

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

T.O.S. No. 24 of 2014

1. K.Pannerselvam

2. P.Srinivasan

3. P.R.Venkatesh

Petitioners 2 and 3 are minors, represented by their
father and natural guardian K.Pannerselvam

... Plaintiffs

vs

1. K.Nagarajan

2. N.Vijay

3. N.Vijaya

4. K.Anandhan

5. K.Saroja

6. K.Nirmala

7. K.Santhi

...Respondents

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 1st petitioner as one of the son/one of the legatee under the Will of the said deceased have effect limited to the State of Tamil Nadu.

For Plaintiffs : Mr. V.Sundarraman
For Mr.S.Pugalenth
For Defendants : D1 to D3 - set exparte

J U D G M E N T

This Testamentary Original Suit is filed for grant of Letters of Administration in respect of the Will annexed in favour of the first petitioner.

2. I heard the learned counsel for the plaintiffs.

3. By order dated 22.10.2019, the defendants were set ex parte, on account of not filing the written statement and thereafter, evidence was recorded by the learned Master. The learned counsel for the plaintiffs submitted that the first petitioner is the son of the Testatrix, who died on 25.07.1995, at No.4, Kannammal Street, Kamarajar Colony, Chennai-83, which was also her ordinary place of residence and is within the jurisdiction of this Court. He further submitted that the Testatrix executed her last Will and Testament on 14.06.1995, in the presence of two witnesses, whose names appear at the foot thereof.

4. In order to prove the Will, he submitted that evidence was recorded through the first plaintiff, who was examined as P.W.1 and that the following documents were exhibited through P.W.1:

i. Ex.P1 - The original registered Will and Testament, dated 14.06.1995, executed by Mrs.Kannammal, which has been attested by two attesting witnesses namely 1.Mr.S.Shankar and 2.Mr.V.Sathyamurthy. Ex.P1 will was registered as Doc.No.47 of 1995, on the file of the office of the Joint Sub Registrar-II, Saidapet.

ii. Ex.P2 - The Original death certificate of Mrs.K.Kannammal, who died on 25.07.1995.

iii. Ex.P3 - The original Legal Heirship Certificate, dated 28.09.2007 in respect of the Late Mrs.Kannammal.

iv. Ex.P4 - The original death certificate of Mr.V.Sundaramurthy, who died on 11.01.2007.

v. Ex.P5 - The original death certificate of K.Vijaya, who died on 16.06.2002.

vi. Ex.P6 - The affidavit of the first plaintiff viz., Mr.K.Panneerselvam.

Vii. Ex.P7 - The affidavit of the attesting witness viz., Mr.S.Sankar.

5. He further submitted that one of the attesting witnesses namely Mr.S.Sankar was examined as P.W.2 and that P.W.2 deposed that he was well acquainted with the Testatrix and that the last Will and Testament i.e. Ex.P1 was executed in his presence and in the presence of the other attesting witness viz., Mr.V.Sathyamoorthy. He further deposed that the Testatrix was in a sound and disposing state of mind at the time of execution of Ex.P1 viz., the Will.

6. Based on the foregoing, the learned counsel for the plaintiffs submitted that the Will has been proved in accordance with law and that therefore, the suit may be decreed and that Letters of Administration may be granted to the first petitioner.

7. I considered the submissions of the learned counsel for the plaintiffs and also examined the evidence.

8. On perusal of the Will, I find that it was executed on 14.06.1995 and registered as document No.47/1995 on the file of the Joint Sub Registrar-II, Saidapet. Two witnessess, namely, S.Sankar and Mr.V.Sathyamurthy attested the Will and also identified the execution at the the office of the Joint-II Sub Registrar, Saidapet. As per Ex.P2, the Testatrix died on 25.07.1995. The legal heirship dated 28.09.2007 was

marked as Ex.P3 and it shows the legal heirs of the deceased Testatrix, Mrs.K.Kannammal. One of the attesting witnesses, namely, Mr.S.Sankar filed a proof affidavit and was examined as P.W.2 and the said attesting witness deposed that he knew the Testatrix for about 40 years and the last Will and Testament was executed in his presence and in the presence of the other attesting witness. He also testified that the Testatrix was in a sound and disposing state of mind when the said Will was executed. I find that the disposition under the Will is natural and there is a proper explanation for disinheriting certain children

