

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.562 of 2011
and T.O.S.No.13 of 2015 and 25 of 2017

C.S.No.562 of 2011 :

1. P.Kupammal
2. V.Padma
3. V.Meena
4. G.Thambidurai

... Plaintiffs

-VS-

Kesavan

... Defendant

T.O.S.No.13 of 2015 (in O.P.No.222 of 2011) :

P.Kesavan

.. Petitioner

-VS-

G.Kupammal

.. Respondent

T.O.S.No.25 of 2017 (in O.P.No.219 of 2017):

P.Kupammal

.. Petitioner

-VS-

Kesavan

.. Respondent

* * *

PRAYER in C.S.No.562 of 2011 : Plaint filed under Order IV Rule 1 of Original Side Rules, read with Order VII Rule 1 of C.P.C praying for (a) declaring that the 1st plaintiff is the absolute owner of the B Schedule

property morefully described in the schedule hereunder (b) directing the defendant to deliver vacant possession of the schedule B property morefully described in the schedule hereunder to the plaintiff (c) for permanent injunction restraining the defendant and his men, servants, agents and anybody acting on behalf of him from alienating, encumbering or otherwise in the schedule B property and (d) direct the defendants to pay the costs of the suit.

PRAYER in T.O.S.No.13 of 2015: Petition filed under Sections 232, 255 and 276 of Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration.

PRAYER in T.O.S.No.25 of 2017: Petition filed under Sections 232 and 276 of Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration.

* * *

For Plaintiffs in C.S. No.562/11: Mr.Praveen Alexander
and T.O.S.No.25/2017 &
For Defendant in T.O.S.No.13/15

For Defendant in C.S.No.562/11: Mr.Asif Ali
and T.O.S.No.25/17 &
For Plaintiff in T.O.S.No.13/2015

COMMON JUDGMENT

The suit in C.S.No.562 of 2011 is filed for declaration that the first plaintiff is the absolute owner of the 'B' schedule property; for permanent injunction restraining the defendant and his men, servants,

agents and anybody acting on behalf of him from alienating, encumbering or otherwise in the schedule B property; and for direction to the respondent to deliver the vacant possession of the schedule B property.

2. The case of the plaintiffs is that the property situate at Door No.94, Plot No.429, 7th Cross Street, Trustpuram, Pullyur Village, Kodambakkam, Chennai 600 024 in T.S.No.26, Block No.26 measuring an extent of 880 sq.ft. belonged to them. Originally, the said property was allotted by the Tamil Nadu Slum Clearance Board (in short, "the TNSCB") to the first plaintiff's father, viz., Ponnan, who died on 01.03.1998, leaving behind his wife Kathayee Ammal and the first plaintiff. After the demise of the said Ponnan, the first plaintiff's mother Kathayee Ammal got a sale deed executed in her favour on 05.08.2005 and registered as Document No.3281 of 2005. During the life time, the plaintiff's father, Ponnan had put up a hut in an extent of 380 sq.ft in the front portion and a tiled house in an extent of 400 sq.ft. in the rear portion of the suit property and they were living there. The defendant is the nephew of the first plaintiff's father. The said Kathayee Ammal, the mother of the first plaintiff, died on 02.05.2006 leaving behind the sole surviving legal heir, namely, the first plaintiff and she continued to

be in possession of the property. It is also stated that the first plaintiff, out of love and affection, had settled the entire "A" schedule property in favour of her three children. It is stated by the first plaintiff that during the life time of her father-Ponnan, he had permitted the defendant, who is his nephew, to occupy the front portion of the suit property. Thus, the defendant was in occupation of the front portion of the property measuring an extent of 380 sq.ft, which is described as "B" schedule property in the plaint. The first plaintiff alone is the sole legal heir of the deceased Ponnan and Kathayee Ammal, whereas the defendant claimed to be their legal heir based on the fabricated legal heirship certificate. Knowing the motive of the defendant, the plaintiff requested him to vacate and handover the possession of the "B" schedule property. While so, the defendant had approached this Court in O.P.No.222 of 2011 for probate of the alleged Will said to have been executed by the said Ponnan. In the said Will, the defendant has alleged that the said Ponnan was his father, who had executed the Will in his favour. Earlier, the defendant had also filed a suit in O.S.No.2813 of 2000 on the file of the City Civil Court seeking permanent injunction against the first plaintiff in respect of the "B" schedule property, which was dismissed on 31.01.2007. In such circumstances, the suit has been filed by the plaintiffs.

