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

FRIDAY, THE 19th DAY OF MARCH 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

TOS.No.2 of 1996
(O.P.No.444 of 1995)

In the matter of the Indian Succession
Act;
and
In the matter of the Last Will
S.Karupiah Pillai – deceased.

K.Mahendran,
No.V-105, Anna Nagar,
Madras – 10.

... Petitioner/Plaintiff

-VS-

1.Mrs.K.Dhanalakshmi & Others,
W/o Late S.Karupiah Pillai,
residing at No.12, Chellammal Street,
Shenoy Nagar, Madras – 600 030.

... Respondent

2.R.Sarojini,
W/o Mr.N.Ramanujam (d/o S.Karupiah Pillai),
residing at M-74/1, M.K.Colony, Neyveli – 2.

...Caveator/Defendant-1

3.K.Ravindran,
S/o S.Karupiah Pillai,
residing at No.1, 36th Street,
Pudur, Ashok Nagar,
Madras – 600 083.

...Caveator/Defendant-2



WEB COPY Testamentary Original Suit praying that this Hon'ble Court be pleased to allow the petitioner to prove the will in common form and that probate thereof to have effect throughout the State of Tamilnadu, be granted to him.

This Testamentary Original Suit having been heard on 02.03.2021 in the presence of Mr.Yashod Varadhan, Senior Counsel for M/s Shanmugam, Advocates for the plaintiff herein, and Mr.K.Sakthivel, Advocate for the 1st defendant herein and Mr.C.Sangamithirai, Advocate for 2nd defendant herein and upon reading the pleadings filed herein and the other exhibits therein, referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the will dated 15.01.1995 was executed by the testator in a sound and disposing state of mind, **it is ordered and decreed as follows:-**

That the plaintiff herein, on complying with the rules of this court in this behalf, probate of the Last Will and Testament of the said S.Karupiah Pillai (deceased) dated 15.01.1995 with a copy of the said will annexed



out of and under the seal of this court and the same be granted to
K.Mahendran, the plaintiff herein.

WITNESS THE HON'BLE MR. JUSTICE SANJIB
BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 19th DAY OF MARCH 2021.

Sd/-
JOINT REGISTRAR (O.S)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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28.04.2021

TOS.No.2 of 1996
(O.P.No.444 of 1995)

ORDER

DATED: 19.03.2021

THE HON'BLE MS.JUSTICE

P.T.ASHA

FOR APPROVAL: 02.07.2021

APPROVED ON: 09.07.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2021

Pronounced on : 19.03.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

T.O.S.No.2 of 1996

K. Mahendran ... Plaintiff

-Vs.-

1.R. Sarojini
2.K. Ravindran ... Defendants

Prayer: Original Petition filed under Sections 222 and 276 of the Indian Succession Act and XXXIX of 1925 and Order XXV Rule 4 of the Original Side Rules praying to allow to prove the Will in common form and that probate thereof to have effect throughout the state of Tamil Nadu.

For Plaintiff : Mr.Yashod Varadhan,
Senior Counsel for
M/s.Shanmugam

For Defendant : Mr.K. Sakthivel for D1
Mr/s.C.Sangamithirai for D2



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Judgment

The plaintiff had originally filed O.P.No.444 of 1995 for the grant of Probate in respect of the Will dated 15.01.1995 executed by S. Karuppiah Pillai, the father of the plaintiff/petitioner. The plaintiff/petitioner has also impleaded the other legal representatives of Late Karuppiah Pillai, namely, his 2nd wife, daughters and son through his first wife and the sons through the 2nd wife, namely, as the 1st respondent as respondents in the Original Petition.

2.The 2nd and 4th respondents had filed a Caveat and therefore, the Original Petition was converted into Testamentary Original Suit and the respondents 2 and 4 were the only defendants in the Testamentary Original Suit.

3.The 1st defendant had filed a Written Statement *inter alia* contending that the Will had been obtained by undue influence and duress at the hands of the plaintiff. The 1st defendant would state that considering the fact that the testator had disinherited his other children the very execution of the Will appeared unnatural. This was especially so when the father had maintained cordial terms with the 1st defendant.



Karuppiah Pillai along with the plaintiff and the respondents in the Original Petition and the 2nd defendant had constituted a joint Hindu family which had inherited all the properties. Karuppiah Pillai was managing these properties as Kartha of the joint family and after sale of these properties, he had utilised the amounts received from the sale for starting a business at Madras. He had started an Omni bus services from Madras to other places. From out of the business he earned considerable income from which he purchased properties in Madras and surrounding area. The properties have been purchased in the name of the 2nd wife and sons through the 2nd wife. The 2nd wife was enimically disposed towards the 2nd defendant and she has influenced the testator to prepare the Will and to purchase the properties in her name and that of her children.

5. Considering the fact that Karuppiah Pillai is only a Kartha in respect of the joint family properties he cannot bequeath the entire property in favour of the 2nd defendant. At best he owns only a 1/5th share. The defendant would submit that he had been forced to sign in a Release Deed by the testator without knowing the fact that the document that he had signed is a Release Deed. The defendant would further submit that the property given to him, namely, Rathna Photo



Studio was of no value and the 2nd defendant would continue to have a right on the joint family properties. He would further submit that the Will has been executed when Karuppiyah Pillai was very unwell and not in a position to do things by himself. He would therefore submit that the Will Executed by the Karuppiyah Pillai is not a valid one and therefore, the Probate ought not to be granted to the plaintiff.

6.This Court had framed the following Issues:

“1.Whether the Will dated 15.01.1995 was executed by the testator in a sound and disposing state of mind?

2.Whether it is true and valid?

3.To what relief?”

