

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.07.2019

JUDGMENT PRONOUNCED ON : 31.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

T.O.S.No.13 of 2016

1.Susan George

2.Mariam Roshan Zachariah

... Plaintiffs

Vs.

Dr.Jacob Mathew Zachariah

... Defendant

PRAYER: Petition filed under Section 232, 255 and 276 of the Indian Succession Act (XXXIX of 1925) for grant of Letters of Administration read with, Order XXV Rule 4 of the Original Side Rules for grant of Letters of Administration with the last Will and Testament of Late Sosa Zachariah dated 01.01.2007 annexed to the petitioners as daughters of deceased/legatee under the Will of the said deceased having effect limited to the State of Tamil Nadu limited to the property mentioned in the assets. Against the petition a caveat was filed by the caveator, as per order of this Court dated 21.12.2015, the Original Petition No.720 of 2011 was converted into Testamentary Original Suit No.13 of 2016.

For Plaintiffs : Mr.S.Thiruvengadam

For Defendants : No appearance

J U D G M E N T

The plaintiffs as petitioners have filed the Original Petition in O.P.No.720 of 2011 seeking Letters of Administration in respect of the last Will and Testament of late Sosa Zachariah dated 01.01.2007.

2. The said Sosa Zachariah died on 23.07.2009 at Ongole, Andhra Pradesh. He was an ordinary resident of No.39/1, Arathoon Road, Chennai - 13. The petitioners are the daughters of the deceased Sosa Zachariah. The two sons of the deceased Sosa Zachariah viz., Dr.Jacob Mathew Zachariah and Ninan George were impleaded as respondents 1 and 2 in the said Original Petition.

3. The 1st respondent viz., Dr.Jacob Mathew Zachariah on appearance filed a caveat opposing the grant. Upon filing of the caveat, the Original Petition was converted into Testamentary Original Suit and was numbered as T.O.S.No.13 of 2016.

4. According to the plaintiffs, the deceased Sosa Zachariah executed

<http://www.judis.nic.in> a Will on 01.01.2007 and the same was registered in the Office of Sub-

Registrar, Ernakulam as Doc.No.1 of 2007. The Will was executed in the presence of the attesting witnesses and was duly registered. Under the Will, the deceased has bequeathed his properties in favour of the plaintiffs who are his daughters as the beneficiaries. Since the Will related to the property situate within the original jurisdiction of this court, the plaintiffs have sought for Letters of Administration with a copy of the Will annexe.

5. Though, the defendant had filed a caveat, he did not chose to file a written statement and the counsel for the sole defendant reported that he is not cooperating for taking any steps in defending the Testamentary Original Suit. Hence, the defendant was set *exparte* by an order dated 03.07.2019 and the Testamentary Original Suit was directed to be posted before the learned Master for *exparte* evidence.

6. Pursuant to the said direction, the 1st plaintiff Susan George was examined as PW1. She has filed a proof affidavit reiterating the averments made in the petition for grant of Letters of Administration. She had also produced the death certificate of the deceased Sosa Zachariah as Ex.P1. The original Will was marked as Ex.P2. A copy of the sale deed dated 29.11.1969 relating to the property situate at Chennai was marked as Ex.P3. A declaration executed by the defendant on 7th March 2018 before the

expressed his no objection for the legatees under the Will enjoying the legacy as per the wishes of the Testator was marked as Ex.P4. The paper publications made were marked as Ex.P6 and Ex.P7. The affidavit of attesting witnesses was marked as Ex.P8. There was no cross examination of the said witness.

7. The 2nd plaintiff Mariam Roshan Zachariah was examined as PW2. She had filed a proof affidavit reiterating the averments contained in the petition for grant of Letters of Administration.

8. One Mr. Manoj Abraham who figured as attesting witness to the Will was examined as PW3. He had filed a proof affidavit setting out the manner in which the Will was executed by the Testator in the presence of himself and one Mr. Binu, S/o. Sebastian who figures as second attesting witness to the Will. In the proof affidavit he has stated that the Testator executed the Will in the presence of himself and Mr. Binu, S/o. Sebastian and both of them saw the Testator signed the will and the Testator saw them attesting the same.

