

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.11.2017

PRONOUNCED ON: 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.34 of 2013

1. M.Sarumathi
2. I.Padmini
3. T.Banupriya
4. M.Vijayakumar

Plaintiffs

Vs

1. V.Jaya
2. K.Chandrasekar
3. K.Jaisankar
4. K.Poornima
5. M.Shobana

Defendants

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 Plaintiffs : Mr.N.Jayabalan

For Defendants : Mr.G.Jayachandran

JUDGEMENT

OP.No.385 of 2011 had been filed, seeking Letters of Administration with the Will annexed with respect to the Will produced by the Petitioners dated 6.8.1988 said to have been executed at Chennai by K.Abaranji Ammal, who died on 4.9.1988 at Chennai.

2. The husband of K.Abaranji Ammal, by name, A.Kulandaivelu, predeceased her on 24.1.1987. At the time of her death, she left behind her, as

her legal representatives, her two daughters, Jaya, Panchali @ K.Devaki and a son, K.Mohan. Even before filing of the OP, Panchali @ K.Devaki and K.Mohan died. They left behind their legal representatives.

3. The property was bequeathed to the son of K.Abaranji Ammal, K.Mohan. The legal heirs of K.Mohan were the Petitioners in OP.No.385 of 2011. The only surviving daughter of K.Abaranji Ammal, namely, Jaya was the 1st Respondent and the legal representatives of the other daughter, Panchali @ K.Devaki were the 2nd to 6th Respondents. Since the Respondents, except the husband of Panchali @ K.Devaki, by name V.Karthikeyan, filed a caveat, the OP.No.385 of 2011 was converted into TOS.No.34 of 2013. Consequently, the Petitioners came to be called as the Plaintiffs and the Respondents, who had filed the caveat, came to be called as the Defendants. The Defendants have also filed a written statement.

3. In the petition, seeking Letters of Administration with the Will annexed, it has been stated that K.Abaranji Ammal had died on 4.9.1988 and she had left behind a Will dated 6.8.1988. Under the said Will, she had bequeathed the property bearing Door No.25/13, III Main Road, CIT Nagar, Chennai-35 to her only son K.Mohan with absolute right and with a further obligation to pay Rs.35,000/- to each one of two daughters within five years from the date of her death. It was further mentioned that since the 2nd daughter, Panchali @ K.Devaki predeceased her, the same sum of Rs.35,000/- was to be paid to her husband, V.Karthikeyan, who was shown as the 2nd Respondent in the OP. It was further mentioned that the Executor, K.Mohan had also paid the said sum of Rs.35,000/- to his sister V.Jaya. The 1st

Respondent had also acknowledged the same by a separate letter dated 1.10.1992, which was named as the release deed.

4. It has been further stated that all the family members of K.Abaranji Ammal reposed complete faith on V.Karthikeyan, husband of Panchali @ K.Devaki. It was hoped that he would initiate steps to give effect to the Will. But, he instigated his sons and daughters and also his sister in law, V.Jaya to file OS.No.1163 of 2010 for partition. Consequently, having no other option, the Petitioners, who are the legal representatives of the deceased son K.Mohan, of K.Abaranji Ammal, had to file the petition, seeking grant of Letters of Administration of the Will of the deceased K.Abaranji Ammal. It has been stated that there is no delay in filing the petition. The Will had been produced along with the petition.

5. The Defendants have filed a written statement after the OP was converted as TOS.No.34 of 2013. In the written statement, it has been stated that the Will had been projected by the Petitioners after they received the summons in OS.No.1163 of 2010, which had been filed, seeking partition and separate possession of the property and which was pending on the file of the 7th Additional Judge, City Civil Court, Chennai. It was further stated that during his life time, K.Mohan evaded the demand for partition. It has been further stated that the Testatrix and her husband were living in Malaysia for more than 30 years. It has been denied that K.Mohan paid Rs.35,000/- as contended in the petition to V.Jeya. It has been further stated that the Will cannot be a true testament since the entire property had been given only to her son, K.Mohan and the daughters had been excluded.

