

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2018

PRONOUNCED ON: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.34 of 2011

G.Jayaraman Plaintiff

Vs

1. V.Premavathi
2. D.Pushavathi @ Savithri Defendants

Prayer:- This Testamentary Original Suit is filed under Sections 222 and 276 of the Indian Succession Act for grant of Probate.

For Plaintiff : Mr.K.A.Mahendira Kumar

For Defendants : Set Exparte

JUDGEMENT

Originally, OP.No.368 of 2011 had been filed by the Plaintiff, G.Jayaraman, against five Respondents, namely, G.Kannammal, V.Premavathi, D.Pushavathi @ Savithri, G.Purushothaman, and R.Bhuvaneswari, seeking grant of Probate in respect of the Will dated 20.03.2002 in common form.

2. Since the 2nd and 3rd Respondents had filed a caveat on 21.07.2011, the OP.No.368 of 2011 was converted into TOS.No.34 of 2011. Pursuant to the caveat filed by the Respondents 2 and 3, the 1st Respondent, who had given her consent affidavit, had died. The Respondents 4 and 5 had

also given consent affidavits. Thus, Respondents 2 and 3 in the OP alone are the contesting Defendants in the TOS.

3. The case of the Petitioner as stated in the OP is as follows:-

(a) The Petitioner is the son of the deceased N.Govindaswamy. The 1st Respondent is the wife of the deceased N.Govindaswamy and the 2nd to 5th Respondents are daughters and younger son of the deceased N.Govindaswamy. The deceased N.Govindaswamy had purchased the suit property, namely, house, ground and premises, bearing Plot No.4, Door No.3/193, 5th Street, Kambar Nagar, Chennai 600082, comprised in S.No.10/1, as per Patta S.No.10/1D, Konnur Village, measuring 2400 sq.ft. by a registered sale deed, dated 29.08.1974 and registered as Document No. 1894 of 1974 in the Office of the Sub Registrar, Ambattur, from one R.Babu, out of his own self acquired funds and he had also put up a superstructure in the suit property.

(b) It has been stated that the deceased N.Govindaswamy had executed a Will dated 20.03.2002 and registered the same on 21.3.2002 as Document No. 47 2002 in the Office of the District Registrar, Sembium. The original Will is annexed herewith. It has been stated that the Will was executed in the presence of two attesting witnesses, namely, Thagarathi and P.Natarajan. In and by the said Will, the Testator had bequeathed the suit property in favour of the Petitioner and the 4th Respondent. The Petitioner is the Executor of the Will. Except the Petitioner and the 4th Respondent, the other Respondents have no right or interest in the suit property.

(c) It has been stated in the Will that the Testator solemnized the

marriage of his daughters, who are the 2nd, 3rd and 5th Respondents, from and out of his savings and with the earnings of the Petitioner and the 4th Respondent herein. The Testator died on 15.8.2008 at the suit property premises, leaving behind the Respondents as his legal heirs. As per the terms of the Will, the Petitioner and the 4th Respondent have become the joint owners of the suit property and they are in possession and enjoyment of the same. It has been stated that in spite of diligent search, no codicil or any other Will is found to be executed by the deceased N.Govindaswamy.

(d) It has been further stated that the 1st, 4th and 5th Respondents had given consent for grant of Probate to the Petitioner and the Petitioner has impleaded all the next of the kin or other persons interested as party/ Respondents. There is no next of the kin or other person interested to be impleaded in the OP. The amount of the assets, which is likely to come to the hands of the Petitioner does not exceed in the aggregate the sum of Rs.3,00,000/- (Rupees three lakhs only) and the net amount of the said assets after deducting all the items which the Petitioner is by law allowed to deduct is only the value of Rs.3,00,000/- (rupees three lakhs only).

(e) It has been stated that the Petitioner undertakes to duly administer the property and credits of the deceased N.Govindaswamy in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make full and a true inventory thereof and exhibit the same before this Court within six months from the date of grant of Probate with the Will dated 20.03.2002 annexed herewith and also render a true account of the said property and credits within one year

from the said date. No application has been made to any Court, seeking similar relief. In such circumstances, the Petitioner as Executor of the Will has filed this OP for probate of the Will dated 20.03.2002.

4. As stated above, the OP.No.368 of 2011 had been converted into TOS.No.34 of 2011 in view of the caveat filed by the Respondents 2 and 3. The Respondents 2 and 3 in the OP, who are alone contesting the TOS as the Defendants had filed a written statement.