3. In the written statement, the defendant had denied all the facts contending that the Ponnan was married to one Kathayee and out of the said wedlock, they had one son by name P.Kesavan, who is the defendant and one daughter, viz., Kuppammal, who is the first plaintiff. According to the defendant, in respect of "A" and "B" schedule properties, the said Ponnan had executed his last Will and Testament dated 03.09.1997 and the same was registered as Document No.126 of 1997 on the file of the Sub Registrar Office, Kodambakkam. The defendant had also filed O.P.No.222 of 2011 for probate of the same. According to the defendant, as per the said Will, bequest was made in favour of the defendant to an extent of 380 sq.ft with superstructure forming the front portion of "A" and "B" schedule properties with the condition that the defendant's mother Kathayee Ammal shall be entitled to enjoy the "A" schedule property throughout her life time as life estate holder. Therefore, on the death of the said Kathayee Ammal on 02.05.2006, the defendant became the absolute owner of the property. One of the witnesses, namely, Kumaresan had filed an affidavit before this Court for probate of the Will. The defendant further denied the fact that he is the nephew of the first plaintiff's father, but he is the son of the deceased Ponnan. The other allegations set out in the plaint are all

denied and the defendant prayed for dismissal of the suit excepting 380 sq.ft. described in the "B" schedule property.

T.O.S.No.13 of 2015 :

4. Originally, the defendant in C.S.No.562 of 2011 had filed O.P.No.222 of 2011 for grant of Letters of Administration for the Will dated 03.09.1997 executed by the testator C.Ponnan. As the Will was resisted by the respondent, the same was converted into T.O.S.No.13 of 2015. In the said O.P., the petitioner- Kesavan had stated that the property was allotted in favour of C.Ponnan by the TNSCB on 09.12.1983, who had taken possession of "A" and "B" schedule properties and constructed a residential house. The said Ponnan was married to one Kathayee Ammal and out of the said wedlock, Kesavan and Kuppammal were born. It is further stated that the testator, Ponnan had executed a last Will and Testament on 03.09.1997, which was registered as Document No.126 of 1997 on the file of the Sub Registrar Office, Kodambakkam. As per the Will, the testator Ponnan had bequeathed an extent of 380 sq.ft. of land with superstructure thereon forming the front portion of the "A" schedule property in favour of the petitioner with the condition that the petitioner's mother Kathayee Ammal i.e., wife of the testator, shall be entitled to enjoy the

property during her life time and thereafter, the petitioner would become the absolute owner. As the said Kathayee Ammal died on 02.05.2006, the petitioner had become entitled to the said property.

T.O.S.No.25 of 2017 :

5. O.P.No.219 of 2017 was filed by Kuppammal, who is the first plaintiff in C.S.No.562 of 2011 for grant of Letters of Administration of the Will of the deceased testatrix dated 05.04.2006. In the said petition, it is stated that the said Kathayee Ammal, who is the wife of the late Ponnan and the mother of the petitioner- Kuppammal, had purchased the land measuring an extent of 880 sq.ft. from the TNSCB by way of a registered Sale Deed dated 05.08.2005. There was a hut put up in an extent of 380 sq.ft in the front portion and a tiled house measuring 400 sq.ft in the rear portion of the schedule mentioned property. The said Kathayee Ammal during her lifetime wrote a Will dated 05.04.2006 and the same was registered as document No.40 of 2006 bequeathing the entire schedule property in favour of the petitioner. The said Kathayee Ammal died on 02.05.2006. As per the Will, Kuppammal is the sole surviving legal heir and she is in possession of the schedule mentioned property. It is stated that there is no executor appointed under the said Will and the Will was executed by the

said Kathayee Ammal out of her own volition without any coercion or undue influence. The said Will was attested by one Murugesan and another. The respondent has been making false claims, as if he is the brother of the petitioner and claiming right through the alleged Will executed by the petitioners' father Ponnann and also filed O.P.No.222 of 2011. The present Original Petition was converted into T.O.S.No.25 of 2017 and the said T.O.S was also resisted by the defendant claiming that he is the son born out of the wedlock between the Ponnann and Kathayee Ammal.