6. It has been further stated in the written statement that the Will is in English and K.Abaranji Ammal was not conversant with English. The thumb impression of K.Abaranji Ammal was misused by the Plaintiffs. The thumb impression is not available in the first page of the Will dated 6.8.1988. It has been further stated that she was not in good health and sound state of mind during the year 1988. She was aged more than 65 years and not about 55 years as contended in the Will. It was further stated that she lost her conscious about more than a year prior to her death and she was in death bed after prolonged serious ill health on account of breast cancer with liquid diet for nearly one year and died on 4.9.1988.

7. It has been further stated that she had no intention of excluding the daughters from the Will and that the Will had been prepared by a person with legal knowledge. The person, who typed the Will, was not disclosed and there is no signature of the said person. Typewriting style and typewriter fonts are of recent origin and it is doubtful that the Will had been prepared in 1988. It has been stated that the Will had been prepared at a later point of time. The details of the attestations of the Will were challenged in the written statement. It has been stated that there were several suspicious circumstances surrounding the attestation of the Will. It has been stated that the TOS should be dismissed.

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

1. Whether the Will dated 6.8.1988 executed by late Abaranji Ammal is true and genuine one?
2. Whether the payment of Rs.35,000/- as directed in the Will to the 1st Defendant by the Executor thereof before his death is

true?

3. Whether the 1st Defendant is estopped from questioning the genuineness of the Will having received the sum of Rs.35,000/- as directed by the Testator?
4. Whether K.Abaranji Ammal was in good health, sound state of mind and conscious during the year 1988 and particularly, on the alleged date of execution of the Will?
5. Whether the thumb impression of the 1st Defendant was misused and a letter dated 1.10.1992 was fabricated by the Plaintiffs?
6. Whether in applying for grant of Letters of Administration after long delay of 23 years after the demise of Testatrix and after institution of suit for partition by the Defendants in OS.No.1161 of 2010 is fatal to the case?
7. Whether the inconsistent stand of the Plaintiffs regarding date of execution of the alleged Will and the alleged fulfilment of terms of the alleged Will is fatal to the case?
8. To what other reliefs the parties are entitled to?
9. The parties were invited to lead evidence. During the trial, the 1st Plaintiff, M.Sarumathi was examined as PW.1. The attesting witness, K.S.Thirunavukkarasu was examined as PW.2. The 2nd attesting witness, P.Subramani was examined as PW.3. An Advocate, R.Bharathi was examined as PW.4. He had issued a reply notice prior to the institution of the suit for partition by the Defendants and he had also filed the written statement in the said suit. The 2nd Defendant, K.Chandradekar was examined as DW.1.
10. During the chief examination of PW.1, she marked Ex.P1 to Ex.P4 and the Defendants had marked Ex.D1 to Ex.D4. Ex.P1 is the registered Will dated 6.8.1988. Ex.P2 is the death certificate of K.Abaranji Ammal. Ex.P3 is the death certificate of K.Mohan and Ex.P4 is the legal heirship certificate of

K.Mohan. Ex.D1 is the advocate notice dated 9.8.2008 and Ex.D2 is the reply notice dated 26.8.1988 and Ex.D3 is the certified copy of the plaint in OS.No.1163 of 2010 and Ex.D4 is the certified copy of the written statement.

11. The Plaintiffs did not mark any document, while examining PW.2 and PW.3, who were the attesting witnesses. During the chief examination of PW.4, discharge request dated 25.6.2008 issued by the Medical Records Officer, Pondicherry was marked as Ex.P5. Ex.P6 and Ex.P7 are the death certificate and the legal heirship certificate relating to Ramalingam. Ex.P8 is the affidavit of Sarumathy, dated 23.6.2011. Ex.P9 is the discharge summary from Ramachandra Medical College of the witness PW.4. Ex.P10 is the notice dated 1.10.2014 issued by PW.4 to G.Gayachandran, Advocate. Ex.P11 is the document relating to Right to Information Act by PW.4.