5. In the written statement, it has been stated that the OP had been filed, based on forged documents to deprive the legitimate right and shares of the Defendants. The Defendants have admitted that the Testator had purchased the suit property out of his own funds and and put up a superstructure in the suit property out of his own earnings. But, however, the Defendants denied the execution of the Will dated 20.03.2002. It has been further stated that the alleged Will was produced before this Court for the first time that too after a period of three years from the date of death of the Testator on 13.9.2008 and has to be proved in a manner known to law. It has been stated that during the life of Testator, he assured all the daughters including the Defendants that he would settle the suit property equally. Immediately after the death of the Testator, the Petitioner did not brought the alleged Will and therefore, the onus is on the Petitioner to dispense with the suspicious circumstances. It has been stated that there are other immovable properties at Siruvalayam Village, Arakkonam Taluk and the Petitioner and the 4th Defendants are enjoying the agricultural income arising out of those properties and they are bound to furnish proper true and correct statement. The

Defendants reserve their rights to adduce additional evidence after seeing the documents. It has been stated that the OP should be dismissed with costs.

6. Based on the pleadings, this court had framed the following issues for trial on 23.09.2014:-

1. Whether the Will dated 20.03.2002 and registered as Document No. 47 of 2002 executed by late N.Govindaswamy is true and genuine?
2. Whether late N.Govindaswamy was in a sound and disposing state of mind at the time of execution of the Will?
3. To what other reliefs, the parties are entitled to?

7. Thereafter, the parties were invited to lead evidence. During the trial, the Plaintiff was examined as PW.1 and one of the attesting witnesses, P.Natarajan was examined as PW.2. On the side of the Plaintiff, Ex.P1 to Ex.P7 were marked. Ex.P1 is certified copy of the sale deed dated 29.08.1974. Ex.P2 is the death certificate of N.Govindaswamy dated 2.9.2008. Ex.P3 is the legal heir certificate of the deceased N.Govindaswamy dated 5.11.2008. Ex.P4 is the original Will dated 20.03.2002. Ex.P5 is the consent affidavit of the 1st Respondent in OP, dated 16.12.2010. Ex.P6 is the consent affidavit of the 5th Respondent in OP, dated 15.12.2010.

8. In spite of sufficient opportunities granted to the Defendants, particularly, in spite of granting specific time limit for cross examination of PW.2 by the Defendants, they did not participate in the trial, by cross examining the witnesses of the Plaintiff. Hence, the Additional Master had no other option except to close the evidence and to post the matter before this court.

Accordingly, the matter was posted before this court today. Even today, there is no representation for the Defendants, besides there was no representation for the Respondents on earlier several occasions. Hence, the Defendants are set exparte.

9. Though the Defendants had entered appearance through a counsel and also filed a written statement, they did not come forward to substantiate the averments made in the written statement, by letting in oral and documentary evidence.

10. On the other hand, the Plaintiff, apart from examining himself as PW.1, had let in oral and documentary evidence and also examined one of the attesting witness, P.Natarajan, to the Will, as PW.2, who had filed his proof affidavit for his chief examination.

11. PW.2 had deposed in his evidence as follows:-

“Myself and the deceased N.Govindaswamy were working together in the Postal Department. The contents of the affidavit were prepared on my instructions. The signature in the affidavit is of mine. I have attested the Will dated 20.03.2002 and registered on 21.3.2002. I have also identified the Executor of Ex.P4, Will in the registration office. I am the second witness in Ex.P4, Will. The second signature in page 5 of Ex.P4, Will is of mine. I have already filed attesting affidavit at the time of filing the Probate OP.”

12. Though the Defendants had filed a written statement, they did not come forward to let in evidence despite several opportunities given to them. On the other hand, as stated above, the Plaintiff has let in oral and

documentary evidence to substantiate the suit claim. Therefore, in the absence of rebuttal evidence by the Defendants in support of their pleadings in the written statement, this Court finds no other option except to go by the evidence of the Plaintiff. Consequently, I hold the issues in favour of the Plaintiff.

