

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07/11/2019
Delivered on	11/11/2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

T.O.S.No.75 of 2013

P.Elumalai

... Plaintiff

Vs.

1.J.Suresh

2.J.Stella

3.Dr.J.Manju

... Defendants

(2nd defendant impleaded
as per order of Court dated
20.02.2014 and 11.07.2014 made in
A.No.693 of 2014 in
T.O.S.No.75 of 2013)

(3rd defendant impleaded
as per order dated 05.08.2014 in
A.No.4736 of 2014 in
T.O.S.No.75 of 2013)

Prayer: This Testamentary Original Suit is filed under Indian Succession Act XXXIX of 1925 for grant of Letters of Administration with the Will annexed.

For Plaintiff : Mr.K.Mohana Murali

For Defendants : No Appearance for D2 and D3

J U D G M E N T

O.P.No.530 of 2012 was filed for grant of letters of administration with respect to the Will, dated 30.11.2011 was converted as T.O.S. in view of the caveat filed by the second respondent.

2. The case of the plaintiff is that the testatrix Mrs.J.Emrose was married to his elder brother P.Janaki Raman and they had two sons and two daughters. The said Janaki Raman died on 15.07.1979. The plaintiff was married to the sister of the testatrix in the year 1976. However, she left the matrimonial home on her own and they had no issues. Hence, the plaintiff continued to live with his elder brother family even after his death.

3. The plaintiff would further state that the testatrix Mrs.J.Emurose died on 31.01.2012. The children of the testatrix got married and started living separately, but the plaintiff continued to take care of the deceased till her last breath. The testatrix executed the Will at Chennai on 03.11.2011 in the presence of the witnesses in respect of the properties possessed and owned by her and the plaintiff is the beneficiary under the Will.

4. Based on the pleadings, this Court had framed the following issues

for trial :-

"(i) Whether the alleged Will dated 30.11.2011 executed in favour of third party is genuine when the children are alive?

(ii) Whether the Will is executed in accordance with law and to what relief?"

5. The parties were invited to lead evidence. During the trial, the plaintiff was examined as P.W.1 and marked Exs.P1 to P29 viz,

Exs	Documents	Dated
P1	Original Will and Testament executed by Mrs.J.Emrose	30.11.2011
P2	Copy of plaintiff's Voter ID	21.11.2008
P3	Photocopy of sale deed relating to the property of 88/81, V.V.Koil Street, Choolai, Chennai-112.	-
P4	Certified copy of Settlement Deed	19.07.1978
P5	Original Judgment in O.S.No.63 of 1987	-
P6	Series (4 Nos) Original land rent receipts	-
P7	Series (4 Nos) are the Corporation Property Tax receipts	-
P8	Water charges receipts	-
P9	Certified copy of Sale Deed	16.09.1968
P10	Original Lease agreement entered into between Mrs.Emrose and tenant	09.08.2011
P11	Lab Report of Mrs.Emrose	12.03.2010
P12	Medical Bills series relating to Mrs.J.Emrose	-
P13	Medical Bills series regarding admission till discharge	-

Exs	Documents	Dated
	relating to Mrs.J.Emrose	
P14	Computer generated copy of Death Certificate of Mrs.J.Emrose	06.03.2012
P15	Death report of burial ground	-
P16	Burial Ground report of death certificate	02.02.2012
P17	Burial ground expenses and death expenses relating to Mrs.J.Emrose	-
P18	Series are the Death 16th day ceremony notices relating to Mrs.J.Emrose	-
P19	Office copy of legal notice sent to the defendants by the plaintiff	09.02.2012
P20	Acknowledgement card received by Manju	-
P21	Returned covers	-
P22	Legal notice to Deputy Registrar by the plaintiff	06.06.2012
P23	Legal notice to the defendants by the plaintiff	14.05.2012
P24	Returned covers	-
P25	Served copy of Memo in T.O.S.No.75 of 2013 filed by the second defendant before filing into the Court	09.02.2015
P26	Served copy of Judge's summon dated 17.06.2016 and affidavit dated 20.06.2016 in T.O.S.No.75 of 2013 filed by the second defendant before filing into the Court	-
P27	Served copy of written statement in T.O.S.No.75 of 2013 filed by the second defendant before filing into the Court	20.06.2016
P28	Original Memorandum of Undertaking given to Mrs.Emrose	08.06.1985
P29	Sworn affidavit	25.05.1996

6. One of the attesting witnesses, viz., C.S.Devarjan was examined as P.W.2. In his evidence, it is stated that the testatrix Emrose was her family

friend. The Testatrix affixed her left thumb impression at the foot of every page in his presence and in the presence of other attesting witness, viz., P.Srinivasan. At her request, he subscribed his signature as the first attesting witness along with Mr.P.Srinivsan, who attested the Will (Ex.P1) as the second attesting witness in the presence of the Testatrix. The testatrix was in a sound and disposing state of mind, memory and in good health at the time of execution of Ex.P1 Will.

7. Though the defendants initially contested the suit, they did not choose to cross-examine the witnesses produced by the plaintiff. The counsel for the defendants 2 and 3 also reported no instructions, by filing a Memo, dated 13.08.2019.

8. In the considered opinion of this Court, the plaintiff by examining the witnesses and producing the documents referred above has proved the execution of Will and he is entitled for decree in the suit.

9. 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 Will. 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 and to render true and correct accounts once in a year. No costs.

11/ 11 / 2019

Speaking Order / Non Speaking Order

Index : Yes/ No.

Internet : Yes /No.

r n s



WEB COPY

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



WEB COPY

T.O.S.No.75 of 2013

K.KALYANASUNDARAM, J.,

r n s



T.O.S.No.75 of 2013

WEB COPY

11 / 11 / 2019