12. **Issues (1) and (4):-** OP.No.385 of 2011 had been filed by four Plaintiffs, namely, M.Sarumathi, wife of K.Mohan and her two daughters and a son, namely, I.Padmini, T.Banupriya and M.Vijayakumar, seeking Letters of Administration with the Will annexed, of K.Abaranji Ammal, who is the mother of K.Mohan. K.Abaranji Ammal was said to have died on 5.9.1988. Her son K.Mohan, who was the executor, also died on 10.10.2001. In the period between 1988 and 2001, steps were not taken to propound the Will and to prove it in common form by K.Mohan.

13. The Will was dated 6.8.1988. K.Abaranji Ammal's husband, A.Kulandaivelu, predeceased her on 24.1.1987. Apart from K.Mohan, K.Abaranji Ammal and two other daughters, namely, Jaya and Panchali @ Devaki, Jaya was shown as the 1st Respondent in OP.No.385 of 2011. Since

Panchali @ Devaki had also died, her husband and children were shown as the Respondents 2, 3, 4, 5 and 6. Among the Respondents, except the husband of Panchali @ Devaki, others have entered appearance through counsel and had objected to grant of Letters of Administration and consequently, OP.No.385 of 2011 had been converted into TOS.No.34 of 2013.

14. In the plaint, seeking Letters of Administration, it has been stated that K.Abaranji Ammal had executed a last Will and Testament dated 6.8.1988. She was possessed of house property at No.13, III Main Road, CIT Nagar, Chennai-35. She bequeathed the said property to her only son K.Mohan with absolute right. She did not give any share to either one of her two daughters, namely, Jeya and Panchali @ Devaki. On the other hand, she had directed her son K.Mohan to pay a sum of Rs.35,000/- to the first daughter, V.Jaya and to the husband of the deceased second daughter, Panchali @ Devaki.

15. According to the petition, seeking Letters of Administration, it is the claim of the Petitioners that the sum of Rs.35,000/- had been paid to V.Jeya and to Karthikeyan, husband of the 2nd daughter. According to the Petitioners, the Will had been attested by two persons, namely, K.S.Thirunavukarasu and P.Subramani. The Will was not a registered Will. K.Abaranji Ammal had affixed her thumb impression in the said Will. Claiming that the Will must be proved in common form, the petition, seeking Letters of Administration had been filed. As stated above, on caveat being entered and objection being raises, the OP had been converted into TOS.

16. The Defendant had entered appearance and filed a written

statement. In the written statement, it has been stated that K.Abaranji Ammal was suffering from cancer and was in coma stage for more than one year prior to her death. This was taken up as a suspicious circumstance, which naturally would have prevented K.Abaranji Ammal from executing the Will, much less the Will dated 6.8.1988. It was specifically pointed out that K.Abaranji Ammal died on 4.9.1988 within one month from the date of the Will. It was further pointed out as yet another suspicious circumstance that the daughters of K.Abaranji Ammal were completely excluded from any bequeath and it was stated that this was unnatural since the relationship with the daughters had with K.Abaranji Ammal was cordial.

17. It was also further stated in the written statement that K.S.Thirunavukarasu was the brother of the deceased husband of K.Abaranji Ammal and the second attesting witness, P.Subramani was the father of the 1st Petitioner, M.Sarumathi. It was therefore pointed out that the Will is shrouded with suspicious circumstances and consequently, it has been stated that the Will has to be proved in a manner known to law.

