

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

THURSDAY, THE 24TH DAY OF OCTOBER 2019

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

A.No.6643 of 2019
in
T.O.S.No.2 of 2015
(O.P.No.770 of 2010)

In the matter of Indian
Succession Act,XXXIX of 1925,
and
In the matter of the Last Will
& Testament of Mr.
T.V.Rangarajan (Deceased)

MR.T.V.PRABHAKARAN
S/O.LATE T.K.VENKATARAMAN,
Aged about 76 years,
RESIDING AT NO.4, SAIRAM,
4,22ND CROSS STREET, BESANT NAGAR,
CHENNAI-600 090. ..Plaintiff

-vs-

MRS.EDITH SRINIVASAN,
AGED ABOUT 68 YEARS,
RESIDING AT NO.601, PRAVEEN APARTMENTS,
ROAD NO.2, SUNDARNAGAR, KALINA, SANTA CRUZ (E), MUMBAI-400 098. ..DEFENDANT

A.NO.6643 OF 2019:

1. MR.SANJAY SRINIVASAN,
S/O.LATE R.SRINIVASAN,
RESIDING AT NO.601 PRAVIN APARTMENTS,
ROAD NO.2 SUNDARNAGAR, KALINA SANTA CRUZ (E),
MUMBAI 400 098. ..1ST APPLICANT/PROPOSED
2ND DEFENDANT

2. MS.DIVYA SRINIVASAN
D/O.LATE R.SRINIVASAN
RESIDING AT NO.601 PRAVIN APARTMENTS,
ROAD NO.2 SUNDARNAGAR, KALINA SANTA CRUZ (E),
MUMBAI 400 098.

-VS-

MR.T.V.PRABHAKARAN,
S/O.LATE T.K.VENKATARAMAN,
AGED ABOUT 75 YEARS.
RESIDING AT NO.4 SAIRAM 5,
22ND CROSS STREET, BESANT NAGAR,
CHENNAI 600 090.

..1ST RESPONDENT / PLAINTIFF

MRS.EDITH SRINIVASAN,
W/O.LATE R.SRINIVASAN,
AGED ABOUT 68 YEARS,
RESIDING AT NO.601,
PRAVEEN APARTMENTS,
ROAD NO.2 SUNDARNAGAR,
KALINA SANTA CRUZ (E)
MUMBAI 400 098.

..2ND RESPONDENT/DEFENDANT

Application praying that this Hon'ble Court be pleased to implead the 1st and 2nd Applicants as the 2nd and 3rd Defendants in T.O.S.NO.2/2015 under Order XIV Rule 8 of O.S. Rules and Order 1 Rule 10(2) R/W Section 151 of the Code of Civil Procedure Code.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed to implead the applicants as second and third defendants in T.O.S.No.2 of 2015.

2. The first respondent herein filed O.P.No.770 of 2010 for grant of Probate of the Will, dated 14.08.2000, arraying his legal-heirs as respondents 1 to 4. The applicants herein were impleaded as respondents 3 and 4 in the O.P. Since the second respondent therein opposed the grant of Probate, the O.P. was converted into T.O.S. in the year 2015. The second respondent has filed her written statement and the suit is at the stage of

framing issues.

3. It is the case of the applicants that the testator is their grandfather and the Will has been obtained under coercion by his uncle Mr.Murali Rangarajan and the applicants are the Class-I legal-heirs of the testator and hence, they have to be impleaded as defendants in the Suit.

4. A detailed counter has been filed by the first respondent, stating that though all the legal-heirs of the testator, including the applicants herein gave their consent for grant of Probate to the said Will, the mother of the applicants herein filed her caveat and objections in the year 2013 and hence, it was converted into T.O.S. Despite the service of notice on the applicants, no caveat and objection was filed by the applicants, opposing grant of Probate of the said Will and this application is nothing, but an afterthought to delay and drag on the proceedings.

5. Ms.A.Yogasree, learned counsel for the applicants would submit that there is no specific provision in the Original Side Rules for impleading the applicants and hence, the procedure prescribed in the C.P.C. has to be followed to implead the applicants in the suit. It is the submission of the learned counsel for the applicants that if they are not impleaded as defendants 2 and 3 in the suit, they would be put to great prejudice and hardships.