9. In the absence of any contra evidence, the evidence that has been placed on record, in my considered opinion establishes the execution and attestation of the Will by the Testator viz., Mr. Sosa Zachariah. I therefore

conclude that the plaintiffs had established due execution and attestation of the Will by the Testator and they are entitled to Letters of Administration with a copy of the Will annexed.

10. Accordingly, this Testamentary Original Suit is decreed as prayed for. The plaintiffs shall execute a security bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each in favour of the Assistant Registrar (O.S.II), High Court, Madras.

31.07.2019

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Index : Yes/No

Internet : Yes/No

Speaking Order/ Non-speaking order

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Witnesses examined on the side of the Plaintiffs:-

PW1 - Mrs.Susan George

PW2 - Mrs.Mariam Roshan Zachariah

PW3 - Mr.Manoj Abraham

Exhibits marked on the side of the Plaintiffs:-

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	The Original Death Certificate of Sosa Zachariah	23.07.2009
2	Ex.P2	The original Will	01.01.2007
3	Ex.P3	The photocopy of the sale deed	29.11.1969
4	Ex.P4	The original document executed by the defendant before the Mediation Centre	07.03.2018
5	Ex.P5	The copy of the affidavit of assets	--
6	Ex.P6	The original Tamil paper publication	21.03.2013
7	Ex.P7	The original English paper publication	28.03.2013
8	Ex.P8	The copy of the Affidavit of Attesting Witnesses	--

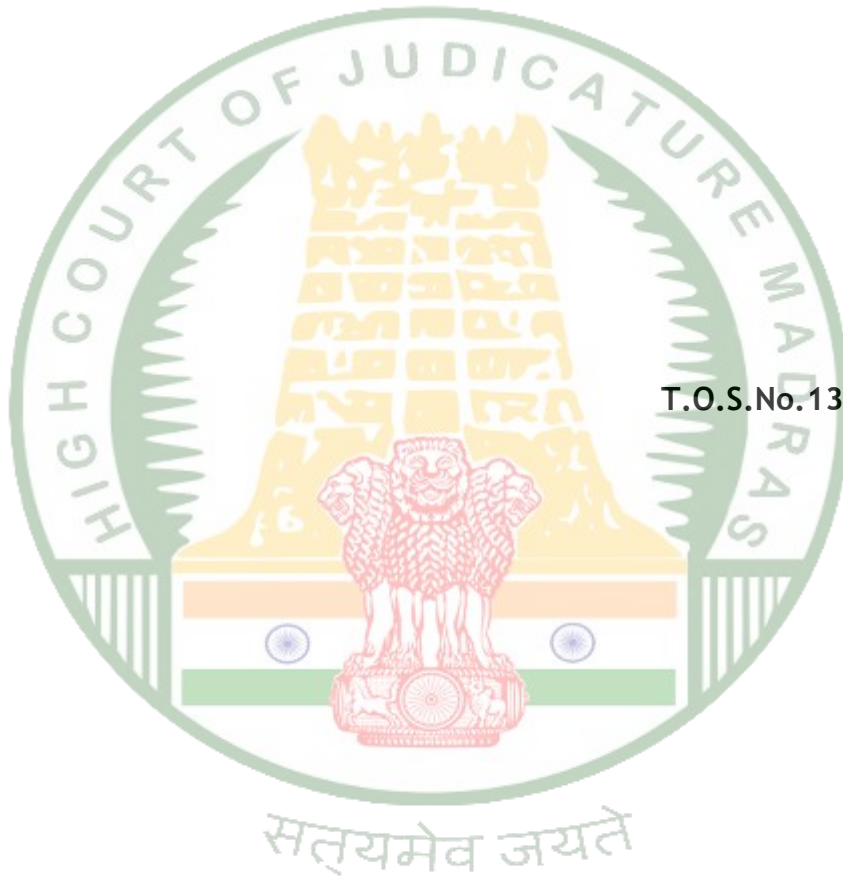
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R.SUBRAMANIAN.J.,

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