

A.No.1698 of 2020
and
T.O.S.No.22 of 2020
(O.P.No.972 of 2018)

N. SATHISHKUMAR, J.

This application has been filed to dismiss the T.O.S.No. 22 of 2020 (O.P.No.972/2018).

2. Originally, an original petition in O.P.No.972 of 2018 was filed for grant of letters of Administration and subsequently, it was converted into T.O.S.No.22 of 2020, in view of the caveat filed by the applicant herein.

3. The applicant herein is the 2nd respondent and the respondents herein are the petitioners in TOS No.22 of 2020. The present application has been taken out by the applicant/2nd respondent on the ground that the subject matter of the Will is also the subject matter of the suit in O.S.No.5680 of 2016 on the file of the XVIII Additional Judge, City Civil Court, Chennai, which was filed seeking for partition by the applicant. It is the contention of the applicant that

the Trial Court had declared that the Will dated 12.06.1989 is null and void and had also granted the relief of partition in favour of the applicant. The further contention is that the above decree and judgement was passed on 02.08.2018, however, the same was not challenged by the respondents/defendants by way of filing appeal and hence, the matter reached finality and the same can not be pressed into service in this proceedings for seeking letters of administration.

4. The learned counsel appearing for the respondents have not disputed the above decree and judgment passed by the Trial Court in O.S.No.5680 of 2016 dated 02.08.2018 by the XVIII Additional Judge, City Civil Court. A perusal of the entire counter affidavit shows that except the general defence by alleging that the application is not maintainable, no other substance found therein. More over, in the suit in O.S.No.5680 of 2016, a specific issue was framed with regard to the validity of the Will dated 12.06.1989, which is the subject matter of the present T.O.S.No.22 of 2020. After elaborate discussion and also considering the oral and documentary evidence adduced on both sides,

the Trial Court has declared that the Will dated 12.06.1989 is null and void and the mother of the parties had no right to execute the Will and that the suit property was purchased by the father of the parties.

5. Having regard to the categorical findings recorded by the Trial Court that the Will dated 12.06.1989 is null and void and also the fact that the above decree and judgment was not challenged so far, this court is of the view that by ignoring the above judgement, the respondents/petitioners cannot seek similar relief in a different form by filing this Testamentary Original Suit. Therefore, the Testamentary Original Suit in T.O.S. 22 of 2020 is not maintainable.

6. Accordingly, this application is allowed. Consequently, the Testamentary Original Suit in TOS 22 of 2020 is dismissed. No costs.

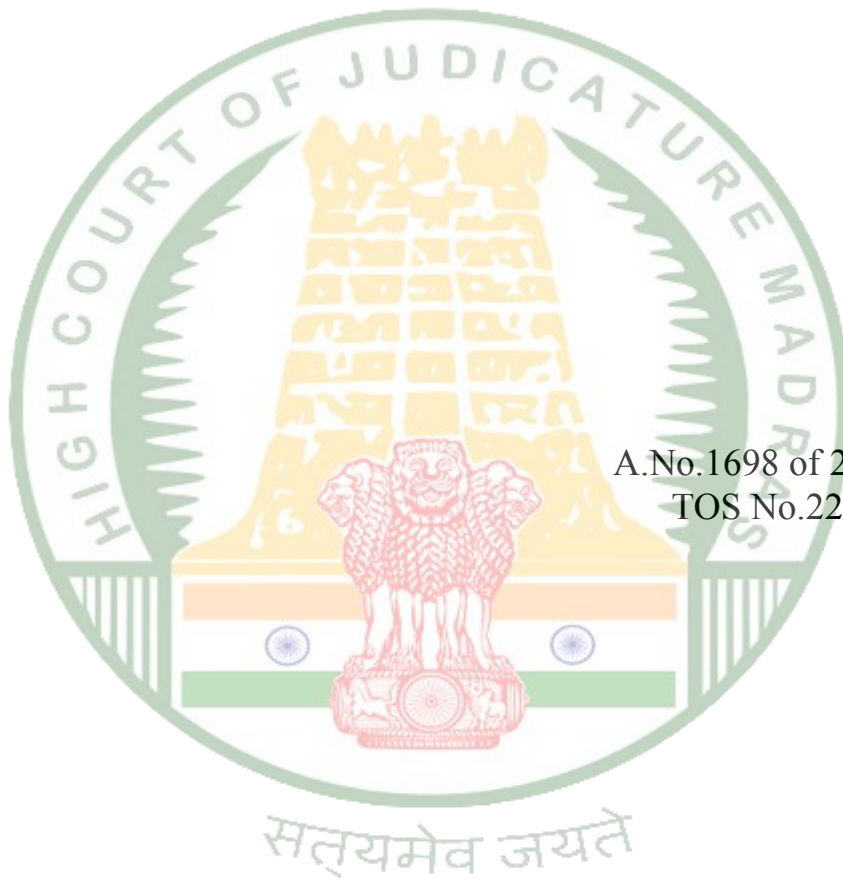
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