

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

TOS.No.56 of 2016

M.Maikandan

... Plaintiff

Vs

1. M.Satchithanantham (died)
2. Sathyakumari
3. S.Rubakumar
4. S.Senthilnathan

[Defendants 2 to 4 are impleaded
as per the order of this Court dated 08.11.2017
in Appl.No.5178 of 2017]

5. Sasikala

[5th defendant is impleaded
as per the order of this Court dated 23.01.2019
in Appl.No.9573 of 2018]

... Defendants

TOS numbered on conversion of O.P. on caveat being filed by the first respondent in the O.P. and the Original Petition filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for grant of Letters of Administration.

For Plaintiff : Mr.K.Sellathurai
For Defendants : Mr.S.Sathish Rajan

JUDGMENT

O.P.751 of 2014 was filed for grant of Letters of Administration with a Will annexed to the petition by the second son / one of the legatee under the Will of the deceased Muthukrishnan Mudaliar. Since a Caveat was filed on 01.04.2015, the Original Petition was directed to be converted into TOS and numbered as TOS.No.56 of 2016.

2. The facts in nutshell would run thus:

a) The deceased Muthukrishnan Mudaliar was the absolute owner of the suit property. He died on 13.09.1983 leaving behind his wife Mrs.Saradhambal, two sons and two daughters as his legal heirs. The said Saradhambal died on 31.05.2011. The first daughter Easwari died in the year 2012 leaving behind her two sons and two daughters as her legal heirs and her husband Sathiyannarayana pre-deceased her.

b) The plaintiff would state that the deceased Muthukrishnan Mudaliar executed a Will at Chennai on 13.06.1979 in the presence of the witnesses and the same was registered as Document No.45 of 1979 in the office

of the Sub Registrar, Kodambakkam, Chennai. The Testator's wife Mrs.Saradhambal had life interest and after her demise, the plaintiff become the absolute owner of the suit schedule property and the beneficiary under the Will. No executor was appointed under the Will. After the demise of the estate holder on 31.05.2011, the Original Petition was filed.

c) The first defendant / Caveator died during the pendency of the suit and his legal heirs were impleaded as defendants 2 to 4. At the time of filing of the Original Petition, the consent affidavit of the legal heirs of the deceased Muthukrishnan Mudaliar were produced in the list of documents attached to the petition.

3. The fourth defendant, S.Senthilnathan, filed a written statement contending that the deceased Muthukrishnan Mudaliar / the grand father of the defendants 3 and 4 does not have any independent right in the petition mentioned property and hence, he cannot execute any Will in favour of the plaintiff ignoring the other legal heirs.

4. It is further stated that though the Will is said to have been executed on 13.06.1979 and the Testator died on 13.09.1983, but the

application for grant of Letters of Administration came to be filed after a lapse of 30 years. The first defendant was suffering from Glaucoma and his vision in both the eyes affected up to 90%. Taking advantage of the blindness of the first defendant, the plaintiff obtained signatures in various papers and only after receiving summons in the Original Petition, the fraud played by the plaintiff came to the knowledge of the first defendant and with a view to grab the suit property, the plaintiff has filed the case. The defendants 2 and 3 filed a memo adopting the written statement filed by the fourth defendant.

5. Considering the above pleadings, the following issues were framed for consideration:

i) Whether the Will dated 13.06.1979 executed by the deceased R.Muthukrishnan Mudaliar and registered as Doc.No.45 of 1979 in the office of the Sub Registrar Kodambakkam, Chennai is true and valid and binding on the defendants?

ii) Whether the testator was of sound state of mind and had executed the Will out of his free consent?

iii) Whether the Will had been proved in accordance with law?

iv) Whether the Will is vitiated by any act of fraud as alleged by the defendants in the written statement?

v) Whether the plaintiff is entitled to grant Letters of Administration in respect of Will dated 13.06.1979 registered as Doc.No.45 of 1979 Office of the Sub Registrar Kodambakkam, Chennai? and

vi) To what other relief the parties are entitled to?

6. The plaintiff in order to prove his case, examined himself as PW1 and marked Exhibits P1 to P13. During the chief examination, PW1 has narrated the facts as set out in the plaint. During cross-examination, PW1 has deposed that the Will dated 13.06.1979 was signed by his father, when he was 70 years old and his mother died on 31.05.2011. When his father signed the Will, he was having sound mind and good health. About ten months prior to his death, he was not well and he was paralysed. The Will was typewritten in front of the Sub-Registrar's Office, Kodambakkam and it was prepared by his father along with his friend Mariyappan. PW1 and his brother Satchithanantham went to the Sub-Registrar's Office for execution of the Will. The said Mariyappan and Satchithanantham have attested the Will. His father signed the Will in the presence of the witnesses and he saw his father signed the Will. He denied the suggestion that the first defendant was blind at the time of signing his consent affidavit, Ex.P8.

7. One of the attesting witness to the Will, Mr.A.Mariyappan, was examined as PW2 and he deposed that on 13.06.1979, he was present along with one Satchithanantham at the house of the Testator Mr.R.Muthukrishnan Mudaliar and saw the deceased subscribe his name at foot of his last Will, Ex.P1. Thereupon, PW2 and the said Satchithanantham subscribe their names and signatures at the foot of the Testamentary Paper as witnesses thereto. At that time, the deceased R.Muthukrishnan Mudaliar, was of sound and disposing state of mind, memory and understanding and to the best of his belief made and published the same of his free will and pleasure. During cross-examination, he has stated that the Testator Muthukrishnan Mudaliar is not only his family friend, but he was also a tenant under him from 1966 to 2006. He knows the contents of the Will and he signed after Muthukrishnan signed the Will. When he signed the Will, Muthukrishnan saw him and Maikandan was also there. The testator was not affected by paralysis, when the Will was executed. He denied the suggestion that Satchithanantham did not sign as a witness in the Will.