7.The plaintiff had examined himself as P.W.1 and one Chelladurai as P.W.2. Mr.Chelladurai was the attesting witness of the will dated 15.01.1995. The 2nd defendant did not enter the box and it was only his wife who had adduced evidence as D.W.1. The 1st defendant had not adduced any oral evidence.

8.Submission of the Plaintiff:

Mr.Yashod Varadhan, learned Senior Counsel appearing on behalf of the counsel for the plaintiff would submit that the testator was in a sound and disposing state of mind while executing Ex.P.1 - Will



though he was suffering from cancer. He would argue that the testator while he was healthy had earlier executed a Will dated 06.12.1992 which has been marked as Ex.P.2. The contents of Ex.P.1 is more or less similar to the contents of Ex.P.2 and in addition to the properties already covered under Ex.P.2, the properties at Yercaud has been included. The learned Senior Counsel would contend that the plaintiff has examined the attesting witnesses as P.W.2 who has not only deposed with reference to the sound and disposing state of mind of the testator but has also proved Ex.P.1 - Will as provided for in Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act and therefore, would pray that probate be granted in respect of the said Will.

9.Per contra, the 2nd defendant in the Written arguments would contend that the Will has been obtained under duress since at the relevant point of time the testator was very ill and was suffering from a terminal illness. Therefore, it is his contention that the Will having been obtained under coercion and undue influence it is not a valid one and probate cannot be granted to the plaintiff.



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10. Discussion:

Ex.P.1 – Will dated 15.01.1995 is a registered Will, the same having been registered on the file of the SRO, Anna Nagar, Chennai. The 1st defendant who is the daughter of the testator has questioned the Will on the ground that it was obtained under threat and coercion. However, she has neither examined herself as a witness to prove the above statement nor has she examined any other person to prove this.

11. Further, the 2nd defendant's wife who had adduced evidence as D.W.1 has admitted that her husband has not pleaded that the Will was executed at the behest of the plaintiff, his siblings and his mother. She would also admit that she has not let in any evidence to show that the signature of the testator in Ex.P.1 – Will has been obtained through coercion. She would only contend that the Will was prepared at the instance of the 2nd wife of the testator. Though D.W.1 has deposed that suspicious circumstance surround the execution of Ex.P.1 – Will since the Testator, Karuppiah Pillai had not left any property to the children born to his first wife namely the defendants and the other daughter Pushparani. This contention fails since the testator has given reasons in



the Will for not making provision for his children through his first wife. Therefore, the defendants have failed to prove that the Will is the result of coercion and undue influence.

12. Considering the fact that the suit is filed for grant of Probate this Court has to examine as to whether the Will has been proved in the manner known to Law, namely, as per the provisions of Section 63 (c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. To prove the mental state of the testator and that the Will had been executed by him on his volition, the plaintiff has examined one Chelladurai who is one of the attesting witness of the Will Ex.P.1. From the evidence of P.W.2, it is seen that he has been closely associated with the testator from the year 1965 having worked beside him in Photography business in Rathna Studio. From his deposition, it is clear that on 01.11.1971, he along with the plaintiff's mother, namely, the 2nd wife of the testator and the defendants herein had started a Partnership business, namely, Pandian Travels which business continued till 1973. Thereafter, it appears that the Partnership was once again re-constituted with the witness, the 2nd wife of the testator and the one Meenakshiammal. P.W.2 would also submit that he has signed as a witness even in Ex.P.2 – Will which was executed prior to



Ex.P.1 – Will. The witness has also deposed to the fact that he has executed the Will as a witness at request of the testator. He has also deposed the fact that not only had he witnessed the testator and the other attesting witnesses affixing their signature but also each of them had seen the other affix the respective signatures to Ex.P.1 – Will all at the same time. P.W.1 would also depose that he had at request of the testator, P.W.1 accompanied him to the Sub Registrar's Office. He would in clear term state that the testator was physically and mentally very active. The evidence of the witness has not been shaken by the defendants by eliciting any contra evidence through cross examination. The defendants have elaborately cross examined P.W.2. However, the witness has been steadfast in his deposition regarding the execution of the Will and its registration by the testator as also the sound and disposing state of mind of the testator.

13. In the light of the above, it is clear that the Will dated 15.01.1995 was executed by the testator in a sound and disposing state of mind, therefore, the Issue Nos.1 and 2 are answered in favour of the plaintiff.



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The suit is decreed as prayed for and probate is granted to the plaintiff.

Sd./-P.T.A.J.
19.03.2021

List of witnesses on the side of the Plaintiff:-

PW-1 – Mr.K. Mahendran

P.W-2 – Mr.A. Chellaldurai

List of witnesses on the side of the defendants:-

DW- 1 - Ms.R. Santha

List of Exhibits marked on the side of the Plaintiff:-

Ex.P-1 15.01.1995 Registered Will executed by Mr.S.Karuppiyah Pillai

Ex.P-2 06.12.1992 Prior to Ex.P.1 – Will, Mr.S.Karuppiyah Pillai executed another Will

Ex.P-3 18.01.1995 General Power of attorney executed by Mr.S.Karuppiyah Pillai

Ex.P-4 series - Discharge summary issued by the Apollo Hospitals

Ex.P-5series - Sale Receipts issued by my father to the plaintiff for the sale of the buses

Ex.P.-6 18.06.1997 Stamped Receipt issued by my mother



- Ex.P-8 20.01.1995 Watchman in the Yercaud property had written a letter to my father
- Ex.P-9 series - Receipt issued by the 7 financiers
- Ex.P-10 series - Income Tax Returns filed by me for the assessment years 1990-91 to 1997-98.

List of Exhibits marked on the side of the defendants:-

NIL

Sd./-P.T.A.J.
19.03.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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