

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

Coram

The Honourable Mr.Justice RAJIV SHAKDHER  
and

The Honourable Mr.Justice N.SATHISH KUMAR

Original Side Appeal Nos.122, 123 & 129 of 2016  
and C.M.P.No.8250 of 2016

1. K.Seshadri (since Deceased)
  2. Malathi Seshadri
  3. Vijay Seshadri
  4. Gayathri Rajkumar
  5. Srividya Jaiganesh
  6. Anil Seshadri
- ... Appellants in all the OSAs

Vs.

1. Dr.Mrs.Vasantha Balakrishnan
  2. K.Gopal (Since Deceased)
  3. Dr.Rukmani Gopal
- .... Respondents in all the OSAs

(Cause title accepted vide order of  
court dated 27.01.2016 made in MP.1/15)

Prayer in all the OSAs: Appeals filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, against the common judgement and decree dated 05.04.2013 made in T.O.S.Nos.11 & 12 of 2002 and C.S.No.610 of 2003 on the file of this Court.

For Appellants : Mr.T.V.Ramanujan  
in all O.S.As. SC for Mr.C.Jagadish

For Respondent 1 : Mr.R.Thiagarajan  
in all O.S.As.

For Respondent 3 : Mr.P.B.Balaji  
in all O.S.As.

## C O M M O N J U D G E M E N T

(Judgement of the Court was made by RAJIV SHAKDHER, J.)

1. These appeals are preferred against the common judgement and decree dated 05.04.2013.

2. It may be relevant to note that there are three main protagonist in the proceedings before us. This being the legal representatives of late K.Seshadri; legal representative of late K.Gopal and Dr.Vasantha Balakrishnan.

2.1. Furthermore, the dispute centres around an immovable property, in respect of which, the parents of late K.Seshadri, late K.Gopal and Dr.Vasantha Balakrishnan had apparently executed two separate Wills of even date (Ex.P3 and Ex.P4) qua their respective half shares. The immovable property is situate at Old No.13, New No.8, 6<sup>th</sup> Street, Gopalapuram, Chennai-600 086 (Plot No.4 in the Layout Plan No.167) and comprised in R.S.No.1252 and bounded on the North by Plot No.1 owned by Mrs.Prema Santhanam and Plot No.2 owned by K.Varadarajan, on the South by Corporation Road (Gopalapuram Sixth Street), on the East by Plot No.5, owned by Mrs.K.Sarangan and on the West by Private Road and measuring North to South on the Eastern Side 121 feet 6 inches, on the Western Side 120 feet and East to West on the Northern side 52 feet and on the Southern side 51 feet and of a total extent of 2 grounds and 1416 sq.ft. and situate within the Registration District of Madras and Registration Sub District of Mylapore (hereafter referred to as "the property"). Late K.Seshadri, late K.Gopal and Dr.Vasantha Balakrishnan are sons and daughter of Dr.K.G.Krishnasamy and Mrs.Ramlakshmi Krishnasamy.

2.2. It is in this context, O.P.No.506 of 2001 was filed for issuance of letter of administration qua Will dated 03.02.1984 executed by Dr.K.G.Krishnasamy. Likewise, O.P.No.505 of 2001 was filed for issuance of letter of administration vis-a-vis the Will dated 03.02.1984, executed by Mrs.Ramlakshmi Krishnasamy.

2.3. This apart, a partition suit was filed by Dr.Vasantha Balakrishnan, which is numbered as C.S.610 of 2003. Since, objections were filed vis-a-vis O.P.No.505 of 2001 and 506 of 2001 by Dr.Vasantha Balakrishnan, they were converted into testamentary suits. The testamentary suits are numbered as: T.O.S.No.11 and 12 of 2002, which, as indicated above arise out of O.P.No.505 of 2001 and O.P.No.506 of 2001 respectively.

2.4. It may also be relevant to note that legal representatives of late K.Seshadri who are brought on record are

(i) Malathi Seshadri, (ii) Vijay Seshadri, (iii) Gayathri Rajkumar, (iv) Srividya Jaiganesh and (v) Anil Seshadri. In so far as Dr.Rukmani Gopal is concerned, she is the only surviving Class I heir of late K.Gopal.

2.5. Therefore, the legal representatives of late K.Seshadri will be described as the "Seshadri group". In so far as Dr.Rukmani Gopal and Dr.Vasantha Balakrishnan, are concerned, they will be referred to hereafter by their respective names.

3. After lengthy arguments were advanced in the matter by Mr.T.V.Ramanujan, senior counsel, instructed by Mr.C.Jagadish, appearing for the K.Seshadri group, Mr.R.Thiagarajan, advocate, appearing for Dr.Vasantha Balakrishnan and Mr.P.B.Balaji, advocate, who appears for Dr.Rukmani Gopal - on instructions from their respective parties, consent is given for disposal of the captioned appeals and the interlocutory application on the following agreed terms:

(i) Dr.Vasantha Balakrishnan accepts the truth, validity and genuineness of the two Wills of even date i.e. 03.02.1984, executed by Dr.K.G.Krishnasamy and Mrs.Ramlakshmi Krishnasamy (hereafter referred to as "Subject Wills").

