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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

T.O.S.No.26 of 2007
in
OP.No.824 of 1998
and
Tr.C.S.No.943 of 2010

R.Rangaraj .. Plaintiff in TOS.No.26/2007

Vs.

1.Kannamal (deceased) .. 1st Defendant in TOS.No.26/2007 &
1st Plaintiff in Tr.C.S.No.943/2010

2.Nandakumar .. 2nd defendant in TOS.No.13/2010 &
2nd Plaintiff Tr.C.S.No.943/2010

(D-2 impleaded as per order dated
2.9.2011 in A.P.No.4460/2011)

3.Revathy .. 5th Plaintiff Tr.C.S.No.943/2010
3rd defendant in TOS.No.13/2010

4.R.Neela .. 7th Plaintiff Tr.C.S.No.943/2010
4th defendant in TOS.No.13 of 2010

5.R.Kalaivanan .. 6th Plaintiff Tr.C.S.No.943/2010
.. 5th defendant in TOS.No.26/2007

6.R.Deepa .. 8th plaintiff in Tr.C.S.No.943/2010

6th defendant in TOS.No.26 / 2007

- 7.B.Gowri .. 3rd plaintiff in Tr.C.S.No.943/2010
 7th defendant in TOS.No.26 / 2007
- 8.B.Raja .. 2nd plaintiff in Tr.C.S.No.943 / 2010
 8th defendant in TOS.No.26 / 2007
- 9.B.Kasthuri .. 4th plaintiff in Tr.C.S.No.943/2010
 9th defendant in TOS.No.26/ 2007

D3 to D9 brought on record as LR
 of D1 as per order dated 15.2.2016
 in A.P.No.12/2016)

10. Rupavathi Ammal .. 1st defendant Tr.CS.No.943/2007
11. Ravi .. 4th defendant in Tr.CS.No.943/2007
12. Selvam
13. Kalavathi
14. Selvi
15. Babu
16. Mrs. Bangarammal . Defendants 5 to 9
 in Tr.C.S.No.943/2007

Original Petition No 824 of 1998 was filed under Sections 232 and 276 of Indian Succession Act, XXXIX of 1925 for the grant of letters of Administration. Against this petition a Caveat was filed on 5.4..2007 by the Caveators As per order of this Court dated 13.08.2007, the Original Petition No.552 of 2002 was converted into Testamentary Original Suit No.26 of 2007.

Tr.C.S.No.943 of 2010: Civil Suit filed under Order VIII Rule 1 of CPC praying for the judgement and decree for the following reliefs:

(a) directing partition by metes and bounds of the suit property being land with thatched hut in the extent of 3553.3 sq.f.t bearing New Door No.29, Old NO.11, Pillaiyar Koil Street, Naduakkarai, Anna Nagar, Chennai - 600 040, morefully described in the schedule hereunder and allot he 1/6th share thereof to the plaintiff;

(b) directing the defendants to pay the cost of the suit.

For Plaintiff in Tos.No.26/2007
& Defendants 3 to 7 & 9
in Tr.C.S.No.943/2010 : Mr. P.B.Balaji

For Defendants 1 and 3 to 9
in Tos.No.26/2007 : Mr.C.T.Mohan

For 2nd defendant in
Tos.No.26/2007 & Tr.
C.S.No.943/2010 : Ms.C.Sriranjani

COMMON JUDGMENT

The petition in OP.No.824 of 1998, originally filed for the grant of Letters of Administration, has been converted as testamentary suit being TOS.No. 26 of 2007 in view of the caveat filed by the defendants therein.

2. The Suit in Tr.C.S.No.943 of 2010 has been filed for partition and allotment of 1/6th share of the suit property to the plaintiff.

3. Since the facts involved in the Testamentary Suit in TOS.No.26 of 2007 as well as the Transfer Civil Suit in Tr.C.S.No.943 of 2010 are interconnected and the parties are one and the same, the facts have been culled out from the Civil Suit. For the sake of convenience, the parties are referred to as per their status in the Civil Suit.

