

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.12.2017

PRONOUNCED ON: 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.28 of 2015

S.Muthukrishnan

Plaintiff

Vs

Vijayalakshmi

Defendant

Prayer:- This Testamentary Original Suit is filed under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration with the Will annexed.

For Plaintiff : Mr.V.Suthakar

For Defendant : Mr.S.John Peter

JUDGEMENT

Originally, OP.No.587 of 2014 had been filed by the Plaintiff, S.Muthukrishnan, against five Respondents, namely, S.Sivanthi Kani, Balakrapagam, Meena Alagesan, Annapoorani and Vijayalakshmi, seeking Letters of Administration with the Will annexed with respect to the Will produced by the Petitioner, dated 17.04.1996 said to have been executed at Chennai by M.Shunmugadurai, who died on 17.04.1996 at Chennai.

2. Since the 5th Respondent had raised an objection, the OP.No.587 of 2014 was converted into TOS.No.28 of 2015 and she was the sole Defendant in the TOS.

3. The case of the Plaintiff is that his father M.Shanmugadurai had executed a registered Will dated 17.04.1996, bequeathing all his properties and shares in his business, insurances, etc. in favour of the Plaintiff, in the presence of the witnesses, M.V.Narayanan and G.Ravi and he died on 5.11.2012. In the said Will, there is no executor appointed by the Testator. The 1st Respondent is the mother of the Plaintiff and Respondents 2 to 5 are the sisters of the Plaintiff. There is no next of kin or other persons interest to be impleaded. The parents of the deceased Testator predeceased him. The amount of assets, which is likely to come to the hands of the Plaintiff does not exceed in the aggregate the sum of Rs.31,59,872.36/- and the net amount of the said assets after deducting all items which the Plaintiff is by law allowed to deduct is only of the value of Rs.31,59,872.36/-. It has been stated that since the Plaintiff is the son of the deceased Testator and is a legatee as per the Will, he is entitled to the grant of Letters of Administration.

4. The sole Defendant was served on 14.1.2016 and she appeared through a counsel and also filed a written statement, after condoning the delay in filing the written statement.

5. In the written statement, it has been stated that the Will dated 17.04.1996 is not authentic and her deceased father did not execute any will. It has been stated that it is not known as to why the mother or her sisters were not

included in the alleged Will and at least informed of the same till the demise of the father on 5.11.2012. It has been stated that the Plaintiff has to prove that all the properties and shares and assets were actually acquired by her father only through his own money. It has been stated that her father died only intestate and hence, the Plaintiff is not entitled to grant of Letters of Administration.

6. Based on the pleadings, this court had framed the following issues for trial on 13.11.2013:-

1. Whether the Plaintiff is entitled to Letters of Administration as prayed for?

2. Whether the Will relied on by the Plaintiff is genuine one?

7. The parties were invited to lead evidence. During the trial, the Plaintiff was examined as PW.1 and Ex.P1 to Ex.P3 were marked. Ex.P1 is the registered original Will dated 17.4.1996. Ex.P2 is the death certificate of M.Shanmugadurai, dated 5.11.2012. Ex.P3 is the legal heirship certificate of M.Shanmugadurai, dated 3.5.2013. One of the attesting witness to the Will, Ex.P1, G.Ravi was examined as PW.2.

8. In spite of sufficient opportunities granted to the Defendant, she did not participate in the trial, by cross examining the witnesses of the Plaintiff. Hence, the Additional Master had no other option except to close the evidence and to post the matter before this court. Accordingly, the matter was posted before this court and after hearing the learned counsel, the matter was reserved for orders.

9. Though the sole Defendant had entered appearance through a

counsel and also filed a written statement, she did not come forward to substantiate the averments made in the written statement, by letting in oral and documentary evidence. There is also no specific denial in the written statement.

10. On the other hand, the Plaintiff, apart from examining himself as PW.1, had let in oral and documentary evidence and also examined one of the attesting witness, G.Ravi, to the Will, as PW.2, who had filed his proof affidavit for his chief examination. PW.2 had deposed in his evidence that he is one of the attesting witnesses to Ex.P1 Will. PW.2 has stated in his proof affidavit that at the time of execution of the Will, on 17.4.1996, he was present with M.V.Narayanan, who is another attesting witness, at Adyar and he saw the Testator signing the Will at the foot of each paper in Tamil and saw the other witness attesting the Will in the presence of each other.

11. Though the Defendant had filed a written statement, she did not come forward to let in evidence despite several opportunities given to him. On the other hand, as stated above, the Plaintiff has let in oral and documentary evidence to substantiate the suit claim. Therefore, in the absence of rebuttal evidence by the Defendant in support of her pleadings in the written statement, this Court finds no other option except to go by the evidence of the Plaintiff. Consequently, I hold the issues (1) and (2) in favour of the Plaintiff.

12. In the result, this TOS is decreed as prayed. Issue Letters of Administration in favour of the Plaintiff. The Plaintiffs is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The Plaintiff is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The Plaintiffs is further directed to render true and correct accounts once in a year.

18.12.2017

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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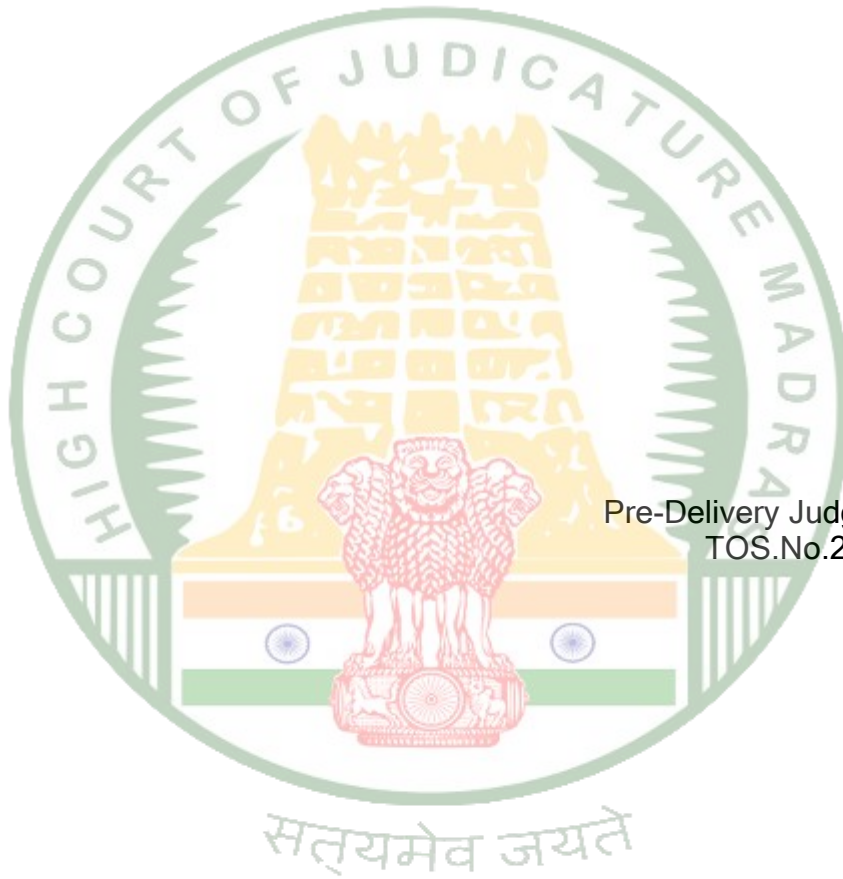
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1. The Record Keeper, VR Section, High Court, Madras

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
TOS.No.28 of 2015

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