6. On 15.07.2013, in C.S.No.562 of 2011, this Court framed the following issues for consideration :

"1. Whether the defendant has become an absolute owner of an extent of 380 sq. ft. land with superstructure thereon situated at No.94, in Plot No.429, 7th Cross Street, Trustpuram, Kodambakkam, Chennai-600 094, forming the front part of A & B Schedule property and more fully described in the A-Schedule property by virtue of the registered Will dated 03.09.1997 executed by C.Ponnann, the father of the first plaintiff and the defendant granting life estate to their mother Kathayee ?

2. Whether the Settlement deed executed by the first plaintiff in respect of the said schedule property in favour of her children, plaintiffs 2 to 4 is valid in view of the registered Will executed by the said late C.Ponnann bequeathing the B-Schedule mentioned property in favour of the defendant ?

3. Whether the first plaintiff is the absolute owner of the B-Schedule property ?

4. Whether the plaintiffs are entitled to the relief of seeking the first defendant to deliver vacant possession of Schedule B property ?”

7. On 11.12.2015, the following additional issues were framed in C.S.No.562 of 2011 and T.O.S.No.13 of 2015 for determination :

- i. Whether the Will dated 03.09.1997 executed by late C.Ponnan is genuine or not?*
- ii. Whether the Will dated 03.09.1997 executed by late C.Ponnan is surrounded by any suspicious circumstances?*
- iii. Whether the plaintiff is biological son of late C.Ponnan and Kathayee Ammal?*
- iv. Whether late C.Ponnan ws bequeated the property as the true owner?*
- v. To what relief the parties are entitled to?*

8. Based on the directions of this Court dated 26.10.2017, the Hon'ble the Chief Justice vide order dated 30.01.2018 directed the Registry to tag T.O.S.No.25 of 2017 along with C.S.No.562 of 2017 and T.O.S.No.13 of 2015 and post it for trail.

9. During the trial, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and also examined P.Ws.2 to 5 and marked

Exs.P.1 to P.14. The defendant examined himself as D.W.1 and marked Exs.D.1 to D.8.

10. Heard the learned counsel on either side and perused the materials placed before this Court.

11. For the sake of convenience, the parties are referred to hereinafter as per their ranking in C.S.No.561 of 2011.

Additional Issue No.(iii) :

12. Whether the plaintiff (the defendant in C.S.No.562 of 2011) is the biological son of late C.Ponnan and late Kathayee Ammal ?

12.1. The issue in the suit revolves around 880 sq.ft of land, which was allotted to one C.Ponnan by the TNSCB. After his death, the TNSCB executed a Sale Deed in favour of his wife Kathayee Ammal and got it registered on 05.08.2005. The allotment was made in the year 1983 and the death of Ponnan was on 01.03.1998. Thereafter, the sale was effected in the year 2005. It is the case of the first plaintiff that the defendant is not born to her parents, namely, Ponnan and Kathayee Ammal, but he is the son born to one Maari and Kannamma. On his own imagination, he called himself that he was born to Ponnan and Kathayee

Ammal. It is the admitted case of the first plaintiff that the defendant was allowed to be in possession of 380 sq.ft. even during the life time of her father. The first plaintiff has produced the death certificate of Ponnann and also the legal heirship certificate of Ponnann dated 20.06.2000, which is marked as Ex.P.-5. A perusal of the legal heirship certificate in Dis/C4/18004/2000 reveals that the same was issued by the Tahsildar, Egmore - Nungambakkam Taluk, Chennai, in which, Kathayee Ammal is described as his wife and the Kuppammal- the first plaintiff is described as daughter. The name of the defendant does not find a place in the said legal heirship certificate. There is no reason given by the defendant for not including his name as legal heir of deceased Ponnann. If not the plaintiff at least, the mother Kathayee Ammal would not have given up her own son, as alleged by the defendant. The defendant also had not bothered about it and allowed Kathayee Ammal to complete the payment of installements and take the sale deed in her favour. On 02.05.2006, Kathayee Ammal, wife of Ponnann died. Once again, the first plaintiff Kuppammal had obtained the legal heirship certificate in Ne.Mu.E4/18489/2011 issued by the Tahsildar, Egmore-Nungambakkam. In the said legal heirship certificate also, only Kuppammal was shown to be the sole heir to the deceased Kathayee Ammal. The defendant had also produced the legal heirship

certificate dated 06.07.2006, wherein, Kuppammal, the first plaintiff and the Kesavan, the defendant are shown as legal heirs and it is also mentioned that Tmt.Kathayee Ammal died as early as on 02.05.2006.

