

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.03.2018

PRONOUNCED ON: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.32 of 1998

C.Chakravarthy

Plaintiff

Vs

1. R.Dhanalakshmi Ammal (deceased)
2. Komala
3. R.Ramesh
4. R.Gopi @ Magesh
5. R.Krishnamurthy

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 Plaintiff : Mr.K.P.Chandrasekaran

For Defendants : Set Exparte

JUDGEMENT

Originally, OP.No.446 of 1997 had been filed by the Plaintiff, C.Chakravarthy, against the sole Defendant, R.Dhanalakshmi Ammal, seeking Letters of Administration, with the Will annexed, dated 31.8.1993 of the Testatrix, Saraswathi Ammal.

2. Since the sole Defendant had filed a caveat, as per orders of this

Court dated 9.11.1998, the OP was converted into TOS.No.32 of 1998. During the pendency of the proceedings, the sole Defendant died and her legal representatives were brought on record as the Defendants 2 to 5.

3. The case of the Plaintiff, as set out in the petition, is as follows:-

a. The Petitioner is the son of late Chitty Babu Naidu, aged about 40 years, residing at No.10, Palaniyappa Chetty Street, 1st Lane, Ayyanavaram, Madras-23 and the Respondent is her sister. The Saraswathi Ammal is their mother and absolute owner of the suit property and she died on 7.12.1993 at the above address. During her life time, she had executed a Will, dated 31.8.1993, registered as Document No. 189 of 1993 in the Office of the Sub Registrar, Anna Nagar, in favour of the Petitioner. The said Will was executed in the presence of the witnesses, namely (1) S.Chitti Babu and (2) N.Ravi. The mother of the deceased Testatrix predeceased her. Only the Petitioner and the Respondents are the legal heirs of the Testatrix .

b. In the said Will, there is no executor appointed by the Testatrix. The amount of assets, which is likely to come to the hands of the Petitioner does not exceed in the aggregate the sum of Rs.1,50,000/-(Rupees one Lakh Fifty thousand only) and the net amount of the said assets after deducting all items which the Petitioner is by law allowed to deduct is only of the value of Rs.1,45,000/- (Rupees one lakh forty five thousands only).

c. The Petitioner undertakes to duly administer the property and credits of the deceased Testatrix in any way concerning her Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same

before this Court within six months from the date of grant of Letters of Administration with the Will annexed and also render a true account of the said property and credits within one years from the said date.

c. The Petitioner and the Respondents are the nearest kin and there is no next of kin or other persons interested to be impleaded. No application has been made to any Court, seeking similar relief. The said attesting witnesses are alive and they had filed affidavits to prove the signature of the deceased Testatrix . The Petitioner came to know about the existence of the Will in the month of the January 1996 and immediately the Petitioner had filed this Petition, seeking Letters of Administration and the delay in filing this petition is neither wilful nor wanton. In such circumstances, this Original Petition has been filed, seeking Letters of Administration.

4. There was also a connected suit in Tr.CS.No.367 of 2006, filed by the deceased 1st Defendant herein against the Plaintiff herein for partition and separate possession of the suit property and the said suit was directed to be tried along with TOS.No.32 of 1998. Since there were no steps taken to bring on record the legal representatives of the deceased 1st Defendant, the said suit was dismissed as abated, by judgement dated 30.08.2017.

5. In this TOS, the Defendants entered appearance through a counsel. However, no written statement had been filed in time. This Court, by order dated 21.02.2018, had directed recording of evidence. For non filing of the written statement, the Defendants are set exparte.

6. As per the said order dated, 21.02.2018, before the Additional Master II, the Plaintiff was examined as PW.1 and the second attesting

witnesses to the Will, dated 31.08.1993, N.Ravi, was examined as PW.2. Ex.P1 to Ex.P6 were marked.

7. Ex.P1 is the Will dated 31.08.1993. Ex.P2 is the death certificate of the deceased Testatrix. Ex.P2 is the original property tax demand notice in the name of the deceased Testatrix. Ex.P4 and Ex.P5 are the affidavits filed by the two attesting witnesses to the Will. Ex.P6 is the affidavit of assets.

