

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/4/2016

C O R A M

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

T.O.S.No.12 of 2014
(O.P.No.317 of 2009)

G.Murugesan

...

Petitioner

Vs

1. G. Sampath
2. C. Deviga
3. S. Shanthi
4. M. Suriya
5. K. Bhaskaran
6. K. Shanmugam
7. S. Kuppuswamy
8. K. Shankari
9. K. Shankar
10. K. Senthil

...

Respondents

Petition under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration with the Will annexed under Order XXVI Rule 5 of the Original Side Rules.

For petitioner

...

Mr.S.Sadasharam

For respondents

...

No appearance for D.1 and D.2.

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ORDER

The plaintiff originally filed Original Petition No.317 of 2009 praying for the issuance of Letters of Administration, filed under Sections 232 and 276 of the Indian Succession Act with the Will annexed.

2. The respondents 8 and 10 had lodged caveat and therefore, Original Petition was converted as Testamentary Original Suit No.12 of 2014.

3. Mr.S.Sadasharam, learned counsel appearing for the plaintiff would submit that G.Murugesan, has been examined as P.W.1 and filed Ex.P.1 Original Will; Ex.P.2 Consent affidavit of Mrs.K.Shankari; and Ex.P.3 – Consent affidavit of M.K.Senthil.

4. This Court has carefully considered the submissions made by the learned counsel appearing for the petitioner and perused the materials placed on record.

5. It is the case of the plaintiff that his father as testator had executed a registered Will, dated 27/8/1992, bequeathing the immovable property bearing Old No.16 New No.37 Azeez Mulk 3rd Street, Thousand Lights, Chennai 600 006, in his favour and his daughter viz., Tmt.Lakshmi/mother

of the respondents 8 to 10 in the Original Petition and the said property was purchased by way of a sale deed registered as Document No.352/1989 in the Office of the Sub-Registrar, Thousand Lights, Chennai, executed by the learned X Assistant Judge, City Civil Court, Chennai for and on behalf of K.Venugopal and five others arising out of a decree passed in O.S.No.6518 of 1983, which was filed for specific performance.

6. It is further stated by the plaintiff that the said Will was executed in the presence of witnesses and the petitioner being one of the beneficiaries under the said Will, came forward to file O.P, for grant of Letters of Administration.

7. As already stated, in the light of the caveat filed by the respondents 8 and 10, Original Petition was converted as Testamentary Original Suit No.12 of 2014.

8. The plaintiff has filed a proof affidavit in lieu of the chief-examination reiterating the averments made in the original petition and also marked Ex.P.1 original registered Will dated 27/8/1992 as well as the consent affidavits of the defendants/caveators.

9. This Court has also perused the consent affidavit of the eighth defendant dated 4/12/2014 as well as consent affidavit of the tenth defendant dated 1/12/2014.

10. The issue arises for consideration is whether the plaintiff is entitled for issuance of letters of Administration?

11. Ex.P.1 is a registered Will executed by the father of the petitioner/testator, bequeathing the property in favour of the plaintiff as well as the deceased Lakshmi/mother of the respondents 8 to 10 in the Original Petition and all of them are entitled to get equal share in the said property. In view of the caveat filed by the respondents 8 and 10, Original Petition was converted as Testamentary Original Suit No.12 of 2014. Subsequently, they filed their consent affidavits stating that they have no objections for granting probate in favour of the plaintiff. Therefore, this Court is of the view that Ex.P.1 Will has been proved in accordance with law as its genuineness is not in dispute.

12. In the result, this TOS is allowed, granting Letters of Administration with the Will annexed, in favour of the plaintiff. The plaintiff

is directed to execute a personal bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) in favour of the Assistant Registrar (O.S), High Court of Madras, Chennai 104. No costs.

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List of witnesses on the plaintiff's side:-

P.W.1 - G. Murugesan

List of Exhibits marked on the plaintiff's side:-

Ex.P.1 - Original registered Will dated 27/8/1992

Ex.P.2 - Consent affidavit of Mrs.K.Shankari

Ex.P.3 - Consent affidavit of M.K.Senthil

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Index: yes/No

website: yes/No

M.SATHYANARAYANAN,J

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