12.2. As there has been discrepancy in the legal heir ship certificates issued, the plaintiff has examined the Special Tahsildar, Egmore-Taluk. The Tahsildar, who has been examined as P.W.2, stated as follows :

"..... Usually, the legal heir ship certificate, if applied, will be issued in one month at maximum. Prior to my joining as the Tahsildar, Egmore Taluk in the year 2014, 3 legal heir ship certificates dated 20.06.2000, 06.07.2006 and 15.07.2011 were issued by my predecessors, in respect of the deceased Ponnan. It is true that in the legal heir ship certificate dated 20.06.2000, wife and daughter of the deceased Ponnan, who died on 01.03.1998, were mentioned as his legal heirs. Based on the death certificate of Ponnan, Family Card of Ponnan and Verification Report submitted by the then Zonal Deputy Tahsildar, the legal heir certificate dated 20.06.2000 in respect of the deceased Ponnan was issued. As per the legal heir ship certificate 20.06.2000, it was issued for the purpose of the transfer of Tamilnadu Slum Clearance Board's Allotment. Subsequently, Kathaiyammal died on 02.05.2006. The legal heir ship certificate dated 15.07.2011 in respect of Ponnan was issued on the basis of the death certificate of Kathaiyammal, Electricity Consumption Card standing in the name of Kuppammal, Electroal I.D. Card of Kathaiyammal, death certificate of Ponnan, Report of the then Zonal Deputy Tahsildar, Affidavit of Kuppammal, Sale deed dated 09.08.2005 executed in favour of Kathaiyammal by the Tamilnadu Slum Clearance Board,

registered as Doc.No.3281 of 2005 on the file of the SRO, Kodambakkam. In the Ration Card, which was submitted for issuance of legal heir ship certificate dated 20.06.2000 only the names of Mr.Ponnan and Kathiyammal find a place.”

From the above evidence, it appears that the legal heirship certificate for the death Ponnan and Kathayee Ammal were obtained by the first plaintiff based on the electricity consumption card, electrol I.D.Card, the sale deed executed in favour of Kathayee Ammal by the TNSCB and also the ration card, which was submitted for issuance of legal heirship certificate.

12.3. So far as the legal heirship certificate, that was produced by the defendant-Ex.D.2 is concerned, the same is based on the allotment order issued by the TNSCB and the ration card of Kesavan. In this regard, the Tahsildar / P.W.2, stated as follows :

".... Along with the application submitted by Mr.Kesavan for issuance of legal heir ship certificate in respect of the deceased Ponnan, he submitted 2 death certificates of Ponnan one was issued on 23.11.1999 and another one was issued on 15.06.2006, death certificate of his mother Kathaiyammal, allotment order issued by Tamilnadu Slum Clearance Board, Ration Card of Kesavan, in which the names of Kesavan, Muniyammal, Arun and Saravanan find a place. The legal heir ship certificate dated 06.07.2006 was issued on the basis of the aforesaid documents submitted by Mr.Kesavan and also on the

basis of the report submitted by the then Zonal Deputy Tahsildar.

....”

The ration card submitted by the defendant for the purpose obtaining the legal heirship certificate only contained the names of Kesavan, Muniyammal, Arun and Saravanan. After the submission of the application form, there should be an enquiry by the Revenue Inspector or the Zonal Deputy Tahsildar. But the Legal Heirship Certificate was issued to the defendant based on the report submitted by the then Zonal Deputy Tahsildar, which is not based on the documents submitted. The name of Kesavan, though living in the portion of the suit premises, had not been included. The Tahsildar has also given a report without verifying the actual facts. Not only the Tahsildar had failed to advert to the fact that earlier legal heirship certificate has been issued to the first plaintiff for the death of the same Kathayee Ammal, wherein, the said first plaintiff is shown as the only legal heir of the Kathayee Ammal. Other than the legal heirship certificate, the defendant had produced Ex.D.6, which is the Burial Certificate. In the said certificate against the column name and address of the Informer, the defendant's name has been mentioned, which does not mean that the defendant would be the relative of the deceased therein, as it is only the name of the informer and not the relative. Therefore, the said

certificate also will not help the defendants to prove his paternity.

12.4. It is pertinent to mention that except examining himself as D.W.1, the defendant has not examined any other person to prove his paternity. Even in the cross-examination, the defendant denied, when confronted with the question that the name of his biological father is Maari, who is the paternal uncle of the plaintiff. Thus, in the absence of any evidence to show that he is the son of Ponnan and Kathayee Ammal, the irresistible conclusion is that he is not the son born to Ponnan and Kathayee Ammal. Accordingly, the additional issue No.(iii) is answered in favour of the plaintiffs and against the defendant.

