

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

T.O.S.No.10 of 2009

K.G.Mohan

...Plaintiff

1.Ambujam P. Nair

2.Vatsala Raghunath

... Defendants

Prayer: Suit filed under Section 232 & 276 of Indian Succession Act Under Order XXV Rule 5 of Original Side Rues to grant Letters of Administration with certified copy of the Will annexed to the petitioner as son and one of the beneficiary under the will of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiff : Ms.Sarala Chidambaram

For Defendants : Mr.Joseph George Mayiladumpara

ORDER

The above TOS is filed for grant of letters of administration in respect of the registered Will dated 19.06.1985 executed by the Testator, P.V.Prabhakaran Nair, registered as Doc. No.27 of 1985 on the file of the SRO, Ambathur. The petitioner is the son of the late P.V.Prabhakaran Nair, the Testator and the 1st respondent is his wife and the 2nd respondent is his daughter respectively.

2. It is the contention of the plaintiff that the said P.V.Prabhakaran Nair was ordinarily residing within the Jurisdiction of this Court and that prior to his death, on 19.06.1985 he had executed a Will within the Jurisdiction of this Court and registered the same as Doc. No.27 of 1985 on the file of the SRO, Ambathur in the presence of witnesses whose name appear at the foot thereof. The plaintiff would submit that under the Will the 1st defendant was given a life estate and thereafter the property had to devolve on the 1st defendant.

3. The said P.V.Prabhakaran Nair died on 31.07.1991. Therefore, the plaintiff had come forward with the present application. On entering Vakalat the defendants herein had filed a caveat inter alia questioning the validity of the Will put forward by the applicant / plaintiff in the light of the fact that the deceased had executed a subsequent Will and Codicil. Therefore, the claim under this Will was not maintainable. The plaintiff was not give any right under the subsequent Will and Codicil and therefore by executing the subsequent Will, the earlier Will in favour of the plaintiff stood revoked.

4. On receipt of the above caveat, this Court had converted the Original petition into a Testamentary Original Suit in T.O.S.No.10 of 2009. The defendants have filed a very detailed written statement in which they would acknowledge the Will put forward by the plaintiff but would however contend that the Testator had executed the subsequent Will on 02.06.1986 and this Will was also registered before the SRO, Ambathur registered as Doc. No.27 of 1986. Thereafter, the said P.V.Prabhakaran

Nair had also executed a codicil, titled as a Will on 16.07.1987. It appeared that between the execution of the Will in favour of the plaintiff and the subsequent Will there was some issues between the father and the son which resulted in his executing a new Will. They would therefore submit that in view of the subsequent Will, the earlier Will in respect of which the suit had been filed stands revoked.

5. This Court had framed issues and relegated the parties to evidence. The plaintiff had examined himself as P.W.1 and marked Ex.P.1 to Ex.P.12. He had also examined one of the attesting witness of the Will, Ex.P.2 as P.W.2. The 1st defendant mother has entered the witness box as D.W.1 and one Veemaraj as D.W.2. They have also marked Ex.D.1 to Ex.D.5. Ex.D.1 is the subsequent Will dated 16.07.1986 of late P.V.Prabhakaran Nair and Ex.D.2 is the Codicil dated 16.07.1987 which has been described by the Testator as a Will.

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6. Mrs.Sarala Chidambaram, learned counsel appearing on behalf of the plaintiff would contend that the subsequent Wills are the creation of

the fraud and undue influence. She would further argue that the property in question had not even been registered in the name of the Testator by the Tamil Nadu Housing Board. Therefore, the two Wills have been prepared when the Testator did not have any right, title or interest to the property. Therefore, the learned counsel would submit that the reliance cannot be made on the two Wills.