4. The brief case of the plaintiff is as follows:

(i) According to the plaintiff, originally Govindasamy Naidu, Irusappa Naidu and Bangarammal, the children of

Veerasamy Naidu, had jointly purchased a vacant land measuring an extent of 10660 sq.ft. from one S.P.Srinivasa Nadar for a valuable consideration. According to the plaintiff, they are entitled to $\frac{1}{3}$ equal share of the aforementioned property to the extent of 3553.3 sq.ft. individually and separately. The said Bangarammal, the grand-mother of the plaintiff, had been in absolute possession of the said vacant land of 3553.3 sq.ft. and had two issues, viz., Pattammal, the mother of the plaintiff and Ethirajulu Naidu, the maternal uncle of the plaintiff. The said Pattammal had 6 issues. Since the maternal uncle of the plaintiff, Ethirajulu Naidu died issueless and his wife having predeceased him, the suit property devolved upon the parties to the suit, viz., the plaintiff and the defendants, who were jointly owning, possessing and enjoying the suit property.

(ii) It is stated by the plaintiff that the parties to the suit, viz., plaintiff and the defendants have put up thatched huts in the suit property, which is undivided and had been in enjoyment of the same for more than two decades. According to the plaintiff, she is entitled to $\frac{1}{6}^{\text{th}}$ share of the undivided suit land. She had issued a lawyer's notice dated 2.7.1983 calling upon the

defendants to make a partition and hand over 1/6th share of the suit schedule property to her.

(iii) The plaintiff submits that the defendants 3 to 5 have filed a suit in O.S.No.1420 of 1994 against the plaintiff and the 2nd defendant for permanent injunction restraining them from interfering with the suit property. According to the plaintiff, in the said suit, defendants 3 to 5 had raised a fabricated plea of absolute right over the suit property under the guise of a fabricated Will said to have been executed by Desappa Naidu. According to the plaintiff, the said Desappa Naidu did not have any right over the suit property as the same was inherited by plaintiff's mother through her mother Bangarammal. The said suit is pending on the file of II Assistant Judge, City Civil Court, Chennai. In the said suit, the defendants 3 to 5 have claimed that they have probated the alleged Will whereas according to the plaintiff, on verification, it was found that to probate the Will, they have filed the Original Petition in O.P.No.824/1998 after the plaintiff had filed her written statement, which also creates a doubt that the alleged Will is false and fabricated. Since the plaintiff was not added as a party in the said Original Petition,

the plaintiff filed the suit to allot 1/6th equal share of the suit property to her.

5. The brief case of the 3rd defendant is as follows:

According to the 3rd defendant, he along with his brother filed a suit in O.S.No.1420 of 1994 for permanent injunction, which is pending on the file of II Assistant City Civil Court against the plaintiff and others. The 3rd defendant submits that he and the defendants 4 to 7 are the grand children of one Desappa Naidu, who was in absolute possession and enjoyment of the suit property. He bequeathed the suit property to his grand children, viz., defendants 3 to 5 for which, they have also applied for Letters of Administration before this court. The plaintiff is not entitled to any share in the suit property and the present suit is not at all maintainable and is barred under section 10 of CPC, since an earlier proceeding is pending in respect of the same cause of action between the same parties. Hence, he prayed for dismissal of the suit.

6. On the basis of the above pleadings, the following

issues have been framed by the trial Court in O.S.No.1226 of 2005, which stood transferred to this Court and numbered as Tr.C.S.No.943 of 2010:

(i) Whether the plaintiff is entitled for partition as prayed for?

(ii) Whether the suit is barred under Section 10 CPC?

(iii) To what relief, the plaintiff is entitled to?

7. In TOS No.26 of 2007, this Court, vide order dated 10.02.2011, has framed the following issues:

(i) Whether the Will dated 03.02.1980 is genuine, valid and binding?

(ii) Whether the delay of 15 years in seeking Letters of Administration is fatal to the proceedings initiated?

(iii) To what other relief, the plaintiff is entitled?

8. Evidence was recorded in civil suit. Plaintiff in Testamentary Suit was examined as D.W.1. On the side of the plaintiff in Tr.C.S. P.W.1 was examined and Exs.P1 to P6 were marked and on the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D1 and D2 were marked. The details of the documents are here under:-

Exhibits produced on the side of the plaintiff:

<i>S.No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	P-1	3.11.1931	Sale deed registered as Doc. NMo.1755 of 1931
2.	P-2	2.7.1983	Office copy of Lawyer's notice issued to the defendants
3.	P-3	-	Xerox copy of certified copy of judgment in O.S.No.1420/94 on the file of II Assistant City Civil Court, Chennai.
4.	P-4	22.12.2006	Xerox copy of certified copy of Decree in O.S.No.1420/94
5	P-5	29.9.2009	Certified copy of judgment in A.s.No.703 of 2007 on the file of FTC II, Chennai
6	P-6	29.9.2009	Certified copy of Decree is A.S.No.703/2007