9. It is stated in the petition that no previous application was made to a District Court or Delegate or to any other High Court for probate of any Will of the deceased or for Letters of Administration with or without the Will annexed of her property and credits.

10. The delay in filing the petition has also been explained in the petition. Keeping in the mind the above facts and that there is no contra evidence, I conclude clear that the plaintiffs have proved the Will in accordance with law.

11. Accordingly, the Suit is decreed by granting Letters of Administration with the Will annexed to the first petitioner in respect of the last Will and Testament dated 14.06.1995 of Mrs.Kannammal with

effect throughout the State of Tamil Nadu. The plaintiff 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. The plaintiff shall also file a full and true inventory of the properties within a period of six months from the date of grant and also a true account of the said property and credits within a period of one year from the date of receipt of the grant.

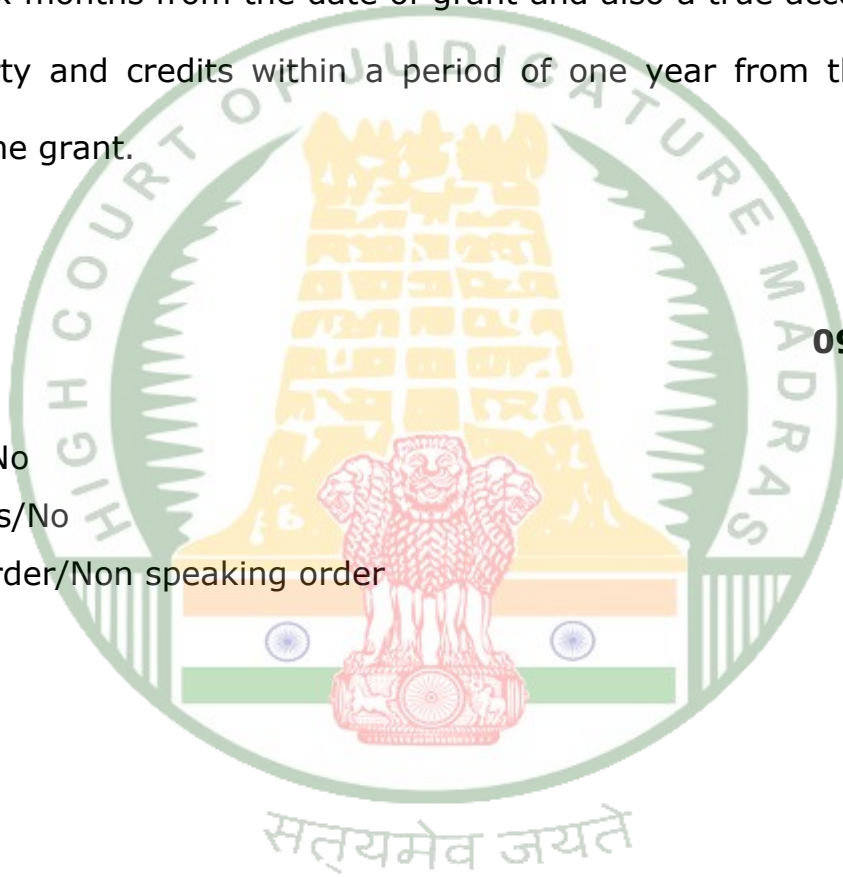
09.01.2020

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Index:yes/No

Internet:Yes/No

Speaking order/Non speaking order



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SENTHILKUMAR RAMAMOORTHY, J.

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