(ii) Dr.Vasantha Balakrishnan, withdraws her objections to the subject Wills unhesitatingly and unequivocally.

(iii) The K.Seshadri group will be entitled to 45% of the undivided share in "A" schedule property, while Dr.Rukmani Gopal will get 25% of the undivided share in the "A" schedule property. The balance 30% of the undivided share in the "A" schedule property will vest in Dr.Vasantha Balakrishnan.

(iv) In so far as the contents of the bank-locker located at Bank of India, Cathedral Road branch is concerned (which is, presently under the control of Dr.Rukmani Gopal), the same will be opened and the contents will be divided equally in three parts, that is, the K.Seshadri group, Dr.Vasantha Balakrishnan and Dr.Rukmani Gopal.

(v) Dr.Vasantha Balakrishnan will not lay any claim to the mesne profits which are adverted to in C.S.No.610 of 2003 and, other movables, referred to in Schedule "B" appended to the plaint filed in C.S.No.610 of 2003.

4. De hors the aforementioned interse terms of settlement, we have also examined the evidence and material placed before us; in particular, we have examined the testimony of P.W.1, who is one of the attesting witness in respect of the subject Wills i.e. Ex.P3 and Ex.P4.

4.1. In our view, the testimony of P.W.1 is credible. The procedure prescribed in law for execution of a Will, in our opinion, was adhered to by the executors of the subject Wills.

4.2. We are also persuaded to hold, based on the appreciation of evidence placed before us that at the time when the subject Wills were executed, the two executants i.e. Dr.K.G.Krishnasamy and Mrs.Ramlakshmi Krishnasamy were in a sound disposing state of mind.

4.3. This apart, Mr.Maraimalai, working as an Assistant in the office of the Sub-Registrar, Mylapore, on our directions, has placed on record a certified copy of the subject Wills. A perusal of the same shows that the assertions made before us with regard to interpolations and/or interlineations having been made in the original Wills, after they were executed, is without basis. A bare reading of the certified copy of the subject wills would show that at time of registration changes made therein, which in any event were not material, were duly noted.

4.4. Thus, having regard to the evidence placed on record and given the fact that objections to the two (2) Wills i.e. Ex.P3 and Ex.P4 have been withdrawn by Dr.Vasantha Balakrishnan, we are inclined to allow the prayer made in T.O.S.No.11 and 12 of 2002.

4.5. Furthermore, in so far as the impugned preliminary decree dated 05.04.2013, passed in C.S.No.610 of 2003, is concerned, the same shall stand varied to the extent set out hereafter:

(i) Dr.Vasantha Balakrishnan shall be entitled 30% of the undivided share in "A" schedule property, while the K.Seshadri group will be entitled to 45% of the undivided share in "A" schedule property. The balance 25% of the undivided share in "A" schedule property will vest in Dr.Rukmani Gopal.

(ii) As far as the contents in the bank-locker located at Bank of India, Cathedral Road branch is concerned, the same will be opened and the contents will be divided in three parts, that is, amongst, the K.Seshadri group, Dr.Vasantha Balakrishnan and Dr.Rukmani Gopal.

(iii) Dr.Vasantha Balakrishnan will have no claim to mesne profits or, movables as set out in "B" Schedule property as adverted to in C.S.No.610 of 2003.

4.6. Dr.Vasantha Balakrishnan, will file an affidavit, as undertaken in Court, today, by her counsel Mr.R.Thiagarajan, based on instructions received by him from his principal, affirming the terms of the settlement, recorded by the Court.

4.7. The K.Seshadri group, Dr.Vasantha Balakrishnan and

Dr.Rukmani Gopal will approach the learned Single Judge for passing a final decree in C.S.No.610 of 2003. The learned Single Judge will pass the final decree keeping in mind the order passed by us today. Furthermore, we request the learned Single Judge to pass the final decree as expeditiously as possible given the fact that the parties have engaged in litigation for over a decade and a half.

5. The captioned appeals are disposed of in the aforementioned terms. The connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kk

To

The Sub Assistant Registrar (Original Side),  
High Court, Madras.

+3ccs to Mr.R.Thiagarajan, Advocate, S.R.No.91313 TO 91315

+3ccs to Mr.P.B.Balaji, Advocate, S.R.No.90958 to 90960

+1cc to Mr.C.Jagadish, Advocate, S.R.No.90751

O.S.A.Nos.122, 123 & 129 of 2016  
and C.M.P.No.8250 of 2016

VD(CO)  
CS/27/02/18

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