8. The Plaintiff, PW.1 had deposed as follows:-

".. Ex.P1 Will has been attested by two attesting witnesses, (1) S.Chitti Babu and (2) N.Ravi. These attesting witnesses were also identifying witnesses before the SRO, Anna Nagar, Chennai at the time of registration of Ex.P1. Both the attesting witnesses have filed their respective affidavits of attesting witnesses and the same are marked as Ex.P4 and Ex.P5. My sister, Dhanalakshmi, the sole Defendant died subsequent to transfer of her suit before the City Civil Court, Chennai to the file of this Court. I brought her children as legal heirs in this TOS. The Defendants, who are legal heirs of my sister, Dhanalakshmi, have been set exparte by order of this Hon'ble Court."

9. The second attesting witness, PW.2 had deposed as follows:-

"I am the 2nd attesting witness to Ex.P1 Will. On 31.08.1993, I was present together with one Mr.S.Chittibabu at the house of the Saraswathy Ammal and we did then and there see the Testatrix affix her left thumb impression in the Will, Ex.P1 before me. I signed in the Will after the first attesting witness signed. The Testatrix was in good health and in a sound and disposing state of mind while affixing her L.T.I. In Ex.P1."

10. It is seen that the Defendants are not interested in prosecuting the case. Consequently, the Defendants had been exparte. On the other hand, as stated above, the Plaintiff had let in oral and documentary evidence to substantiate the suit claim. Therefore, this Court finds no other option except to

go by the evidence of the Plaintiff.

11. In the result, this TOS is decreed as prayed for. Issue Letters of Administration in favour of the Plaintiff. The Plaintiff 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.

28.04.2018

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

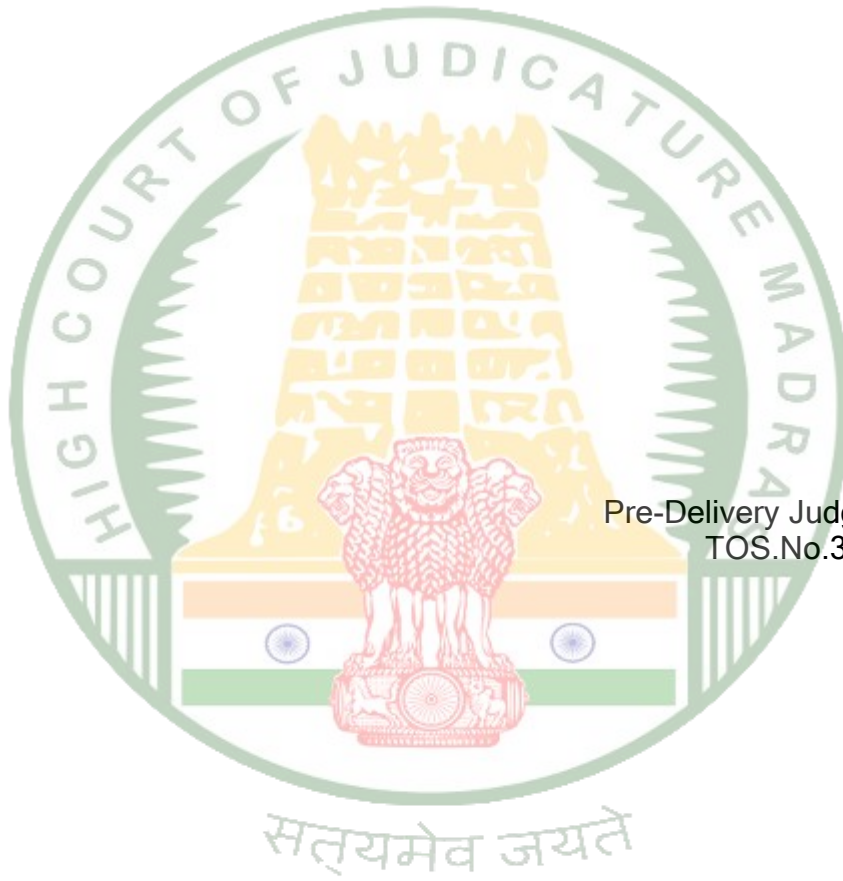
To:

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.32 of 1998

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28.04.2018