Exhibits produced on the side of the defendants:

<i>S. No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1	D-1	-	Death Certificate of K.Desappa Naidu who died on 7.5.1983
2	D-2	3.12.1980	Original Will executed by K.Dessappa Naidu

Witnesses examined on the side of the plaintiff:

P.W.1. -Kannammal

P.W.2 - Kannappan

Witnesses examined on the side of the defendants

D.W.1 – R.Rangaraj

9. The learned counsel for the plaintiff in Tr.C.S.No.943 of 2010 submitted that since the suit property was jointly purchased by one Govindasamy Naidu, Irusappa Naidu and Bangarammal, who are the children of one Veerasamy Naidu, under Ex.P1, they became entitled to 3553.3 sq.ft. each in the suit property. Mrs.Bangarammal, the grand mother of the plaintiff had two children, namely, Ethirajulu Naidu and Pattammal (mother of the plaintiff in Tr.CS.). Since, the said Ethirajulu Naidu died issueless and his wife also predeceased him, and that no other Class I legal heir is available, the share of the said Ethirajulu Naidu devolved upon Govindasamy Naidu and Bangarammal, being the class II

legal heirs. It is submitted by the learned counsel that since the said Ethirajulu Naidu executed a release deed releasing his share in favour of one Desappa Naidu, who is the son of Govindasamy Naidu, the said share also would devolve upon Pattammal, as she is the wife of the said Desappa Naidu. Therefore, it is the contention of the learned counsel that since the said Pattammal had 6 children, the plaintiff is entitled to $1/6^{\text{th}}$ share in the suit property.

10. It is the further contention of the learned counsel for the plaintiff in Tr.C.S.No.943 of 2010 that the Will propounded by the plaintiff in TOS.No.26 of 2007 is shrouded with suspicious circumstances and the manner in which the Will was executed created serious doubt and that all the legal heirs have not been impleaded in the probate proceedings. It is submitted that name of the scribe has not been mentioned in the alleged Will. The evidence of P.W.2, attesting witness is also doubtful with regard to the execution of the document. The plaintiff has already filed suit for bare injunction in the year 1994 and the same was dismissed in the year 2006 but Original Petition was filed in the year 1998, with delay of 12 years. The same has not been

properly explained. It is submitted that P.W.2, attesting witness, namely Kannappan, has also admitted that beneficiary was present at the time of executing the Will and the plaintiff in Tr.C.S., Kannammal one of the daughter of the Desappa Naidu, alone has excluded. No reason has been assigned in the Will for exclusion of the said Kannammal, which alone creates suspicious circumstances about the execution of the Will. Therefore, it is submitted by the learned counsel for the plaintiff in Tr.Cs.No.943 of 2010 that Letters of administration cannot be granted and the Testamentary suit is liable to be dismissed. In support of his arguments, the learned counsel has placed reliance on the judgments in ***T.Ponnalagi v. RM.Ramachandran and others*** [(2007) 2 MLJ 254]; ***Apoline D Souza*** [(2007) 7 SCC 225; ***Benga behera v. Braja Kishore Nanda*** [(2007) 9 SCC 728; (***Rani Purnima Debi v. Kumar Khagendra Narayan Deb.***) 1962 SC 567 and ***Susama Bala Devi and Others v. Anath Nath Tarafdar and others***) AIR 1976 Cal 377(1)

11. Per contra, it is the contention of the learned counsel appearing for the contesting defendant in Transfer Suit/ plaintiff in Testamentary Suit that his father Desappa Naidu, who died on

07.5.1983, executed a registered Will dated 03.12.1980 bequeathing the entire suit properties in favour of all the legal heirs excluding the plaintiff in Transfer suit, i.e. Kannammal. The learned counsel for the contesting defendant in Transfer suit/plaintiff in testamentary suit submitted that the Will has been proved in the manner known to law and the defendants 1 to 9 are the grand children of the testator and that they have given sufficient provisions in the Will. The plaintiff in Transfer suit, viz., Kannammal, and her mother alone are opposing the Will and other legal heirs have not contested the Will.

12. It is the submission of the learned counsel for the contesting defendant in transfer suit/plaintiff in testamentary suit that D.W.1 has clearly spoken about the execution, attestation and the testamentary capacity of the testator of the Will. The only contention of the plaintiff in the transfer suit, i.e. partition suit, is that the testator has no right to execute the Will and the Will is not genuine. It is further submitted by the learned counsel for the contesting defendant in transfer suit and the plaintiff in Testamentary suit that merely because no reason has been assigned in the Will for disinheriting one of the grand daughters

of the testator, i.e. the plaintiff in the transfer suit, Kannammal, the same itself cannot be a ground to disbelieve the Will when the Will is otherwise proved in the manner known to law and there is no suspicious circumstances attached to the Will.

