

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

THURSDAY, THE 23RD DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.9613 of 2019
in
T.O.S.No.25 of 2014

(ARISING OUT OF ORIGINAL PETITION NO.417 OF 2012)

In the matter of Indian
Succession Act, 1925
(Act XXXIX of 1925)
and
In the matter of the Last
Will and Testament of
Tmt.S.Thayanayagi
(deceased)

A.No.9613 of 2019 in T.O.S.No.25 of 2014:

1. S.T.SUNDARI
W/O.LATE P.PANCHABAKESAN
NO.52/37, SUBRAMANIAM STREET,
WEST MAMBALAM, CHENNAI - 600 033 ..PETITIONER/APPLICANT

-VS-

1. R.VENKATARAMAN
S/O.RAMANUJA DEVAR,
NO.64, SANTHI NAGAR,
MELARIPAKKAM, CHENGALPATTU - 603 001

2. GUNAVATHI
W/O.THAIYUMANAVAN,
NO.52/7G, III EDDA THERU,
AGARAMANAKKAL, THIRUTHURAIPOONDI - 614 713

3. G.SUSEELA
W/O.LATE GANESAN
NO.87, DR.ALAGAPPA CHETTIAR ROAD,
PURASAIWAKKAM, CHENNAI - 600 084

4. G.PANCHANATHAN
S/O.LATE GANESAN,
NO.87, DR.ALAGAPPA CHETTIAR ROAD,
PURASAIWALKAM, CHENNAI - 600 084

5. S.PRAMILA
D/O.LATE GANESAN,
NO.87, DR.ALAGAPPA CHETTIAR ROAD,
PURASAIWALKAM,
CHENNAI - 600 084

..RESPONDENTS/RESPONDENTS

Application praying that this Hon'ble Court be pleased to Issue Summon to Mrs.K.N. Kalaiarasi, Advocate, Notary Public and Commissioner of Oaths Having office at No.94, Dr. Annie Besant Road, Royapettah, Ch 14 as Court Witness to Depose in Evidence in the above Testamentary Original Suit No.25 of 2014.

This application coming on this day before this court for hearing the court made the following order:

This application is filed to summon Mrs.K.N.Kalaiarasi, Advocate, Notary Public and Commissioner of Oaths as Court witness to depose in T.O.S.No.25 of 2014.

2. I heard the learned counsel for the applicant and the learned counsel for all the respondents. The learned counsel for the applicant submitted that Mrs.K.N.Kalaiarasi, Advocate, Notary Public and Commissioner of Oaths notarized the Will dated 11.06.1995 which was exhibited in the T.O.S as Ex.P1. He further submitted that neither of the attesting witnesses could depose in the proceedings on account of the death and non-availability of the witnesses. Therefore, he submitted that the Notary Public may be summoned as a Court witness so as to adduce secondary evidence.

3. In response, the learned counsel for the respondents submitted that this application is a dilatory tactic and that the case was posted for the defendant's arguments on 05.04.2019 as per details at Paragraph No.4 of the counter affidavit. In addition, he submitted that evidence should have been recorded through the attesting witnesses and that no purpose would be served by adducing evidence through the Notary Public, who was not present

when the Will was executed.

4. Upon considering the submissions of the learned counsel for the respective parties, I find that especially in light of the fact that the attesting witnesses were not examined, summoning the Notary Public would throw light on the Will which is the subject matter of the T.O.S. As regards the objection that this is a dilatory tactic, time limits can be fixed so as to ensure that the process is completed expeditiously. Accordingly, this application is allowed by summoning Mrs.K.N.Kalaiarasi, Advocate, Notary Public and Commissioner of Oaths with office at No.94, Dr.Annie Besant Road, Royapettah, Chennai-14 as Court witness. Post the matter before the learned Master on 17.02.2020 for recording evidence. The evidence of the Notary Public shall be concluded on or before 16.03.2020.

Sd/.S.K.R.J.

23.01.2020

//Certified to be a true copy//

Dated this the day of 2020.

S.U./30.01.2020

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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