18. During the trial, the 1st Plaintiff, M.Sarumathi, examined herself as PW.1. She gave evidence and during her evidence, she has stated about the execution of the Will by K.Abaranji Ammal and its due attestation by the two witnesses, K.S.Thirunavukarasu and P.Subramani. She had filed her proof affidavit. When cross examined with respect to the ailment of K.Abaranji Ammal, she specifically denied the same. However, she was also very frank and truthful in her admission that K.Abaranji Ammal did suffer from medical complications. She stated as follows:-

"My mother in law, died in the suit property on 4.9.1988. At the time of death of my mother in law, she was suffering from breast cancer. My mother in law was taking treatment in hospital at Teynampet. I do not know the name of the hospital but the above said hospital is a private hospital. I deny the suggestion that at the time of ailment of my mother in law, the first Defendant, Mrs.Jaya only taken care of her. Witness adds: i only took care of my my mother in law at the time of her ailment. I deny the suggestion that even during the life time of my father in law, my mother in law was seriously fell ill I deny the suggestion that at the time of death of my mother in law, she was on coma stage. I deny the suggestion that my mother in law died when she was critical ill in the hospital."

19. With respect to the death of M.Mohan, she has stated as follows:-

"My husband, Mr.Mohan died on 28.10.2001 due to lungs cancer"

20. It is seen that she had very clearly stated about the circumstances surrounding the Will in her proof affidavit. These aspects were not put in cross examination.

21. In her chief examination, she has stated as follows:-

"I state that I was present when said K.Abaranji Ammal executed the Will, in the presence of two witnesses and requested them to sign in Will as witnesses and when the said witnesses attested Will at the request of the Testatrix and in her presence and in the presence of each other.

I state that in spite of her sufferings from caner Tmt.K.Abranjji Ammal was mentally alert and she was in free disposition of mind and she executed the Will without any coercion or undue influence from any other person."

22. A perusal of the Will shows that the Will is in English and had been attested by two witnesses, K.S.Thirunavukarasu and P.Subramani. Both the witnesses were examined as PW.2 and PW.3 respectively. They were both also subjected to cross examination. During the cross examination, PW.2 has stated as follows:-

“ Ex.P1 Will executed by my sister in law, Abranji Ammal and I have signed Ex.P1 as the first attesting witness. I deny the suggestion that the signature of the first attesting witness found in Ex.P1 is not mine. I deny the suggestion that the signature found in the proof affidavit is alone my signature and that the signature found in Ex.P1 is not mine.

I explained the contents of the Will to Abranji Ammal in Tamil and subsequently she affixed her left thumb impression in the Will Ex.P1. It is correct to state that in the Will, Ex.P1 it was incorporated that the contents were explained to the Testatrix in Tamil and only after understanding the same, she affixed her thumb impression on it.”

23. This evidence of K.S.Thirunavukarasu had been very seriously challenged by the learned counsel for the Defendants, who stated that the affidavit of K.S.Thirunavukarasu had been signed in Tamil and was not in proper jurat form and had called upon court to reject the entire affidavit filed by K.S.Thirunavukarasu since it is not in proper jurat form. The learned counsel has relied on Order 15 Rule 7 of the Original Side Rules, which is as follows:-

“Order 15 Rule 7:- when an affidavit is sworn or affirmed by a person who appears to the officer taking the affidavit to be illiterate, blind, or unacquainted with the language in which the affidavit is written, the officer shall certify in the jurat that the affidavit was read, translated or explained in his presence to the deponent, that the deponent seemed perfectly to understand it, and made his signature or mark in the presence of the officer as in Form No.8, otherwise the affidavit shall not be used in evidence.”

The learned counsel has also relied on Form No.8, in which jurat form is given. According to the learned counsel for the Defendants, the entire evidence of PW.2 has to be rejected.

