

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

T.O.S.No.43 of 2016

1.B.Santhi
2.S.DEvaki
3.D.Mekala

... Petitioners/Plaintiffs

-Vs.-

1.L.Vimala
2.I.Boopathy
3.L.Logeswari

... Caveators/Defendants

Prayer: Original Petition filed under Sections 232 and 276 of the Indian Succession Act and XXXIX of 1925 read with Order XXV Rule 5 of the Original Side Rules praying that the Letters of Administration against this petition a Caveat and supporting affidavit was filed on 11.03.2016 by the Caveators above named, as per order of this Court dated 17.06.2016 in O.P.No.761 of 2013 is directed to be converted into Testanmentary Original Suit.

For Plaintiffs : Ms.C.K.Vishnu Priya

For Defendants : Mr.G.Appavu A. Visagan

JUDGMENT

The plaintiff had originally filed O.P.No.761 of 2013 for the grant of the Letters of Administration to the petitioners as the beneficiaries/daughters of the deceased Radha Ammal with the Will annexed.

2.The plaintiffs would contend that the 1st respondent was the brother of the plaintiffs and the 1st defendant is the sister-in-law, the wife of the predeceased brother Lakshmanan and defendants 2 and 3 the children of Lakshmanan who had died on 26.04.2010 leaving behind him surviving respondents 2 to 4.

3.The plaintiffs would submit that the property belonged to their mother Radha Ammal who died on 11.10.2012 leaving behind her surviving the plaintiffs. The said Radha Ammal had executed a registered

Will on 17.03.1997 at Chennai on the file of the Sub Registrar, Sembiam in Document No.42/1997. The testatrix has not appointed any executor and on her death, the plaintiffs as the beneficiaries became entitled to the property and therefore, taken out the present petition.

4.The plaintiffs would further contend that in the year 2010, their brother Lakshmanan died leaving behind his wife and the defendants 3 and 4 as his legal heirs. It appears that on the death of Lakshmanan, the defendants 2 to 4 had filed a petition before the Magistrate Court in C.C.No.3319 of 2010 under the Domestic Violence Act. In the above proceedings, a compromise was arrived at whereunder the 2nd defendant herself and on behalf of her children defendants 3 and 4 herein had entered into a compromise for receiving a sum of Rs.9,30,000/- towards releasing her right in the property and she had also undertaken to withdraw by her. The brother of the plaintiffs who is the 1st defendant who has arrayed as the 2nd defendant in the Original Petition has also given consent and also consent affidavit has also been filed. That apart, the 2nd defendant was also a attesting witness to the Will dated 17.03.1997 executed by the

plaintiffs' mother Radha Ammal. After notice was served on the defendants they had filed a caveat and thereupon the Original Petition was converted into a testamentary original suit in TOS.No.43 of 2016.

5.Though the defendants had time and again sought time for filing their written Statement they have failed to file the same and consequently by order dated 11.11.2019 they were set ex parte and the matter was directed to be listed before the learned Master for recording evidence.

6.After the matter was posted before the learned Master the plaintiff had adduced evidence and marked documents. The 1st plaintiff has adduced evidence as PW1 and has marked the following documents:

- Ex.P.1 - Registered Will dated 17.03.1997 in Doc.No.42/2011 in SRO, at Sembiam executed by mother Mrs.Radha Ammal.
- Ex.P.2 - Certified copy of the Sale Deed dated 24.09.1975 in D.No.2707/1975 in SRO, Sembiam.
- Ex.P.3 - Online copy of the Death Certificate of my brother

Lakshmanan dated 19.03.2013 in which his date of death is recorded as 26.04.2010.

- Ex.P.4 - Online copy of the Death Certificate of my father J.Sambandan in which his date of death is recorded as 13.06.2013.
- Ex.P.5 - Certified copy of the Judgment and Decree dated 08.11.2012 passed in O.S.No.2423/2012 on the file of the VII Assistant Judge, City Civil Court, Chennai.
- Ex.P.6 - Certified copy of the compromise memo and consequently other passed by the V Metropolitan Magistrate, Egmore
- Ex.P.7 - Original copy of the Legal Heirship Certificate dated 22.11.2012 of my deceased mother Radha Ammal issued by Tahsildar, Perumbur Taluk
- Ex.P.8 - Online copy of the Death Certificate of my mother deceased Radha Ammal in which date of death is recorded as 11.10.2012.
- Ex.P.9 - Consent affidavit dated 18.03.2012 filed by the Witness S.Velayutham who has attested Ex.P.1-Will.