Additional Issue Nos.(i), (ii) and (iv) :

13. The defendant/plaintiffs in T.O.S.No.13 of 2015 has produced the Will dated 03.09.1997 marked as Ex.D.8. The said Will is registered as Document No.126 of 1997 before the Sub Registrar Office, Kodambakkam. As per the said Will, Ponnan, who is the father of Kupppammal / the first plaintiff had been alleged to have executed the Will in favour of the defendant Kesavan as well as the first plaintiff Kupppammal. In the said Will, Ponnan's wife Kathayee Ammal is given the life interest and thereafter, A Schedule was given to P.Kesavan/the defendant and B Schedule was given in favour of P.Kupppammal/the first

plaintiff absolutely. The Testator of the Will dated 03.09.1997 died on 01.03.1998. On his death, the alleged Will ought to have come into force. The property mentioned in the Will is the one, which was allotted in his name by the TNSCB. While he was paying the monthly installments, he died. Thereafter, his wife Kathayee Ammal paid the balance of the installments and obtained the sale deed from the TNSCB on 05.08.2005 under Ex.P.3. To obtain the sale deed Kathayee Ammal had produced the legal heir certificate-Ex.P.5, as per which, Kathayee Ammal and the first plaintiff - Kuppammal alone were shown as legal heirs of the deceased Ponnan. Based on the same, the TNSCB had executed the sale deed in favour of the Kathayee Ammal on 05.08.2005. If really the deceased Ponnan had executed a Will in favour of the defendant and when the said Ponnan died on 01.03.1998, he would have taken steps to get the sale deed registered in his favour, as indicated in the Will. But the defendant had not taken any steps to either probate the Will or claim his half share as per the Will. He had only produced the said Will as a counter-blast for the suit, when the plaintiff had claimed title to the same. Whether the said Will is true and genuine or not had to be decided in the manner known to law.

14. A perusal of the said Will dated 03.09.1997 shows that there were two Attestors, namely, one P.Kumaresan and P.Duraikannan. The said Kumaresan / the first Attestor, has given his address as "Grandipuram Village in Dindivanam Taluk". The second witness is from Trustpuram, Chennai-24, where, the Testator himself was living. There is no reason forthcoming from the defendant as to why the first Attestor is brought from Dindivanam and also nothing is stated as to how he is known or related to the deceased Ponnan. It is also not explained as to why none of the Attestors were examined to prove the Will. It is not also pleaded that the Attestors are not alive or available to be examined. Thus, the defendant could not prove the Will, which is the subject matter in T.O.S.No.13 of 2015, as the execution of the same is surrounded by suspicious circumstances.

15. As discussed earlier, the Ponnan was the original allottee of the suit property by the TNSCB as per the Chennai Metropolitan Development Scheme. After his death on 01.03.1998, at the request of his wife Kathayee Ammal, on production of the required documents, the allotment was transferred in her name. After the date of transfer, i.e., from 21.10.2000, which is evidenced by the memo issued by the TNSCB as per Ex.P.2, the said Kathayee Ammal was paying the further

installments. Once the installments were paid, the sale deed was executed by the TNSCB in favour of Kathayee Ammal on 05.08.2005. The case of the defendant is that the said Ponnan had bequeathed the suit property equally between himself and the first plaintiff. The said Ponnan died in the year 1998, on which date, the installments of the sale consideration was not paid in full and the said Ponnan had not become the owner of the property. Admittedly, on the death of the Ponnan, Kathayee Ammal, who is his wife, had got the allotment transferred in her name and completed the payment of installments towards the sale consideration. Thereafter, on 05.08.2005, the TNSCB had executed the sale deed in her favour. Therefore, on the date when the Will under Ex.D.8 was executed, Ponnan was not the owner of the property, as the ownership continued only with the TNSCB. A reading of the Will also says that "என் பெயருக்கு ஒதுக்கீடு கிடைக்கபெற்றும் அன்றுமுதல் நான் என்னுடைய அனுபவத்தில், தமிழ்நாடு குடிசைபகுதி மாற்று வாரியத்திற்கு செலுத்த வேண்டிய மனை வரி வகையறாக்களை பாக்கி இன்றி செலுத்திக்கொண்டும், குடிசை வீட்டினை நான் என்னுடைய சொந்த செலவில் அமைத்துக்கொண்டும்". Therefore, it is only the allotment, that was alone made, in favour of the said Ponnan. When the Testator himself did not have absolute right over the suit property, he could not have executed the Will, as alleged by the defendant and even he executed

such a Will, the same is invalid in the eye of law.