13. It is also submitted by the learned counsel for the contesting defendant in the transfer suit/ plaintiff in testamentary suit that an extent of 10660 sq.ft. of vacant land was originally purchased jointly by Govindasamy Naidu, Irusappa Naidu and Bangarammal as per Ex.P1 and, therefore, each of them are entitled to 3553.3 sq.ft., for which there is no dispute between the parties. It is also the contention of the learned counsel that one joint owner, namely, Irusappa Naidu died issueless and therefore, his share devolved upon his other brother, Govindasamy Naidu and his sister Bangarammal equally. Therefore, Govindasamy Naidu and Bangarammal became entitled to 5331 sq.ft each. It is also admitted by both sides that Bangarammal had two issues, one son and daughter namely, Ethirajulu Naidu and Pattammal and both of them are equally entitled from the Bangarammal's share. Irusappa Naidu has already released share in favour of Desappa Naidu. Therefore,

Desappa Naidu became entitled to 7998 sq.ft in the entire property which was originally purchased by three joint holders. The remaining extent of 2662 sq.ft would devolve upon the said Pattammal. The said Pattammal married Desappa Naidu, the testator herein and they had six children. Therefore, it is submitted by the learned counsel for the contesting defendant in transfer suit / plaintiff in testamentary suit, that at the most, the plaintiff is entitled to $1/6^{\text{th}}$ share in 2662 sq.ft. alone and not from 3553.3 sq.ft as pleaded in the plaint.

14. The learned counsel for the contesting defendant in the transfer suit/plaintiff in testamentary suit also submitted that since all other legal heirs have been given sufficient provision in the Will, they have not been made as parties in the testamentary suit and the person, who disputes the Will alone was made as party. Whereas in the suit, all the interested persons are made as parties. Except plaintiff, others have not contested the suit and also not disputed the Will. Hence, it is submitted that merely because all the legal heirs have not been arrayed as parties in the testamentary suit, that itself cannot be a ground to dispute the genuineness of the Will, which was proved otherwise, in the

manner known to law. Hence, the learned counsel for the contesting defendant in the transfer suit/plaintiff in testamentary suit prayed for grant of Letters of Administration in respect of the Will executed by the testator.

15. In the light of the above submissions, the issues to be analysed by this Court is the issues framed by the trial Court in the partition suit, i.e. Tr.C.S.No.943 of 2010 i.e. whether the plaintiff is entitled to partition as prayed for.

16. The suit has been laid claiming $1/6^{\text{th}}$ share out of 3553.3 sq.ft of land in the schedule mentioned property. On a careful perusal of the pleadings and exhibits adduced by the parties, it is seen that an extent of 10660 sq.ft. of land was originally purchased by one Govindasamy Naidu, Irusappa Naidu and Bangarammal, who are the brothers and sister, jointly in the year 1931 under Ex.P1. It is also admitted by both sides that Irusappa Naidu died issueless. That being the case, Irusappa Naidu's share i.e.3553.3sq.ft. would devolve upon his brother and sister, namely, Govindasamy Naidu and Bangarammal equally and that they became entitled to $3/6^{\text{th}}$ share each in the

entire property purchased under Ex.P1 sale deed of the year 1931. It is also admitted by both sides that Bangarammal had two issues, one son and daughter namely, Ethirajulu Naidu and Pattammal. Both of them are equally entitled from the Bangarammal's share. It is also admitted by both sides that Ethirajulu Naidu died issueless. Though parties have not clearly pleaded and adduced evidence on this regard, during the course of argument, both counsels fairly conceded that he died long back and there is no evidence available on record to prove his exact date of death. Similarly, it is conceded by both sides that Ethirajulu Naidu, one of the children of Bangarammal has released his share in favour of Desappa Naidu, who is only son of the original owner, Govindasamy Naidu.

