

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM:

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Testamentary Original Suit No.23 of 2014 in
(O.P.No.141 of 2014)

Mrs. Sangeetha ... Plaintiff

Vs.

Mrs. Shobana Gopaldas .. Defendant

Original Petition No.141 of 2014 was filed under Sections 222 and 276 of Indian Succession Act, XXXIX of 1925 for the grant of Probate. Against this petition a Caveat was filed on 20.06.2016 by the Caveators. As per order of this Court dated 10.07.2014, the Original Petition No.141 of 2014 was converted into Testamentary Original Suit No.23 of 2014.

For Plaintiff : Mr.S. Thiruvengadam

For Defendant : Mr.Santhosh Nagarajan.

J U D G M E N T

This suit has been originally filed for grant of Probate in respect of the Will left by one Mr.Gansham Das, in favour of his four daughters and wife namely 1. Mrs. Sangeetha (Plaintiff herein) 2. Mrs. Samina @ Bharathi Shah, 3. Mrs. Beena Pranjivandas Devi, 4.Miss. Mala and 5.Mrs.Padma Bai (wife) (2 to 5 are Respondents 1 to 4 in O.P.No.141 of 2014). The deceased

has not allotted any share to the daughter Mrs.Shobana Gopaldas (Defendant herein)who is the 5th respondent in the Original Petition. The Testator appointed the Plaintiff as the executor of the Will. Accordingly, the Plaintiff filed the Original Petition showing the other sisters as Respondents 1 to3 and 5 and mother as Respondent No.4 respectively. As the Testator has not allotted any share to the 5th Respondent/Defendant herein, she filed caveat on 20.6.2014 in the Original Petition and as per the order of this Court dated 10.07.2014 in O.P.No.141 of 2014, the same was converted into Testamentary Original Suit No.23 of 2014.

2. Brief facts leading to the filing of the suit is as follows :

2(a) It is stated by the plaintiff that the Testator Mr.Gansham Das is her father. Including her there are 5 daughters to the Testator. Except the Defendant, other four daughters and his wife Mr.Padmabai are the beneficiaries of the Last Will and Testament of the deceased Mr. Gransham Das. The above Will was executed at the residence of the Testator on 24.08.2009 in the presence of the witnesses. The properties morefully described in Schedule 'A' and Schedule 'B' are situated at Chennai within the jurisdiction of this Court.

2(b) The Testator died on 15.06.2011 at Chennai where he normally resided. The parents of the Testator predeceased him. The value of the assets which are likely to come into the beneficiaries hand do not exceed in the aggregate the sum of Rs.39,83,500/- and the net amount of the said assets after deducting all the times which the beneficiaries are by law allowed to deduct is of the value of Rs.39,63,500/-. Hence, the plaintiff filed petition in O.P.No.141 of 2014 for grant of Probate. Against this petition a Caveat was filed by the Caveator and as per order of this Court, the Original Petition was converted into a Testamentary Suit.

3. When the matter was pending for framing of issues and filing written statement, learned counsel appearing for the Defendant submitted that there is a possibility of settlement between the parties and requested the Court to refer the matter for Mediation.

4. In the mediation the parties have arrived at a settlement of the dispute and hence they appeared before the Court and filed Memorandum of Understanding dated 02.03.2020. As per the terms of compromise, the defendant has undertaken to provide consent in respect of the pending testamentary proceedings. Hence the matter was referred to the learned

Master for recording evidence.

5. In this suit the Plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.8 were marked through her. The first attesting witness in the Will, Mrs. M.N.V.L.Prasoona was examined as P.W.2 and Ex.P.9 was marked through her.

Exhibits produced on the side of the plaintiff:

S.No	Exhibits	Date	Description of documents
1	P-1	15.06.2011	Computer generated death certificate of Mr. M.Ghansham Das
2	P-2	24.08.2009	Original last will and testament executed by Mr.Ghansham Das
3	P-3	10.10.2012	Original Legal Heirship Certificate in respect of Mr.M.Ghansham Das
4	P-4	19.03.2012	Online guideline value of Schedule 'A' Property
5	P-5	27.03.2021	Online guideline value of Schedule 'B' Property
6	P-6	17.02.1968	Online Conveyance Deed registered as Doc.No.516 of 1968 at SRO, Sembium
7	P-7	--	Affidavit of Assets showing the value of estate as Rs.39,63,500/-
8	P-8	03.03.2020	Original Memorandum of Understanding entered between the Plaintiff and Defendant in Mediation Centre with the consent given by the Defendant therein.
9	P-9	--	Affidavit of P.W.2 the attesting witness

Witnesses examined on the side of the plaintiffs:

P.W.1. - Mrs. Snageetha

P.W.2. - Mrs. M.N.V.L.Prasoona

6. The Plaintiff examined herself as P.W.1 and she had narrated the averments made in the petition stating that the Plaintiff has filed this

petition for the grant of probate in respect of the Last Will and Testament executed by the testator on 24.08.2009. P.W.2, the attesting witness has also deposed about the execution of the will and he made his signature in the Will as the 1st attesting witness.

7. In the Will the Testator has not allotted any share to the Defendant hence she challenged the suit. During the pendency of the suit the parties are arrived at settlement of the dispute and filed Memorandum of Understanding dated 02.03.2020 before this Court which is marked as Ex.P.8. In terms of compromise the Defendant has consented for Probate as per the last Will and Testament of their father Mr.M.Ghansham Das. In view of the Memorandum of Understanding between the parties, Probate is granted in favour of the Plaintiff.

8. Accordingly, the suit is decreed in terms of Memorandum of Understanding. Grant probate of the Will in respect of the Plaintiff. No costs.

10.03.2021

Index:Yes/no

Internet: Yes

<https://www.mhc.tn.gov.in/judis/>

ggs

R.PONGIAPPAN,J.

ggs



T.O.S.No.23 of 2014

WEB COPY

10.03.2021