7.After filing the affidavit as an attesting witness, the 2nd defendant did not step in to give evidence. The other attesting witnesses Sundarrajan had passed away and therefore, his son has adduced evidence as PW2 and has confirmed that the signature found in Ex.P.1 Will as one of the attesting witness is that her father Sundarrajan. Therefore, the plaintiff has

complied with the provisions under Sections 68 and 69 of the Indian Evidence Act.

8.A perusal of Ex.P.6 would show that Radha Ammal and her son Velu and husband Sambandam had entered into Compromise with the wife 1st plaintiff in C.C.No.3319 of 2010 before the learned V Metropolitan Magistrate, Egmore, Chennai. They were paid a sum of Rs.9,30,000/- and therefore, has no further interest of the properties of the 1st respondent therein neither she nor her children in order to claim the properties of the testatrix.

9.Considering the fact that despite filing the original petition converted into the Testamentary Suit, the defendants having failed to file their written statement or contesting the case. It is clearly evident that since they have received their compensation they have no further interest to contest the suit.

10.Considering the fact that the Will of Late Radha Ammal has been

proved in keeping with the provisions of Sections 68 and 69 of the Indian Evidence Act and also taking note of the fact that the defendants 2 to 4 have been settled, the Letters of Administration is granted to the petitioner.

This Original Petition is allowed. The petitioners shall 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. In addition, the petitioners shall also provide a full and true inventory of the properties and credits and also true accounts thereof within a period of six months and one year, respectively, from the date of grant.

31.07.2020

Internet : Yes/No

Index : Yes/No

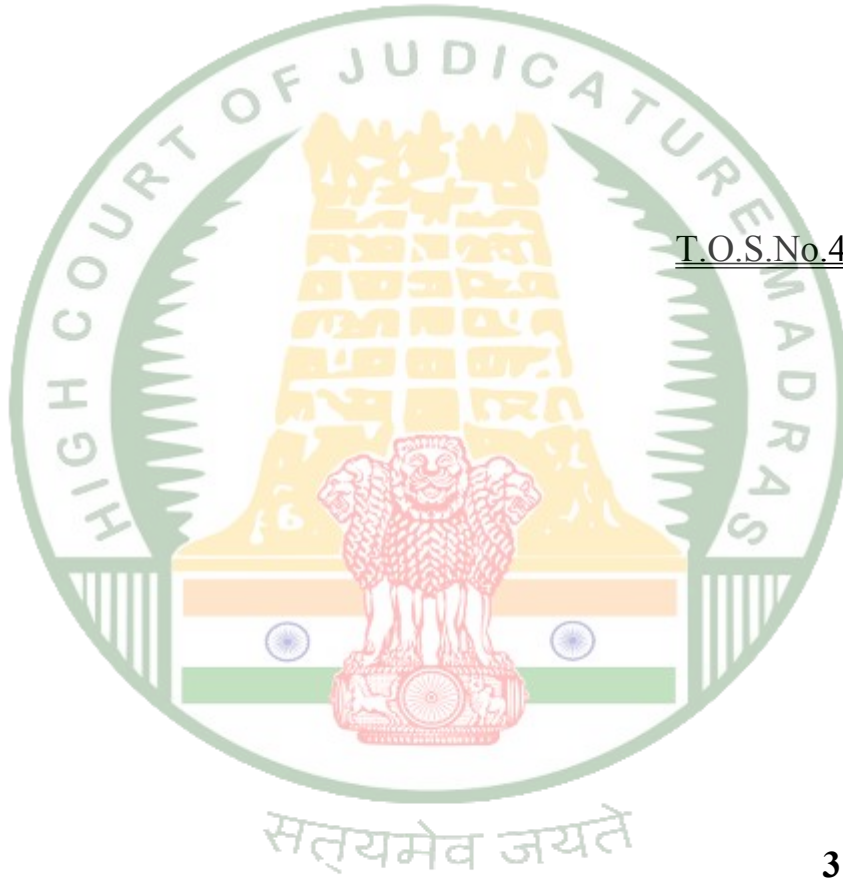
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