16. When Ponnan executed the alleged Will nothing is mentioned about his wife, who was with him throughout. Even if no bequest is made in her favour, it is but natural to atleast mention the reason for excluding his wife. Having not mentioned the name of his wife Kathayee Ammal and the Testator being only the allottee and not yet become the full fledged owner could not have made the bequest as alleged, which leads to suspicion. As found supra, the Attestors or the scribe are not examined in proof of the Will. There is also no explanation forthcoming from the defendant for not producing the Will before the death of Kathayee Ammal, when she died only on 02.05.2006. Thus, the version of the defendant about the execution of the Will is highly improbable and the whole evidence in this regard is unsatisfactory. The defendant having taken active part in the execution, the onus is very heavy on him to remove the suspicion, which is not discharged by the defendant.

17. From the date of Ponnan's death, i.e., from 01.03.1998, till the date of the sale deed executed in favour of Kathayee Ammal on 05.08.2005, the defendant had not taken steps even to find out

whether the installments have been paid or anybody is paying the balance of the sale consideration. Even in the Legal heirship certificate obtained by the first plaintiff for the death of Ponnan, the names of the wife of the deceased, viz., Kathayee Ammal and daughter Kuppammal have been shown as legal heirs and the name of the defendant was not included. The defendant also not taken steps to get his name included in the said certificate. Kathayee Ammal, wife of Ponnan, also died on 02.05.2006. Even in the legal heirship certificate obtained by the first plaintiff for the death of Kathayee Ammal, the first plaintiff-Kuppammal alone is shown as the sole legal heir, which had not been challenged by the defendant. It is also not the case of the defendant that after the death of Ponnan, he continued to pay the installments to get the sale deed executed in his name or in the name of Kathayee Ammal. When there is absolutely no relationship between the defendant and his alleged parents Ponnan and Kathayee Ammal, the claim of the defendant is not sustainable.

18. When Ponnan himself had not become the complete owner of the property on the date of his death, it is not possible for him to execute the Will over the suit property and on the other hand, he had got no right to deal with the same. Therefore, the bequest made by the

late Ponnann of the suit property, not being the true owner, is not valid in the eye of law. In view of the above discussion, the additional issue Nos.(i), (ii) and (iv) are also answered in favour of the plaintiffs and against the defendant.

T.O.S.No.25 of 2017 :

19. In T.O.S.No.25 of 2017, the issue "Whether the Will dated 05.04.2006 executed by the plaintiff's mother Kathayee Ammal is genuine or not ? is required to be determined.

19.1. The first plaintiff has produced a Will of her mother dated 05.04.2006 bequeathing all her rights in the suit property in favour of the first plaintiff alone. The said Will is also registered before the Sub Registrar Office, Kodambakkam, as Document No.40 of 2006. The said Will is attested by one Murugesan and one Shankar. One of the Attestors is died and other Attestor Murugesan has been examined as P.W.5. The Attestor Murugesan in the chief examination filed in the form of proof affidavit has stated as follows :

"2. That on the 5th day of April, 2006, I was present together with one Shanmugam at the house of Kathayee Ammal and we did then and there see the said deceased set and subscribe her name at the foot of the testamentary paper in the Tamil language and character hereunto annexed and marked with the letter A and declare and publish the same as and for her last Will and testament.

3. That thereupon, I this deponent and the said Shanmugam did at the request of the said deceased and in her presence and in the

presence of each other and all being present at the same time, set and subscribed our respective names and signatures at the foot of the testamentary paper as witnesses thereto."

19.2. The said chief examination of P.W.5 was not disturbed in the cross-examination by the defendant. The witness had specifically stated that the suit property belonged to the plaintiffs and they have been enjoying the same over a period of 25 years. A party propounding the Will or otherwise making a claim under a Will is seeking to prove the document. The courts are to refer to the statutory provisions, which govern the proof of Will, viz., Sections 67 and 68 of the Indian Evidence Act. These provisions prescribe the requirements and the nature of proof which must be satisfied by the person, who relies on a document in the Court of law. As the propounder of the Will, the first plaintiff has shown satisfactory evidence that the Will was signed by the Testatrix and that the Testatrix was in a sound disposing state of mind during the relevant point of time having understood the nature and effect of the dispositions and put her signature in the document on her own free-will. As the plaintiff has examined one of the attestors, viz., Murugesan, in proving the signature/thumb impression as required in law, the finding is in favour of the plaintiff and against the defendant.