17. If the above undisputed submission is taken into consideration that originally Govindasamy Naidu, after the death of his brother, namely, Irusppa Naidu, became entitled to 5331 sq.ft. and similarly, Bangarammal is entitled to 5331 sq. ft in the suit properties, Desppa Naidu, had acquired 5331 sq.ft. from his father Govindasamy Naidu. Similarly, Bangarammal had two children namely, Ethirajulu Naidu and Pattammal and each of

them became entitled to 2662 sq.ft. It is fairly conceded by the learned counsel for the plaintiff in transfer suit that Ethirajulu Naidu, son of Bangarrammal has released his share in favour of Desappa Naidu. That being the case, Pattammal, the daughter of Bangarmmal, derived an extent of 2662 sq.ft alone in the entire property. Admittedly, the said Pattammal, had six (6) children. In that case, the plaintiff in partition suit, namely, Kannammal one of the legal heirs of deceased Pattammal, is entitled to $1/6^{\text{th}}$ share out of 2662 sq.ft. and not as pleaded in the plaint. At the most, the plaintiffs together are entitled to 444.7 sq.ft. out of 2662 sq.ft. The issues raised in O.S.No.1226 of 2005 which was subsequently transferred and numbered as Tr.C.S.No.943 of 2010 are answered accordingly.

Issue Nos. 1 and 3 in TOS No.26 of 2007

18. The third defendant in the partition suit/plaintiff in testamentary suit, namely, Rangarajan, has propounded the Will 03.12.1980 said to have been executed by his father Desappa Naidu and the same has been registered on the file of Sembiam Sub-Registrar. On a careful perusal of the Will, it is seen that

Desappa Naidu, executed the Will dated 03.12.1980, bequeathing the entire suit property purchased under Ex.P1 to all his grand children, except the plaintiff in partition suit, i.e. Kannammal, another daughter of the Desappa Naidu. Of course, there is no reason, whatsoever, mentioned in the Will for such exclusion. To prove Ex.P1, one of the attesting witnesses, namely Kannappan was examined as D.W.2, who, in his evidence, has clearly mentioned that he was working in SIMSON Group of companies and at the request of the testator, Desappa Naidu, he attested the Will and he has also admitted that the Will was signed by the testator Desappa Naidu in his presence and also the other attesting witness. He also asserted that he had seen the testator signing in the Will and the testator Desappa Naidu has also seen him while attesting the Will. Similarly, D.W.2 has admitted that the testator was in sound and disposing state of mind while executing the Will. D.W.2 in his evidence, has categorically stated that he went to the Registrar Office for some other purpose on the said date wherein he saw the testator and at his request, he attested the Will. As such, no suspicious circumstances whatsoever was brought against the Will in the entire cross examination of D.W.2.

19. It is pertinent to note that the Will was executed in the year 1980 and witness was cross examined only on 06.4.2013, i.e., after 33 years from the date of execution of the Will. Due to long passage of time, there may be some minor contradictions in his evidence, but, that itself would not be a ground to reject his evidence. When the entire evidence of D.W.2 is carefully perused by this Court, it does not give any inference that the Will was not genuine one. When the evidence of attesting witness proved the execution, attestation and testamentary capacity of the testator of the Will, then the entire burden lies on the other side to establish the alleged forgery and fabrication.

20. It is the main contention of the defendant in the testamentary suit/plaintiff in partition suit that Desappa Naidu has no right to execute the Will in respect of the entire property as he was not the owner of the entire property. Except this, no suspicious circumstances whatsoever was brought on record by the contesting defendant, namely, the deceased Kannammal, who was the one of daughters of the testator Desappa Naidu. All

other legal heirs have not contested the suit as they have also been given provision under Ex.P1.

21. It is the contention of the plaintiff that the property being ancestral in nature, Desappa Naidu has no right to execute the Will. It is to be noted that admittedly the property has been purchased by Govindasamy Naidu, Irusappa Naidu and Bangarammal jointly. The father of Desappa Naidu has acquired the property of Irusappa Naidu after his death. After the advent of the Act, 1956, Section 8 of the Hindu Succession Act has come into play. Therefore, the grand son of Govindasamy Naidu cannot be treated as co-parcenor in the above properties. Similarly, since the properties devolved upon Govindasamy Naidu from his brother and the property acquired by Desappa Naidu by way of release Deed from one Ethirajulu Naidu, are also to be treated as separate property of Govindasamy Naidu and Desappa Naidu, there is no question of treating the property as ancestral property.

22. Though the plaintiff's mother in partition suit, namely, Pattammal married Desappa Naidu and since Desappa

Naidu himself bequeathed the entire property, now the plaintiff cannot contend that the property is ancestral property. Hence, this Court holds that the contention of the plaintiff in partition suit / defendant in TOS in that aspect, cannot be sustained in law.

