

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.199 of 2016
and C.M.P.No.15414 of 2016

1.Gandhimathi
2.Divya
3.G.Surendran

... Appellants/Respondents 1 &3/
Plaintiff 2 to 4

vs.

1.G.Rangan

...1st Respondent/Applicant/
1st Defendant

2.Vijayalakshmi
3.Shanthi
4.Uma Maheswari
5.Lakshmi
6.Balaji
7.Vasantha
8.Parthasarathy

... Respondents 2 to 8/
Respondents 4 to 10/
Defendants 2 to 8

Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with
Clauses 15 of the Letters Patent against the order dated
19.07.2016 made in A.No.1270 of 2016 in C.S.No.624 of 2000.

For Appellants : Mr.S.R.Rajagopal
for Mr.Durai Kannan

For Respondents : Mr.M.S.Subramaniam for R1

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgment and
order dated 19.07.2016 passed in A.No.1270 of 2016 in C.S.No.624
of 2000.

1.1. To be noted the said application was moved by respondent No.1/defendant No.1.

2. By virtue of this application, a limited prayer was sought, which is, was that evidence of a Forensic Expert be permitted to be led to prove the signature of the testator on the subject will.

2.1. The learned single Judge, by virtue of the impugned judgment and order, allowed the prayer made in the application.

2.2. We are told by the counsel for respondent No.1 that as directed by the learned single Judge, the original documents were presented before the concerned Forensic Expert by the Advocate Commissioner. We are further informed that the Expert has made a requisition to the Court for placing on record contemporaneous documents, which bear the signature of the Testator.

3. Mr.Rajagopal, says that the impugned judgment and order is flawed for the reasons that it proceeds on the basis that the mere proof of signature of the testator would suffice, to prove the subject Will.

3.1. It is the submission of the learned counsel for the appellant that the proof of signature is only one of the facets necessary for proving the Will and that it would have to be further established by the respondents that at the point in time, when the Will was executed, the testator was in a sound and disposing mind.

4. Counsel for respondent No.1 says that, he does not contest this position, which is, otherwise well established in law.

5. Having regard to the above, according to us, no interference is called for with the impugned judgment and order. It is made clear that it would be open to the appellants to take recourse to every defence, which may be available in law, to them, if they so choose to contest the genuineness of the subject will. Needless to say, the trial Court will take a decision in the matter, in accordance with law, after hearing the parties.

6. The appeal is, accordingly, disposed of in the aforesaid terms. Consequently, the connected pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

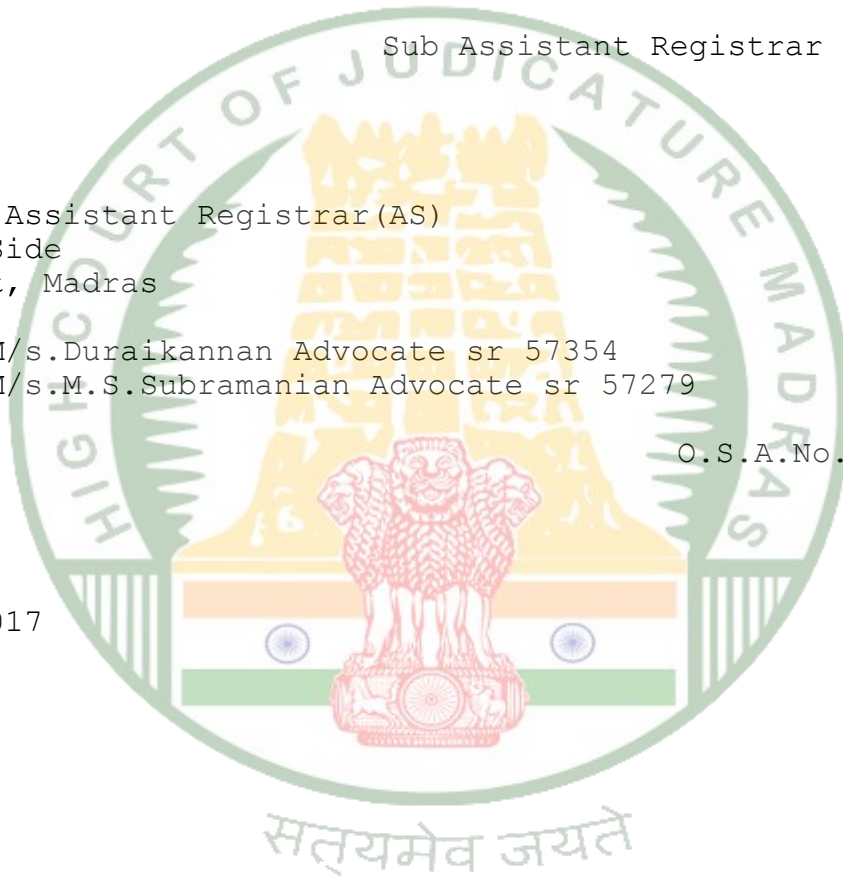
To

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

+1 cc to M/s.Duraikannan Advocate sr 57354
+1 cc to M/s.M.S.Subramanian Advocate sr 57279

O.S.A.No.199 of 2016

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