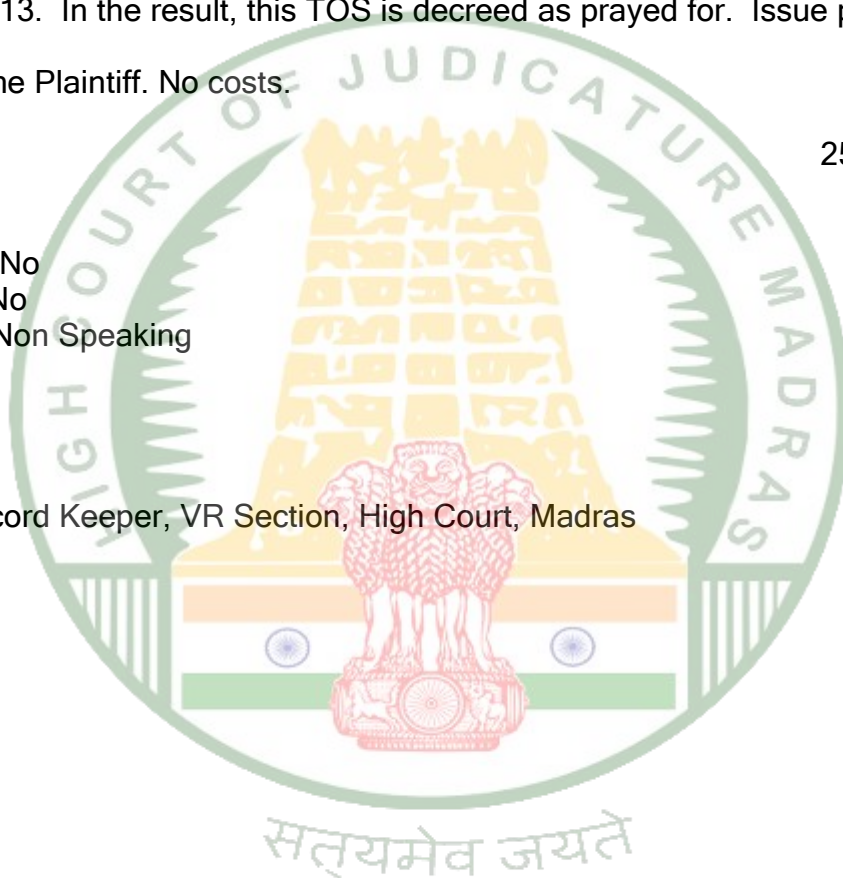
13. In the result, this TOS is decreed as prayed for. Issue probate in favour of the Plaintiff. No costs.

25.01.2018

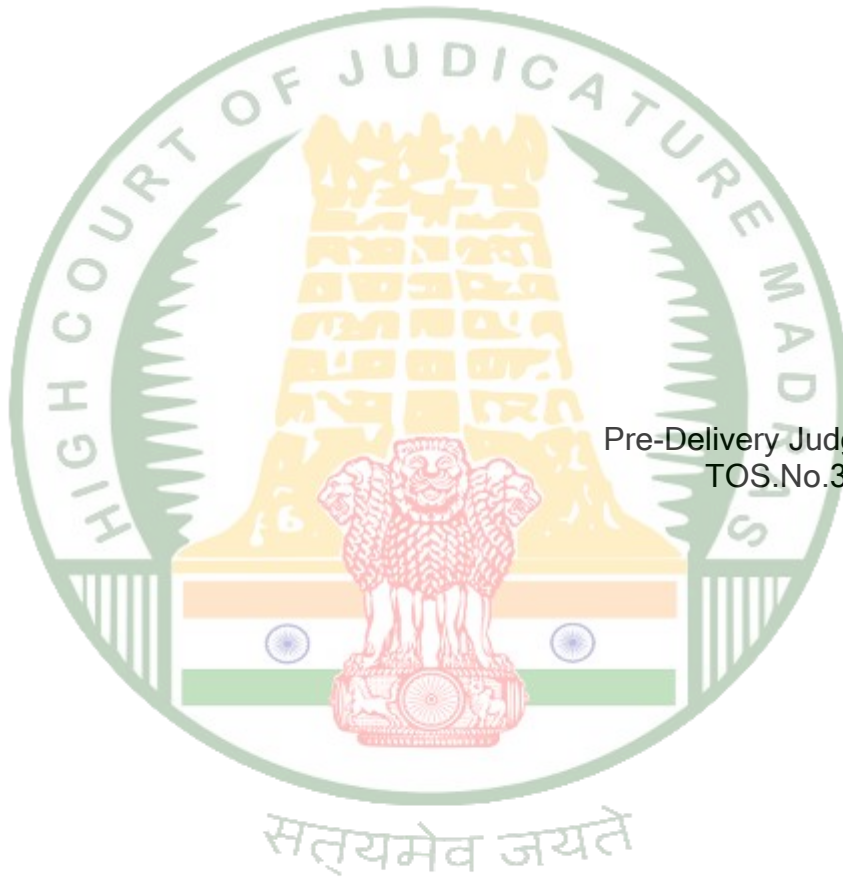
Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To:

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



WEB COPY



Pre-Delivery Judgement in
TOS.No.34 of 2011

WEB COPY

25.01.2018