

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM:

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Testamentary Original Suit No.16 of 2017 in
(O.P.No.613 of 2016)

R.S. Venmathi ... Plaintiff

Vs.

V.R. Sundara raj .. Defendant

Original Petition No.613 of 2016 was filed under Sections 232 and 276 of Indian Succession Act, XXXIX of 1925 for the grant of letters of Administration. Against this petition a Caveat was filed on 28.06.2016 by the Caveators. As per order of this Court, the Original Petition No.613 of 2016 was converted into Testamentary Original Suit No.16 of 2017.

For Plaintiff : Mr.S. Prabakar

For Respondent : No appearance.

JUDGMENT

This suit has been originally filed for grant of Letters of Administration in respect of the Will left by one V.R. Perumal, in favour of the Plaintiff, who is adopted daughter. subsequently, the Original Petition has been converted as suit in view of the caveat filed by the defendant

herein. Against this petition a Caveat was filed on 28.06.2016 by the

Caveator and as per order of this Court, the Original Petition No.613 of 2016 was converted into Testamentary Original Suit No.16 of 2017.

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

It is stated by the plaintiff that the Testator Mr.V.R. Perumal is her paternal aunt's husband. She is the adopted daughter of the deceased V.R.Perumal and Andalammal. The wife and parents of the deceased V.R.Perumal predeceased him. During his lifetime he has executed his Last Will and Testament on 06.04.2015 in favour of the plaintiff. Thereafter, he died on 24.04.2016. Hence, the plaintiff filed petition in O.P.No.613 of 2016 for Letters of Administration. 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. Since the defendant has neither appeared through counsel nor in person and the written statement was also not filed, the Defendant was set exparte and the matter was directed to be listed before the learned Master for recording exparte evidence.

4. In this suit the Plaintiff was examined as P.W.1 and Ex.P.1 to

Ex.P.3 were marked through her. The first attesting witness in the Will, Mrs. S. Stella was examined as P.W.2 and the second attesting witness Mr. Benjamin was examined as P.W.3.

Exhibits produced on the side of the plaintiff:

S.No	Exhibits	Date	Description of documents
1.	P-1	06.04.2016	The original registered Will and Testament executed on 06.04.2016 by Mr.V.R. Perumala in favour of the Plaintiff, which has been attested by two witnesses viz., Mrs.S.Stella and Mr.Benjamin
2.	P-2	03.05.2013	The computer generated copy of the death certificate of Andalammal
3.	P-3	24.04.2015	The computer generated copy of the death certificate of the Testator Mr.V.R. Perumal

Witnesses examined on the side of the plaintiffs:

P.W.1. - Mrs. R.S.Venmathi
P.W.2. - Mrs. S. Stella
P.W.3. - Mr. Benjamin

5. It is the contention of the learned counsel for the plaintiff that the Plaintiff is the adopted daughter of the deceased V.R. Perumal and Anadalammal. The wife and the parents of the deceased V.R.Perumal predeceased him. Mr. V.R. Perumal possessed with property within channai and State of Tamilnadu, within the jurisdiction of the Court. Learned counsel for the Plaintiff further states that Ex.P.1 is the Last Will and Testament of the deceased V.R.Perumal which was duly executed by him on the 1st day of April 2015, and registered on 06.04.2015 in the office of the

Sub-Registrar, Thousandlights, chennai, in the presence of the witnesses.

6. It is the further contention of the learned counsel that the Plaintiff filed a petition before this Court for the Letters of Administration of the Will of the deceased to be issued in his favour as there is no next kin or other persons interested to be impleaded. Subsequently, after objection from the Defendant side, it was converted into a Testamentary Original Suit.

7. Learned counsel further states that no other application made to any District Court or High Court for the Probate of any Will of the said deceased or Letters of administration with or without the Will annexed of his property and credits. The Plaintiff is ready to undertake to administer the property and credits of the said deceased and in any way concerning the Will by paying first his debts and then the legacies therein bequathed so far as the assets will extend and to make a full and true investory thereof and exhibit the same in this court within six months from the date of grant of Letters of Administration and render to this Court a true account of the said property and credits within one year from the said date.

8. As the defendant had entered caveat, and opposed the Will, the

Original Petition was converted as Testamentary Original Suit. Thereafter, there was no representation on behalf of the Defendant. Hence the defendant was set exparte.

9. It is not in dispute that the suit property originally belonged to Mr. V.R. Perumal. He executed his Last Will and Testament on 1.4.2016 and registered on 06.04.2016. Ex.P.1 proves the same. In the said Will P.W.2 and P.W.3 are attesting witnesses. They have given evidence regarding the execution of the Will. Ex.P.2 is the death certificate of Mrs. Andalammal, wife of the Testator, predeceased him. Ex.P.2 Death Certificate of Mrs. Andalammal proves the same. Ex.P.3 is Death Certificate of the Testator Mr. V.R. Perumal. The defendant is the brother of the Testator who filed caveat and resisted the petition filed for Letters of Administration, was set exparte. Several opportunities were given to him to appear before this Court and to file his written statement. But neither the learned counsel nor the defendant have filed the written statement. Hence, this court has taken into consideration of the documents and evidence submitted by the plaintiff side. The above documents proved that there is no other legal heirs to the Testator other than the Defendant.

10. The Will, Ex.P.1, is a registered Will and executed by Mr.V.R. Perumal. Ex.P.1, when carefully seen, in all pages of the Will, he had signed and the contents of the Will had been explained to the testator on the date of execution, viz., 06.04.2016 and P.W.2 and P.W.3 stood as attesting witnesses.

11. P.W.2 and P.W.3 were being the attesting witnesses, examined to prove the execution of the Will by Mr.V.R. Perumal. They have clearly stated in their evidence about their attestation in Will and the execution of the Will by the testator while he was in a sound state of mind and the same has not been rebutted by the defendant. Hence, their evidence not only prove attestation but also execution of the Will by the testator. All the above, clearly show that the Will has been proved in the manner known to law. Therefore, the plaintiff is entitled to the Letters of Administration.

12. In the result,

(i). The suit in T.O.S.No.16 of 2016 is decreed.

(ii). The Letters of Administration, having the effect limited to the State of Tamil Nadu, shall be issued in

favour of the plaintiff in respect of the Will executed on 06.04.2016 by Mr.V.R. Perumal in favour of the Plaintiff Mrs.R.S. Venmathi.

(iii). The plaintiff is directed to duly administer the estate of the deceased.

(iv). The plaintiff shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S-II), High Court, Madras.

(v). The plaintiff is further directed to render true and correct accounts once in a year.

(vi). No costs.

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Index:Yes/no
Internet: Yes
ggs

R.PONGIAPPAN,J.
ggs



T.O.S.No.16 of 2017

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