

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.NOS.7147 AND 7148 OF 2019

in

T.O.S.No.32 of 2011

IN THE MATTER OF INDIAN
SUCCESSION ACT XXXIX OF
1925

AND

IN THE MATTER OF LAST WILL
AND TESTAMENT DATED 4.3.1998
OF LATE M.GOVINDAMMAL

V.Sridevi,
New No.200, Old No.72,
Alwarpet Street, Alwarpet,
Chennai-600 018.

: APPLICANT

-VS-

1. G.Balasubramanian,
New No.200, Old No.72,
Alwarpet Street, Alwarpet,
Chennai-600 018.

2. G.Sasikala,
New No.200, Old No.72,
Alwarpet Street, Alwarpet,
Chennai-600 018.

3. G.Rajeswari,
New No.200, Old No.72,
Alwarpet Street, Alwarpet,
Chennai-600 018.

..Defendants

A.Nos.7147 and 7148 of 2019:

1. G.Balasubramanian,
New No.200, Old No.72,
Alwarpet Street, Alwarpet,
Chennai-600 018.

2. G.Sasikala,
New No.200,Old No.72,
Alwarpet Street,Alwarpet,
Chennai-600 018.

3. G.Rajeswari,
New No.200,Old No.72,
Alwarpet Street,Alwarpet,
Chennai-600 018.

..Applicants/Defendants
IN BOTH APPLICATIONS

-vs-

V.Sridevi,
New No.200,Old No.72,
Alwarpet Street,Alwarpet,
Chennai-600 018.

: Respondent/Plaintiff
IN BOTH APPLICATIONS

A.NO.7147 OF 2019:

This application praying that this Hon'ble Court be pleased to receive additional documents in TOS.No.32 of 2011 on the file of this Honble court.

A.NO.7148 OF 2019:

This application praying that this Hon'ble Court be pleased to Eschew the inadmissible documents marked as Exhibits P5 and Exhibits P6 viz., Affidavits of Attesting Witnesses of K.C.Giridhar and Mathi in applicants absence marked through the respondent/plaintiff Sridevi in TOS.NO.32 of 2011 on the file of this Hon'ble Court.

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

These applications have been filed by the defendants to receive additional documents and to eschew the documents marked as Exs.P5 and 6 in TOS.No.32 of 2011.

<https://hcservices.ecourts.gov.in/hcservices/> 2. O.P.662 of 2007 filed by the respondent for grant of Letters of Administration with Will dated

04.03.1998 was converted into TOS on the application moved for revocation of grant of Letters of Administration.

3. It is the case of the applicants that in order to prove their case, the additional documents are vital. It is further stated that in the absence of the counsel for the applicants, inadmissible documents were marked as Exs.P5 and 6.

4. A counter affidavit has been filed by the respondent stating that the said documents were marked in the presence of the applicants' counsel and no objection or reservation was raised by him at that time. Thereafter, cross-examination of the witness was also carried out and this application is filed only to drag on the proceedings. The respondent would state that genuineness of the documents that are sought to be marked is seriously disputed and by producing those documents, the applicants are trying to create evidence on their side.

5. The learned counsel for the applicants would argue that when the applicants wanted to mark the deposition of respondent recorded in a suit, it was objected by the respondent and the objection was sustained. The learned counsel would further state that the respondent is the sister of the applicants, but by suppressing the fact, the ex-parte order was obtained in the Original Petition and to prove the case of the applicants that they were living with the testatrix in the suit property, the additional documents are to be marked on the side of the applicants / defendants.

6. It is the submissions of the learned counsel for the respondent that Exs.P5 and P6 were marked in the presence of the junior counsel, but no objection was raised and that no explanation was given for filing this belated application.

7. As per Section 68 of the Evidence Act, to prove the execution of a Will, at least one of the attesting witness has to be examined. But, in the instant case,

without examining the attesting witnesses, their affidavits have been marked as Exs.P5 and P6. In the counter affidavit, nothing is stated about the availability of the attesting witnesses to prove the execution of the Will. In the considered opinion of this Court, the documents Exs.P5 and P6 do not have any evidential value and hence, they have to be eschewed and the application is to be allowed.

8. Considering the reasons pleaded for marking additional documents, the applicants in order to meet the ends of justice can be permitted to mark those documents, subject to proof, relevancy and admissibility. Accordingly, both the applications are allowed.

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

26.11.2019

//Certified to be a true copy//

Dated this the day of 2019.

Su/20.12.2019

COURT OFFICER

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

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