24. Section 63 of the Indian Succession Act is as follows:-

“63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged,] or a mariner at sea,

shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

25. Section 68 of the Indian Evidence Act is as follows:-

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

26. According to the above said provisions, any one of the witnesses can be examined to prove a Will. In this case, even though the evidence of PW.2 is to be rejected in toto, which of course, is not the case, the Plaintiffs can always call upon to their assistance the evidence of PW.3, P.Subramani. PW.3 had also filed his proof affidavit. He was also cross examined and during cross examination, he had stated that as follows:-

“It is true to say that Abranji Ammal was suffering from cancer

before her death. I deny the suggestion that Abranji Ammal was in coma stage at the time of her death. She was conscious. Abranji Ammal had executed Ex.P1 Will on 6.8.1988.”

27. It is very clear that the said witness had stated that the Will was signed in his presence and that she was conscious. He had further stated during the cross examination as follows:-

“She expressed her desire to execute a Will in favour of her son Mohan in respect of the subject matter of the property. She has stated only that. After that PW.2 and my son in law went and got typed the Will in English and brought back to home and PW.2 read over and explained to me since I am not acquainted with English. Thirunavukarasu, PW.2 read over to me in English and explained to me in Tamil. I deny the suggestion that Thirunavukarasu himself not acquainted the English.”

He further asserted as follows:-

“ I deny the suggestion that on 6.8.1988 Abaraji Ammal did not execute any Will. Abranji Ammal affixed her left thumb impression in the Will and not signed it. She has affixed her thumb impression only in the last page of Ex.P1 Will.”

28. This evidence is given only to hold that the Will was executed by K.Abaranji Ammal in her free and sound disposing state of mind.

29. In 2002 1 CTC 244 (Madhukar D.Shende Vs. Tarabai Aba Shedage) in paragraph 8, the Honourable Supreme Court had held as follows:-

“8.The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular

case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and way layers.

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict — positive or negative.”

30. In 2005 1 CTC 443 SC (Sridevi and others Jayaraja Shetty and others) it was held in paragraph 14 as follows:-

“14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW 2, the scribe, in his testimony has categorically stated that the Will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW 2) and the two attesting witnesses (DWs 3 and 4) is fully

corroborated by the statement of the handwriting expert (DW 5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed.”

31. There is one another circumstance, which was pointed out by the learned counsel for the Defendants that they had filed a suit for partition in O.No.1163 of 2010 on the file of the VII Additional City Civil Court, Chennai. It has been stated that in reply to the notice issued prior to the institution of the said suit, the counsel, who issued a reply notice, had stated that the Will was dated 5.8.1988. It was pointed out that this discrepancy in the date is very fatal and that the Will dated 6.8.1988 is a fabricated will. To disprove this fact, the Plaintiff had examined PW.4, Advocate, who had issued the reply notice, by name, Bharathi. He was examined as PW.4 and documents were marked and he had also taken a stand that he would not be able to concentrate on his legal profession. This document may not directly come to the assistance of the Plaintiffs, but they are relevant facts to be considered to explain the mistake in the date of the Will.

32. As a matter of fact, the written statement in OS.No.1163 of 2010 had also been produced as a document. A perusal of the same shows that even in the written statement, the very same mistake of the date of the Will being given as 5.8.1988 had continued. This is evidently a copy of the reply notice since in paragraph 6 of the written statement, the words “ of your client” had been corrected to “plaintiff”. It is, therefore, seen that not much can be subscribed to the change in date from 6.8.1988 to 5.8.1988. It is only a

typographical error and this court is not prepared to give much weightage to the same.

33. One yet another suspicious circumstance pointed out by the learned counsel for the Defendants is that K.Abaranji Ammal was suffering from cancer and was also in the coma stage. This statement was made by the Defendants and they must come forward with specific details regarding the same. The 1st Defendant, who was the eldest daughter of K.Abaranji Ammal, did not voluntarily come forward to give evidence and subject herself to cross examination. It is all the more important because in his cross examination of, DW.1, it was stated that that he was aged only 16 years on the date of execution of the Will and he stated that it was V.Jaya, who looked after the deceased K.Abaranji Ammal. Reluctance on the part of the Defendants to put in the best evidence also exposes their case and also I am not prepared to give much credibility to the stand of the Defendants that K.Abaranji Ammal was not in good physical and mental condition of mind to execute the will and had not understood the terms of the Will, which she was executing.

