

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

THURSDAY, THE 31ST DAY OF OCTOBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.NoS.6836 AND 6837 of 2019
in
T.O.S.No.14 of 2009

In the matter of the Indian
Succession Act XXXIX of 1925;
and
In the matter of the last Will and
Testament of P.Somasundaram -
deceased.

S.Gunasekaran,
S/o.Late P.Somasundaram
residing at 101,
1st Avenue, Indira Nagar, Adyar,
Chennai - 600 020.
...Petitioner/Plaintiff

-VS-

1. K.Kamala
Wife of P.Kondusamy,
residing at Flat No.4,
Block M9, 4th Flor,
Ragam Apartments, Thiruvalluvar Nagar,
Thiruvanmiyur, Chennai - 600 041.

2. S.Chandrasekaran (deceased)
Son of Late P.Somasundaram,
residing at No.6/24, R.C.2, Mani Street,
3rd Bus Stop, Thiru Nagar,
Madurai - 6.

3. Mrs.B.Rajeswari
Wife of G.K.Balakrishnan,

No.8, MIG Flats, 2nd Avenue,
Indira Nagar,
Adyar, Chennai - 600 020.

4. C.NAGARATHINAM
W/o.Late S.Chandrasekaran,
No.RC2,
Mani Street, Thiru Nagar,
Madurai-2.

5. V.RAJESWARI
W/o.Velmurugan
Door No.1/1,
Velayuthapuram,
Pandalgudi (Post),
Aruppukottai Taluk,
Virudhu Nagar District.

6. M.SUBBULAKSHMI
W/o.Murugesan, No.251,
N.S.P.Illam 17, Cross Street,
Kodeeswara Nagar, Tirunelveli-7.
Tirunelveli District.

7. P.PRIYA
W/o.Pandi,
Shanmugam Street,
Thirunagar, Madurai-2.

8. N.SANGEETHA
W/o.Nagaraj,
No.249, N.S.P.Illam,
17, Cross Street,
Kodeeswara Nagar,
Tirunelveli-7.

(2ND DEFENDANT LEGAL
representatives are brought
on record as per Ord.dt.18.4.2018 in
A.No.5874/2017)

..Defendants

A.Nos.6836 and 6837 of 2019:-

1. Mrs.B.Rajeswari
Wife of G.K.Balakrishnan,
No.8, MIG Flats, 2nd Avenue,
Indira Nagar,
Adyar, Chennai - 600 020.

...Applicant/3rd Defendant

-vs-

1. S.Gunasekaran
Son of Late P.Somasundaram,
residing at 101,
1st Avenue, Indira Nagar, Adyar,
Chennai - 600 020.

...1st Respondent/Plaintiff

2. K.Kamala
Wife of P.Kondusamy,
residing at Flat No.4,
Block M9, 4th Flor,
Ragam Apartments,
Thiruvalluvar Nagar,
Thiruvannamiyur, Chennai - 600 041.

..2nd Respondent/1st Defendant

Mr.S.Chandrasekaran (deceased)
Son of Late P.Somasundaram,
residing at No.6/24, R.C.2, Mani Street,
3rd Bus Stop, Thiru Nagar,
Madurai – 6.

..2nd Defendant

3. C.NAGARATHINAM
W/o.Late S.Chandrasekaran,
No.RC2, Mani Street,
Thiru Nagar,
Madurai-2.

..3rd Respondent/4th Defendant

4. V.RAJESWARI
W/o.Velmurugan
Door No.1/1,
Velayuthapuram, Pandalgudi (Post),
Aruppukottai Taluk, Virudhu Nagar ,
Virudhu Nagar District.

..4th Respondent/5th Defendant

5. M.SUBBULAKSHMI

W/o.Murugesan,

No.251, N.S.P.Illam 17, Cross Street,

Kodeeswara Nagar, Tirunelveli-7.

Tirunelveli District.

..5th Respondent/6th Defendant

6. P.PRIYA

W/o.Pandi,

Shanmugam Street,

Thirunagar, Madurai-2.

