

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

T.O.S. No. 25 of 1994

1. T.Rajendran
 2. K.C.Varadarajan (died)
 3. D.Manohar
- ... Petitioners

vs

1. D.K.Janakiraman (died)
 2. Saradambal Srinivasa Mudaliar Ashram
KGF, Rep. by its Trustee J.Balaji
(Second defendant impleaded as per order
dated 20.06.2008 in Application No.3754/2004)
- ... Respondents

Prayer: Testamentary Original Suit filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925, to grant of probate of the Will annexed of late Smt.Saradambal may be granted to the petitioners to have effect through out the State of Tamil Nadu.

For Plaintiffs

:Mrs.Chitra Sampath, Senior Counsel
For M/s.T.S.Baskaran

For Defendants

: Mr.A.M.Amutha Ganesh
For M/s.Norton and Grant

J U D G M E N T

This testamentary suit is filed in respect of the last Will and testament dated 19.08.1988 of the testatrix, the late Smt.Saradambal.

2. I heard the learned Senior Counsel for the plaintiffs and the learned counsel for the defendant. The learned Senior Counsel submitted that pursuant to a settlement arrived at between the parties, T.O.S. No.23 of 1994 was withdrawn. As regards T.O.S.No.25 of 1994, she submitted that evidence was recorded so as to prove the Will. She also took me through the evidence wherein the first plaintiff was examined as PW1 and the original Will dated 19.08.1988 was marked as Ex.P1. The original death certificate dated 29.06.1991 of the testatrix was marked as Ex.P2. She also pointed out that the original affidavits of the attesting witnesses, C.K.Perumalsamy and V.Kamalanathan, were marked as Exs.P3 and P4, but the said attesting witnesses died before evidence was recorded in the TOS. In proof of the same, she submitted that the death certificates of the said attesting witnesses were exhibited as Exs.P6 and P7. In view of the death of the attesting witnesses, she submitted that secondary evidence was recorded by examining Mr.Srinivasa Mudaliar, who is the son-in-law of one of the attesting witnesses viz., Mr.V.Kamalanathan. The said witness was examined as PW2 and he identified the signature of the attesting witnesses. As regards the

signature of the testatrix, she submitted that Mr.J.A.Balaji adduced evidence as DW1 and deposed with regard to the signature of the testatrix in the Will. On this basis, she submitted that the plaintiffs have duly proved the Will in accordance with the provisions of the Evidence Act, 1872 and the Indian Succession Act, 1925. The learned counsel for the defendants also submitted that the suit may be decreed and that probate may be granted.

3. Upon considering the submissions of the learned Senior Counsel/learned counsel for the respective parties and upon examining the evidence recorded in the case, I find that the following is clearly established:

(i) The suit is filed by the executors of the Will.

(ii) The original Will dated 19.08.1988 has been exhibited as Ex.P1 through PW1.

(iii) The original death certificate of Smt.Saradambal dated 29.06.1991 is also exhibited as Ex.P2.

(iv) The original affidavit of both the attesting witnesses were also marked as exhibits, and their death certificates were filed as Exs.P6 and P7.

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(v) On account of the death of the attesting witnesses, secondary evidence was adduced to prove the signature of the attesting witness, Mr.V.Kamalanathan through PW2, and the signature of the testatrix through DW1.

4. In view of the aforesaid, I find that the plaintiffs have proved the Will in accordance with law. Accordingly, this suit is liable to be decreed.

5. Therefore, there shall be a decree for the grant of probate of the Will of the late Smt.Saradambal to the petitioners to have effect throughout the State of Tamil Nadu. The plaintiffs shall also file a full and true inventory of the properties and credits and also render a full and true account within a period of six months and one year, respectively, from the date of receipt of a copy of the decree.

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Index:yes/No

Internet:Yes/No

Speaking order/Non speaking order

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