8. On behalf of the defendants, the fourth defendant was examined as DW1 and has stated that the Will is a fabricated one and the case was filed after a lapse of 30 years and the plaintiff has not given any valid or sufficient

reason for the delay in filing the petition for grant of Letters of Administration. His father, the first defendant, never signed in the consent affidavit for grant of Letters of Administration and his vision was affected up to 90%.

9. In the cross-examination, DW1 has admitted that the Will property was purchased from Thiruvallurpuram, Co-operative Society vide registered sale deed dated 04.10.1960 by the deceased Muthukrishnan Mudaliar from his own self acquired funds and his legal heirs are not having any right in the schedule property. The signature of Satchithanantham is available in Ex.P1, but it doesn't belong to his father. PW2, Mariappan signed as attesting witness in the Will, but he is hand in glove with the plaintiff since 1990 and the said Mariappan is not a beneficiary under the Will. But he denied the suggestion that the Testator Muthukrishnan was voluntarily and with sound state of mind executed the Will.

10. Mr.K.Sellathurai, learned counsel for the plaintiff would submit that on the date of execution of the Will, Ex.P1, the Testator by a deed of settlement dated 13.06.1979 settled a property in favour of the first defendant, in which, the plaintiff herein and PW2 signed as witnesses, likewise in the Ex.P1, the first defendant signed as one of the attesting witness. It is

further submitted that though the defendants contested the suit alleging that the plaintiff has committed fraud, the same has not been specifically pleaded and proved by the defendants.

11. Per contra, learned counsel for the defendants would submit that the plaintiff has failed to prove the execution of the Will, Ex.P1 in accordance with law.

12. In this case, it is not in dispute that the deceased Muthukrishnan Mudaliar was the absolute owner of the suit schedule property and on 13.06.1979, he executed two documents, one under Ex.P1 the suit schedule property was bequeathed in favour of the plaintiff and by settlement deed settled another property in favour of Satchithanantham, who is the father of DW1. It is not disputed that the plaintiff is a witness to the settlement deed and the first defendant signed as attesting witness in the Will, Ex.P1. PW2 has stated in his evidence that the Testator voluntarily and with the sound state of mind executed the Will, but nothing could be elicited during cross examination to discredit the witness.

13. In my considered opinion, the plaintiff has proved the execution of the Will, Ex.P1 and hence, he is entitled for the prayer sought for

in respect of the grant of Letters of Administration. All the issues in the suit are taken up together and answered in favour of the plaintiff. Accordingly, the suit is decreed granting Letters of Administration in respect of the Will dated 13.06.1979 in favour of the petitioner. The petitioner is 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. No Costs.

30.09.2019

Index : Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
pvs

To

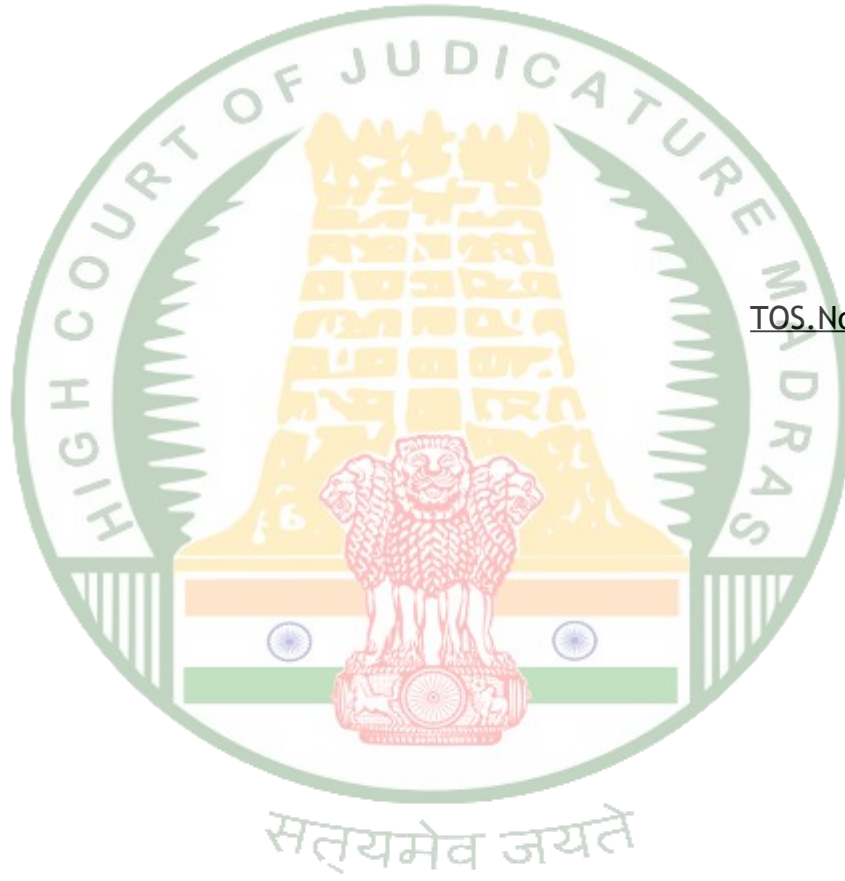
The Sub Assistant Registrar,
Original Side, High Court, Madras.

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