..6th Respondent/7th Defendant

7. N.SANGEETHA

W/o.Nagaraj,

No.249, N.S.P.Illam,

17, Cross Street,

Kodeeswara Nagar,

Tirunelveli-7.

Tirunelveli District.

..7th Respondent/8th Defendant

A.No.6836 of 2019:

Application praying that this Hon'ble Court be pleased to issue Subpoena to the Apollo Hospital by its Medical Record Officer/Medical Service situated at 21, Grems Lane, Grems Road, Chennai - 600 006, directing him to appear before this Court and to exhibit the treatment given by Apollo Hospitals to Mr.Somasundaram and to produce necessary records relating to treatment given from 2006 to 2007 and consultation from the Appollo Hospital.

A.No.6837 of 2019:

Application praying that this Hon'ble Court be pleased to issue

Officer/Medical Superintendent situated at 52, 1st Main Road, Gandhi Nagar, Adyar, Chennai- 600 020, directing him to appear before this Court and to exhibit the treatment given by Fortis Malar Hospitals to Mr.Somasundaram and to produce necessary records relating to treatment given from 2005 to 2006 and consultation from the Fortis Malar Hospital.

These applications coming on this day before this court for hearing the court made the following order:

Heard Mr.P.Sam Japa Singh, learned counsel for the applicant and Mr.M.S.Krishnan, learned Senior Counsel appearing for Mr.K.Venkatasubban, learned counsel for the first respondent and perused the materials placed on record.

2. The third defendant in T.O.S.No.14 of 2019 has filed these applications for issuance of Subpoena (i) to the Apollo Hospital, rep. by its Medical Record Officer / Medical Service situated at No.21, Greams Lane, Greams Road, Chennai - 600 006 and direct him to appear before this Court and exhibit the treatment given by Apollo Hospital to Mr.Somasundaram and to produce necessary records relating to treatment given from 2006 to 2007 and consultation from the Apollo Hospital; and (ii) to the Fortis Malar Hospital, Rep. by its Medical Records Officer / Medical Superintendent, situated at No.52, 1st Main Road, Gandhi Ngar, Adyar, Chennai -600 020 and direct him to appear before this Court and to exhibit the treatment given

by Fortis Malar Hospital to Mr.Somasundaram and to produce necessary records relating to the treatment given from 2005 to 2006 and consultation from the Fortis Malar Hospital.

3. According to the applicant, the testator is her father and he was sick between 2004 and 2007, for which he was admitted in various hospitals and hence, he was incapable of executing the holographic Will dated 09.11.2006. The testator was also a senior citizen, aged about 83 years and to prove his case, Subpoenas have to be issued to examine the witnesses and produce the documents.

4. A common counter affidavit has been filed denying the allegations of the applicant, however in paragraph No.3 of the counter, it has been admitted that the testator was admitted in the hospitals between 2004 and 2007 due to age related ailments and for treatment to septicaemia and multi organ failure. It is contended that even though he suffered from health issues, he was healthy and sound state of mind at the time of execution of the Will.

5. Considering the averments made in the affidavits filed in support of the applications and the common counter statement filed by first respondent, this Court is inclined to allow these applications. Accordingly, these applications are allowed. The Registry is directed to issue Subpoenas, to

No.21, Greams Lane, Greams Road, Chennai - 600 006; and to the Medical Records Officer / Medical Superintendent, Fortis Malar Hospital, No.52, 1st Main Road, Gandhi Ngar, Adyar, Chennai -600 020, for examining them as witnesses in T.O.S.No.14 of 2009 and for production of documents with regard to the treatment given to Mr.Somasundaram during 2006-2007 and 2005-2006 by the Apollo Hospital and Fortis Malar Hospital, respectively. The said individuals shall appear before the learned Master on 15.11.2019.

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

31.10.2019

//Certified to be a true copy//

Dated this the day of 2020.

S.U./17.03.2020

COURT OFFICER

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

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