



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.04.2016**

CORAM:

THE HONOURABLE Mr. JUSTICE **M.SATHYANARAYANAN**

T.O.S.No.13 of 1999

1. Ethirajammal (Deceased)
2. G.Bhanumathi ... Plaintiffs

Vs.

G.Usha ... Defendant

[1st plaintiff has been recorded as dead as per order
dt. 23.10.2008 in A.No.14819/08 in TOS No.13 of 1999]

For Plaintiffs : Mr.T.M.Hariharan

For Defendant : Mr.R.Subramanian

J U D G M E N T

Original Petition No.141 of 1996 was filed by Ethirajammal and G.Bhanumathi praying for approving the Will in the common form and also for issuance of probate of Will with effects throughout Tamil Nadu. The respondent lodged a caveat and therefore, it was converted as T.O.S.No.13 of 1999 and during the pendency of the suit, the 1st defendant viz., Ethirajammal died and the 2nd plaintiff was recorded as the legal representative of the deceased 1st plaintiff.



written statement and it was misplaced and thereafter, an application has been taken out for reconstruction and the same was ordered by this Court and the defendant has taken out an application for filing the written statement afresh and during the pendency of the application, compromise has been reached.

3. The 2nd plaintiff viz. Bhanumathi has filed the proof affidavit in lieu of chief examination wherein she would state among other things that the Testator G.R.Yuvarangam was her father and the deceased 1st plaintiff viz., Ethirajammal, is her mother and her mother and she were appointed as Executors of the Will by the Testator G.R.Yuvarangam and her brother and sister are G.Govindarajulu and G.Vasantham and her brother G.Govindarajulu predeceased his father on 30.04.1986 and he is survived by his wife G.Usha @ C.Usha Rani, the defendant herein.

4. It is further stated in the proof affidavit of the 2nd plaintiff in lieu of chief examination that the father of the 2nd plaintiff has executed his Last Will and Testament dated 05.10.1989 in a sound



and disposing state of mind at Chennai on 05.10.1989 in the presence of the witnesses viz., K.V.Kuppan, S/o.Vedagiri and A.Muthukrishnan, S/o.Appadurai Naidu and it was also registered on 05.10.1989 in the office of the Sub Registrar, Anna Nagar as Document No.98 of 1989 in Book-III and according to the 2nd plaintiff, as per the above said Will, the 1st plaintiff will have the life interest over the immovable property at No.77/4, Gujji Naicken Street, Anna Nagar East, Chennai - 600 102 and thereafter, the property will devolve upon the children of the 2nd plaintiff and also marked Exs.P1 to P5.

5. The 2nd plaintiff to prove the execution of the Will had also examined one of the attestors of the Will K.V.Kuppan as PW2 and in the chief examination, PW2 would state that he knew the father of the 2nd plaintiff and that on 05.10.1989, the testator called him to his residence for the purpose of executing the Will and he had also gone there and at that time of his arrival, another attestor viz., Muthukrishnan was also present and the testator was hale and healthy and was in sound disposing state of mind and the Will was prepared by the Advocate of the testator and he subscribed his signature before PW2



and Muthukrishnan and both of them had seen the signing of the Will by the testator and the said Will was marked as Ex.P6.

6. The respective learned counsel appearing for the parties, would submit that the 2nd plaintiff as well as the defendant had arrived at a compromise and it was also reduced into writing in the form of a Joint Compromise Memo dated 27.10.2015 in D.No.45447 of 2015 and in the light of the Joint Compromise Memo, Probate to the Last Will and Testament may be granted to the 2nd plaintiff and prays for appropriate orders.

7. The 2nd plaintiff as well as the defendant are present before this Court and this Court also made an enquiry and both of them would state that having fully understood the terms of the Joint Compromise Memo, they have voluntarily subscribed their signature and prayed for appropriate orders. The Joint Compromise Memo is also counter signed by the respective learned counsel appearing for the parties. Therefore, the Joint Compromise Memo is taken on record.



8. This Court on going through the materials placed before it is of the view that Ex.P6 Will has been proved in accordance with law. Therefore, in view of the testamentary evidence of PW2 and in the light of the Joint Compromise Memo dated 27.10.2015, entered into between the parties, there cannot be any impediment to grant the Probate to the Last Will and Testament, as prayed for.

9. Accordingly, the Testamentary Original Suit is decreed in terms of joint Compromise Memo dated 27.10.2015 and Probate to the Last Will and Testament of late G.R.Yuvarangam dated 05.10.1989 [Ex.P6] is granted, in favour of the 2nd plaintiff. The Joint Memo of Compromise shall form part of the decree. There shall be no orders as to costs.

sd/.M.S.N.J

06.04.2016

//Certified to be a true copy//

Dated this the day of 2016

S.s/20.07.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.