23. Though the Will is executed in respect of the entire property purchased under Ex.P1, as already discussed above, Desappa Naidu is actually entitled to 7995 sq.ft alone by way of release deed from Irusppa Naidu and from Ethirajulu Naidu. That being so, the Will in respect of the entire property comprised in Ex.P1 cannot be given any effect. However, the Will can be valid only in respect of the extent of 7995 sq.ft. alone. The remaining extent goes to Patammal's legal heirs. Since the Will has been proved in the manner known to law and no suspicious circumstances were brought on record, the same can be given effect to in respect of the actual entitlement of Desappa Naidu. Accordingly, this Court holds that the plaintiff in TOS.No.26 of 2007 is entitled for grant Letters of Administration in respect of the properties to the extent of 7995 sq.ft alone. Issue Nos. 1 and 3 are answered accordingly.

Issue No:2:

24. Yet another contention of the learned counsel for the plaintiff in partition suit is that there was a delay in filing the petition for letters of administration. It is to be noted that all the legal heirs, except the plaintiff in partition suit, were bequeathed to the property. That apart, it is the specific contention of the plaintiff in testamentary suit that since all the legal heirs did not co-operate then and there, there was a delay in filing the Testamentary suit. This reason is quite explanatory and is acceptable. When there are many legal heirs, the delay is normally bound to occur in view of the non co-operation by them. Therefore, mere delay in coming to Court cannot be a ground to disbelieve the Will, which is a genuine one and otherwise, proved in the manner known to law.

25. Insofar the judgments in the case of ***Apoline D Souza v. John d Souza; Benga behera v. Braja Kishore Nanda; Rani Purnima Debi v. Kumar Khagendra Narayan***

Deb and **Susama Bala Devi and Others v. Anath Nath Tarafdar and others, (cited supra)** as relied on by the learned counsel for the plaintiff in partition suit are concerned, absolutely, there is no dispute with regard to the legal principles set out therein. Whereas in this case, the evidence of the attesting witness satisfies the conscience of this Court and that there was no suspicious circumstances whatsoever brought on record.

26. Similarly, in judgment in **T.Ponnalagi v. RM.Ramachandran and others (cited supra)**, though it is held that non impleadment of necessary party itself is a ground to revoke the Letters of Administration, Section 278 of the Indian Succession Act 1925 mandates all the family members and other relatives of the deceased, and their respective residence to be written in the petition.

27. On a careful perusal of the petition for grant of letters of administration, it is seen that originally they have not been arrayed all the legal heirs except contesting caveator. Though Original legal heirs have not been arrayed as respondents, the

contesting defendant has been impleaded in the Original Petition. In the entire pleadings of paragraph 6 of the petition, the details of all the legal heirs have been given. Section 278 (b) of the Indian Succession Act does not mandate that they should be made as parties. As per Section 278 (b), the list of the legal heirs should be mentioned in the petition.

28. In any event, even assuming that the plaintiff in testamentary suit has not complied with the mandate of Section 278 (ii), it is to be noted that in the connected suit, they were all made as defendants and they have been given a chance. The Will, in question, is not disputed by any other legal heir except one of the daughters of the testator. In the comprehensive suit, all the legal heirs were made as defendants. They remained *ex parte*. Hence, this Court is of the view that mere not arraying them as parties in the TOS, itself is not a ground to non-suit the Will, which is otherwise, proved in the manner known to law. This issue is answered accordingly.

29. In the result, The suit in TOS.No.26 of 2007 is decreed in part granting Letters of Administration to the plaintiff in TOS.No.26 of 2007 in respect of 7995 sq.ft alone and not in

entirety as pleaded with the following conditions:

(i). The Letters of Administration, having the effect limited to the State of Tamil Nadu, shall be issued in favour of the plaintiff in respect of 7995 sq.ft alone as per the Will dated 03.12.1980.

(ii). The plaintiff is directed to duly administer the estate of the deceased.

(iii). The plaintiff shall 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.

(iv). The plaintiff is further directed to render true and correct accounts once in a year.

30. Insofar as the suit in Tr.C.S. No. 943 of 2010 is concerned, preliminary decree is passed dividing the extent of 2662 sq.ft into 6 equal shares and allot such share to the

plaintiff. considering the relationship between the parties, there shall be no order as to costs.

Index:Yes/no

Internet: Yes

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28.02.2017

N.SATHISH KUMAR.J.

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Pre-delivery Judgment in
T.O.S.No.26 of 2007
(O.P.No.824 of 1998)
and Tr.C.S.No.943 of 2010

28.02.2017

<http://www.judis.nic.in>