34. All these aspects naturally point out to the fact that the Will had been proved in the manner known to law. In this respect, the learned counsel for the Plaintiffs has also relied on **2008 8 MLJ 647 (Thayammal Vs. Ponnusamy and another)** wherein in paragraph 17, this court had, while dealing with the minor discrepancies, held that while analysing the validity of a Will, the court should not proceed on the preposition that the Will is an invalid one. Minor circumstances cannot be attached with undue importance to imaginary suspicions. The learned counsel has also relied on **AIR 195 SC**

1684 (Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee(dead by legal representatives) wherein it has been stated that debarring natural heirs should not raise any suspicious circumstance.

35. For all these reasons, I hold that the Will in question had been proved in accordance with law. Consequently, with respect to issue (1), the Will dated 6.8.1988 executed by the Testatrix, K.Abaranji Amma is true and genuine and I hold the Issue (1) in favour of the Plaintiffs. With respect to issue (4), I hold that K.Abaranji Ammal, was in good health, sound state of mind and conscious during the year 1988 and particularly, on the alleged date of execution of the Will and I hold this issue (4) in favour of the Plaintiffs.

36. **Issues (2), (3) and (7):-** These issues relate to payment of Rs.35,000/- as directed by the Testatrix to the 1st Defendant, to the two daughters of Testatrix, namely, Jeya and Panchali @ Devaki. There is only oral evidence with respect to the same and even if it is to be held that the said amount of Rs.35,000/- had not been paid, the onus is always there on the person on whom the Letters of Administration is granted to provide proper accounts in terms of bequeaths made in the Will. But, this itself cannot be a ground to reject the grant of Letters of Administration. Consequently, I hold with respect to these issues that the Will has been proved in a manner known to law and that the beneficiaries under the Will, namely, the Plaintiffs, will have to file necessary account after the Letters of Administration is obtained that they have discharged the obligations given by the Testatrix to the 1st Defendant, with respect to the payment of Rs.35,000/- to V.Jeya and to the husband of Panchali @ Devaki. Accordingly, issues (2), (3) and (7) are answered.

37. **Issue (6):-** This issue relates to delay in filing the application, seeking Letters of Administration. The chronology of dates and events shows that K.Abaranji Ammal had executed the Will on 6.8.1988 and she died on 4.9.1988 and her husband Kulandai Velu predeceased her on 1.4.1987. Her son Mohan, whom she had appointed as the Executor, died on 21.1.2007. It is the case of the Defendants that the said Mohan had not taken any steps to prove the Will in a manner known to law. But, it is the evidence of PW.1 that Mohan was suffering from throat cancer and consequently, he died of throat cancer. In these circumstances, it would be highly improbable on the part of the Plaintiffs to file necessary application within the stipulated period. Even otherwise, the Defendants had filed OS.No.1163 of 2010 and once such a suit had been instituted, the necessity to prove the Will in common form had arisen and therefore, quite immediately and simultaneously OP.No.685 of 2011 had also been filed by the Plaintiffs. Therefore, I hold that the delay is not fatal to the grant of Letters of Administration in favour of the Plaintiffs. Accordingly, this issue is answered.

38. **Issue (8):-** I hold that the Plaintiffs are entitled to grant of Letters of Administration with the Will annexed.

C.V.KARTHIKEYAN, J.

Srclm

39. In the result, this TOS is decreed as prayed. Issue Letters of Administration in favour of the Plaintiffs. The Plaintiffs are directed to duly administer the properties and credits of the deceased more fully described in the schedule. The Plaintiffs are 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 are further directed to render true and correct accounts once in a year.

12.12.2017

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To:

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

Pre-Delivery Judgement in
TOS.No.34 of 2013



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