

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

T.O.S. No. 15 of 2011

1. M. Arivazhagan,
2. M. Prakash,
3. M. Jayakumar and
4. M. Ravi
... Plaintiffs
vs
M. Govindasamy
... Defendant

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925, to grant Letters of Administration with the Will annexed may be granted to the petitioners herein as the grand sons/legatees of the said deceased having effect limited to the State of Tamil Nadu.

For Plaintiffs : Mr. G. Saravanan
For Defendant : Mr. M. Govindasamy

J U D G M E N T

This Testamentary Original Suit is filed for the grant of Letters of Administration with the Will annexed to the plaintiffs in the suit.

2. I heard the learned counsel for the plaintiffs.

3. At the last hearing, upon examining the affidavit of service dated 10.12.2019, the first defendant was set ex-parte and the name of the said first defendant is printed in the cause list today.

4. The learned counsel for the plaintiffs submitted that the testator was the grandfather of the plaintiffs and that he executed the last Will and Testament on 04.05.1992 at No.42/34, Vinoba 34th Street, G.K.M. Colony, Chennai - 600 082, which was also the ordinary place of residence of the said testator. He further submitted that the testator bequeathed the immovable property to the grandsons with life interest in favour of his sons. The learned counsel also submitted that evidence was recorded through the first and third plaintiffs and also by examining both the attesting witnesses.

5. During the course of the trial, he submitted that the following documents were exhibited:-

List of documents exhibited by the plaintiffs.

<i>Sl.No</i>		<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	Original Will	05.05.1192
2	Ex.P2	Death Certificate of Munusamy	25.11.1999
3	Ex.P3	Certified copies of the receipts issued by the Tamil Nadu Slum Clearance Board to Mr.Munusamy	-
4	ExP4	Certified copy of the Will (Doc.No.36/1992),	10.03.1992
5	Ex.P5	Certified copy of the order dated 10.03.2014 passed in Contempt Petition No.369/2011, High Court, Madras.	10.03.2014

List of documents exhibited by the defendants.

Sl.No		Description of documents	Date
1	Ex.D1	Certified copy of allotment letter to 1 st respondent	03.02.1994
2	Ex.D2	Certified copy of the plaint.	03.07.2000
3	Ex.D3	Series, Certified copy of legal heirship certificate of K.Munusamy	24.12.1999
4	Ex.D4	Series, NOC issued by Tamil Nadu Slum Clearance Board for Munusamy and Govindasamy.	18.03.1996

6. He also submitted that the two attesting witnesses were examined as P.W.3 and P.W.4 respectively and that the said attesting witnesses adduced evidence with regard to the execution of the Will by the testator and also with regard to the state of mind of the testator. The learned counsel pointed out that P.W.1, 2 and 3 were also cross-examined by the learned counsel for the first defendant, but that P.W.4 was not cross examined.

7. For all these reasons, the learned counsel submitted that the Will had been duly proved in accordance with law and that, therefore, the plaintiffs are entitled to the grant of Letters of Administration.

8. I considered the submissions of the learned counsel for the petitioners and also examined the evidence recorded in the case. The limited question that is required to be answered is whether the plaintiffs have proved the

Will in accordance with law.

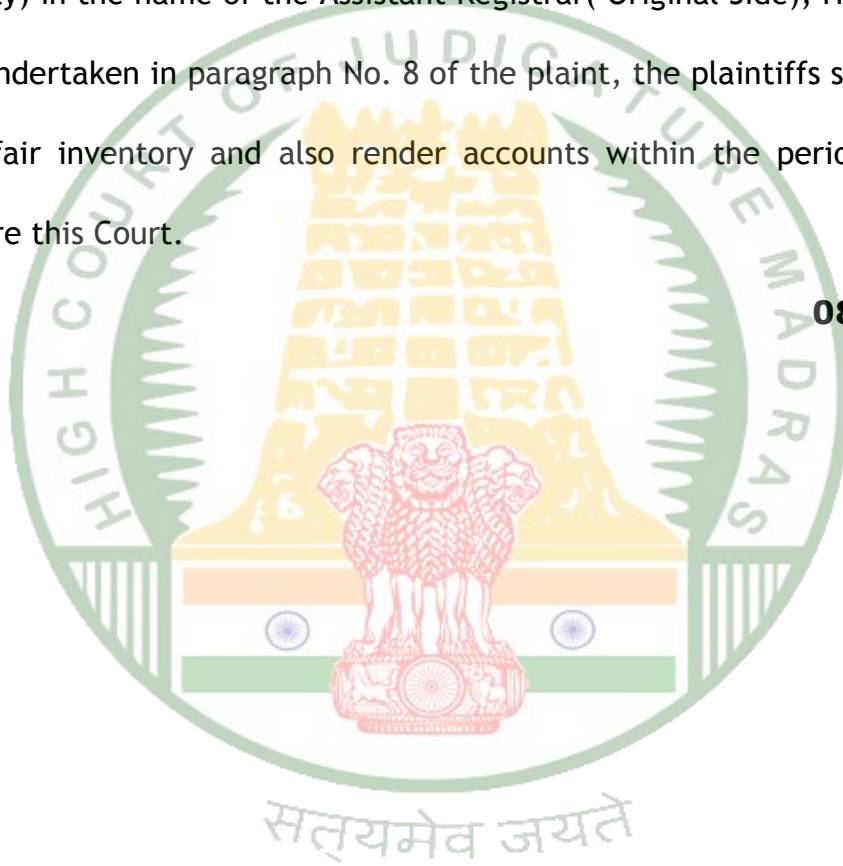
9. I find that P.W.1 is the first plaintiff and the Original Will and the death certificate of the testator were exhibited through P.W.1. Upon perusal of the Will, I find that the Will is registered on the file of the Sub Registrar Office, Ambattur. There are two attesting witnesses to the Will, namely, M.Ramalingam, who was examined as P.W.3 and A.Faritha, who was examined as P.W.4. The disposition under the Will is in favour of the two sons by way of life estate and to the grandsons/plaintiffs by way of an absolute estate. The death of the third son is referred to therein and an explanation is offered for not making provision for the legal heirs of the deceased son. The attesting witnesses were examined as PW.3 and P.W.4 and they have duly testified that they witnessed the execution of the Will by the testator and that he was in a sound state of mind when the Will was executed and also that the Will was not executed under any undue influence or coercion. The evidence adduced through D.W.1 is focused on the inclusion of the name of the defendant in the allotment letter. Such evidence has been adduced so as to establish that the defendant is a co-allottee of the property bequeathed under the Will. However, such evidence does not cast any doubt as to the genuineness of the Will and title to the bequeathed asset is not being decided herein.

10. Upon considering the above evidence, I find that the Will has been

duly proved as per law and no contra evidence has been adduced on behalf of the defendants. Accordingly, the suit is decreed by directing that Letters of Administration be granted to the plaintiffs with the Will annexed. The plaintiffs are directed to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in the name of the Assistant Registrar(Original Side), High Court of Madras. As undertaken in paragraph No. 8 of the plaint, the plaintiffs shall provide a true and fair inventory and also render accounts within the period specified therein before this Court.

08.01.2020

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SENTHILKUMAR RAMAMOORTHY, J.

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