6. Per contra, Mr.K.Harishankar, learned counsel for the first respondent/plaintiff contended that admittedly,

the applicants have been arrayed as respondents in the O.P. filed for Probate and as per Order 25, Rule 52 of Original Side Rules, the caveat has to be filed, whoever opposing grant of Probate and thereafter within a period of 8 days, objections have to be filed. It is further contended that no reason has been given in the affidavit for non filing of the caveat as per the Original Side Rules and the Original Side Rules is a self contained code and if this procedure is adopted, the object and purpose of enactment would be defeated.

7. Heard the rival submissions on either side and perused the materials available on record.

8. In the case on hand, it is not in dispute that the applicants have been impleaded as respondents in the Original Petition and they were also served notice in the O.P, however, no reason has been assigned in the affidavit filed in support of the application for non filing of the caveat and objections as per Order 25, Rules 51 and 52 of Original Side Rules. It is further seen that the affidavit filed in support of the application was not sworn by the applicants, but by the second respondent / defendant. When there is a specific procedure prescribed in the O.S. Rules, for filing caveat and objections in a stipulated time, this belated application cannot be entertained. It is to be noted that the O.P. filed in the year 2010, is kept pending without any substantial progress for about a decade.

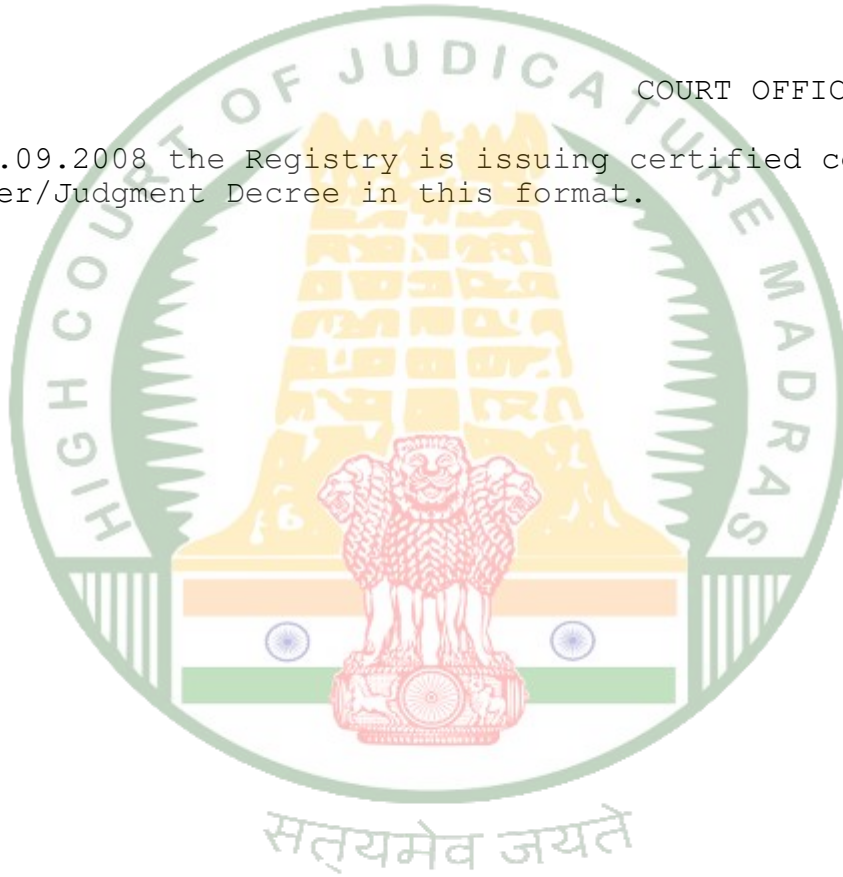
9. For the foregoing reasons, I find no merit in this application and accordingly, the application is dismissed.

Sd/.M.K.K.S.J.
24.10.2019

//Certified to be a true copy//
Dated this the day of 2019.

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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