7. The learned counsel appearing on the side of the defendants would draw the attention of this Court to Ex.D.1 which is the Will dated 02.06.1986 and Ex.D.2 the Will / Codicil of the Testator P.V.Prabhakaran Nair. He would also inform the Court that on the death of the father and keeping with the terms of the Will dated 02.06.1986 and the desire of the Testator, the 1st defendant had settled the property on 2nd defendant her daughter. The learned counsel would also point out the contents of Ex.D.5, which is the letter written by the Testator to his daughter, the 2nd defendant in which the father would castigate the plaintiff and wherein he had contended that he has also repaid the loan that he has taken from his son and son in law for putting up additional construction.

8. The learned counsel would submit that in the light of the execution of the 2nd Will and the Codicil, no right would flow from earlier Will of the year 1985 which is the subject matter of the suit. He would therefore pray for the dismissal of the TOS.

9. Heard the learned counsels and perused the papers.

10. As already stated the Testator had executed a subsequent Will Ex.D.1 and thereafter a codicil titled as a Will and which is marked as Ex.D.2. Once another Will has been executed, the earlier Will admittedly stands revoked. However, unlike the registered document of Transfer a Will comes into effect only on the death of the Testator, till his death it is well open to the Testator to change, modify or alter the earlier Will.

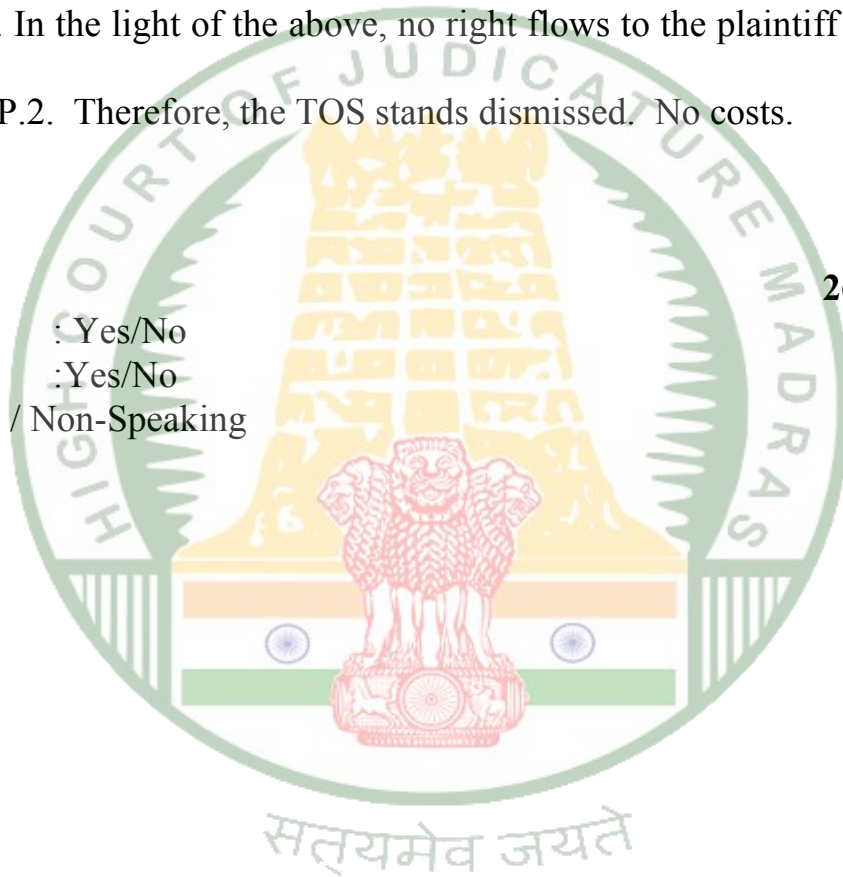
11. In the instant case the Testator has revoked the earlier Will by executing subsequent Wills. Further, the mother to whom the property has

been bequeathed under the 2nd Will, has executed a settlement deed dated 18.12.2003 in favour of her daughter which is registered as Doc. No.3788 of 2003 on the file of the SRO, Villivakkam.

12. In the light of the above, no right flows to the plaintiff under the Will, Ex.P.2. Therefore, the TOS stands dismissed. No costs.

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