19.3. As the Will executed by Kathayee Ammal dated 05.04.2006 is true and genuine and it is proved in the manner known to law, the

plaintiff in T.O.S.No.25 of 2017 is entitled for issuance of letter of administration, as prayed for.

Issue No.1 :

20. In view of the findings rendered qua additional issue No.(i) and (ii), issue No.1 is answered against the defendant holding that the defendant cannot be said to be the absolute owner of an extent of 380 sq. ft. forming part of A schedule property as mentioned in the B Schedule property. Thus, this issue is answered in favour of the plaintiffs.

Issue Nos.2 to 4 :

21. The first plaintiff became absolute owner of A schedule, which includes B schedule property. Accordingly, the Settlement Deed executed by her in favour of her children, who are arrayed as plaintiffs 2 to 4, is valid and the plaintiffs are entitled to the relief of delivery of vacant possession of B schedule property from the defendant. Thus, issue Nos.2 to 4 are also answered against the defendant favouring the plaintiffs.

22. In view of the above findings, C.S.No.562 of 2011 is decreed, as prayed for. Consequently, T.O.S.No.25 of 2017 is also

decreed as prayed for. As a corollary, T.O.S.No.13 of 2015 is dismissed.

23. (i). The Letters of Administration, having the effect limited to the State of Tamil Nadu, shall be issued in favour of the plaintiff in T.O.S.No.25 of 2017 as per the Will dated 05.04.2006.

(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 account once in a year.

gg

18.11.2019

Witnesses examined on the side of Plaintiffs :

P.W.1	-	P.Kuppammal
P.W.2	-	P.Selvam
P.W.3	-	Govindammal
P.W.4	-	Devaki
P.W.5	-	Murugesan

Witnesses examined on the side of Defendant :

D.W.1	-	Kesavan
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PUSHPA SATHYANARAYANA, J.

99

Documents marked on the side of the Plaintiffs :

- Ex.P.1 - 12.10.2000 - Order passed by Tamil Nadu Slum Clearance Board
- Ex.P.2 - 21.10.2000 - Memo issued by Tamil Nadu Slum Clearance Board
- Ex.P.3 - 05.08.2005 - Sale Deed by Tamil Nadu Slum Clearance Board in favour of Kathayee Ammal
- Ex.P.4 - 01.03.1998 - Death Certificate of Ponnann
- Ex.P.5 - 20.06.2000 - Legal Heirship Certificate for the death of Ponnann
- Ex.P.6 - 02.05.2006 - Death Certificate of Kathayee Ammal
- Ex.P.7 - 15.07.2011 - Legal Heirship Certificate for the death of Kathayee
- Ex.P.8 - 31.01.2007 - Judgment in O.S.No.2816/2000
- Ex.P.9 - 06.04.2011 - Petition in O.P.No.222/2011
- Ex.P.10 - 05.04.2006 - Will
- Ex.P.11 - 05.08.2011 - Complaint in C.S.No.562 of 2011
- Ex.P.12 - 05.08.2011 - Affidavit of Attesting Witness Murugesan in O.P.No.219 of 2017
- Ex.P.13 - 19.08.1998 - Voter ID of Kathayee Ammal
- Ex.P.14 - 15.02.1977 - Installment receipt to TNSCB

Documents marked on the side of the Defendant :

- Ex.D.1 - 25.03.1977 - Passbook of TNSCB
- Ex.D.2 - 06.07.2006 - Legal Heir Certificate of Ponnann
- Ex.D.3 - 03.11.1995 - TNSCB Receipt
- Ex.D.4 - 30.06.1980 - TC of the defendant
- Ex.D.5 - 09.09.1996 - Community Certificate of the defendant
- Ex.D.6 - 02.03.1998 - Burial Certificate of Ponnann
- Ex.D.7 - 31.01.2007 - Judgment in O.S.No.2813/2000
- Ex.D.8 - 03.09.1997 - Will

18.11.2019

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T.O.S.Nos.13/2015 & 25/2017