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

WEDNESDAY, THE 27TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

A.No.965 of 2022
in
T.O.S.No.21 of 2002

In the matter of the Indian
Succession Act XXXIX of
1925;

and

In the matter of Last Will and
Testament of K.Susheela-
Deceased

CHANDRA KASINATHAN * **(DECEASED)**
W/O.S.T.KASINATHAN,
ARUL ILLAM, NO.19,
SIVASANKARAN SALAI,
KRISHNASWAMY AVENUE,
VELLALA TEYNAMPET,
CHENNAI-600 086

*** ARUTCHELVI KASINATHAN**
W/O.MR.SATHIYA RRAJENDIRAN,
AGED 42 YEARS,
NEW NO.3, OLD NO.19,
ARUL ILLAM, SIVASANKARAN SALAI,
VELLALA TEYNAMPET,
CHENNAI - 600 086.



*** (2ND PLAINTIFF BROUGHT ON RECORD AS
LR OF DECEASED SOLE PLAINTIFF AND
AMENDED AS PER ORDER DATED
15.03.2022 IN A.964/2022 IN TOS 21/2002) ..PETITIONER/PLAINTIFF**

-VS-

1. THULASI SHANMUGHAM,
W/O.MR.SHANMUGHAM
"SIVASAKTHI",
NO.20,SIVASANKARAN SALAI,
KRISHNASWAMY AVENUE,
VELLALA TEYNAMPET,
CHENNAI-600 086

2. K.SARGUNAN
S/O.LATE N.T.KRISHNASAMY,
NO.A-3,STATE BANK COLONY,
22, STATION ROAD,
WEST MAMBALAM,
CHENNAI-600 033

..CAVEATORS/RESPONDENTS

A.No.965/2022:

CHANDRA KASINATHAN * (DECEASED)

*** ARUTCHELVI KASINATHAN
W/O.MR.SATHIYA RRAJENDIRAN,
NEW NO.3, OLD NO.19,
ARUL ILLAM, SIVASANKARAN SALAI,
VELLALA TEYNAMPET,
CHENNAI - 600 086.**

..PETITIONER/L.R.DECEASED PLAINTIFF

-VS-



THULASI SHANMUGHAM(SINCE DIED),

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1. K.SARGUNAM

S/O.LATE N.T.KRISHNASAMY,
NO.A-3,STATE BANK COLONY,
NO.22, STATION ROAD,
WEST MAMBALAM,
CHENNAI-600 033

..RESPONDENT/DEFENDANT

2. BHAVANI RAJENDRAN

W/O.RAJENADRIAN,
SIVASAKTHI, NO.20,
SIVASANKARAN SALAI,
VELLALA TEYNAMPET,
CHENNAI[600 086.

..PROPOSED RESPONDENT/L.R.OF R-1

This application praying that this Hon'ble court be pleased to permit to amend the prayer as “Letters of Administration may be granted to applicant/Petitioner to have effect limited to the State of Tamil Nadu” Instead of She may allowed to prove the will in Common form and that Probate thereof to have through out the State of Tamil Nadu may be granted to her.

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

This Application is filed by the legal heir, viz., daughter of the plaintiff to amend the prayer as “Letters of Administration may be granted to the applicant to have effect limited to the State of Tamilnadu” instead of



she may be allowed to prove the Holograft Will in common form and that probate thereof to have throughout the State of Tamilnadu.

2. Originally O.P.No.109 of 2002 was filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 for grant of probate. Caveat was filed on 27.06.2002 by caveators, namely, Tulasi Shanmugam and K.Sargunan. The Original Petition was converted and registered as T.O.S. No.21 of 2002 and appropriate court fees was also paid. In said O.P.No.109 of 2002, Mrs.Chandra Kasinathan wife of S.T.Kasinathan sought for a prayer to prove the Holograft Will in common form and that Probate to have effect throughout the State of Tamilnadu. The deceased testator, K.Suseela, who is the mother of the plaintiff and defendants left a Holograph Will dated 20.01.1997 in the presence of witnesses and died on 16.04.2000, after three years and her husband predeceased her.

3. After conversion of T.O.S., issues were framed on 21.09.2006 and the matter was posted for trial. As the examination of witnesses were pending for a quite some time, it was submitted that the 1st defendant died and for taking steps of the legal heirs of the 1st defendant, the matter was adjourned. The said application was allowed to bring the legal heirs of the deceased / 1st defendant and amendment was carried out in the plaint. At



that juncture, after amendment was carried out, an application was filed in A.No.964 of 2022 to implead the applicant, Arutselvi Kasinathan, wife of one Mr.Sathya Rajendran, as legal representative of the deceased / plaintiff.

4. It was submitted in the said application, viz., A.No.964 of 2022 that the deceased / plaintiff, Late Chandra Kasinathan was the daughter of Suseela, who executed the Will. When the testamentary suit was coming up for examination of witnesses, the 1st respondent who is the elder sister of the deceased plaintiff died on 28.02.2020 and her only legal heir, viz., Bhavani Rajendran was brought on record. Further, the applicant has filed an application to implead herself as legal representative of the deceased/ plaintiff in the suit, as the suit is filed for proving the Holograph Will. Satisfied with the reasons stated, this Court allowed the application on 15.03.2022 and directed the parties to carryout the amendment. Subsequently, for filing counter in the present application, the matter was adjourned.

5. The learned counsel for the applicant submitted that the applicant's mother, Chandra Kasinathan died on 05.12.2021, who is the executor of the Holograph Will and filed the Original Petition for probate, which has been

converted into TOS and trial was almost completed. Hence the applicant,



being legal heir of the deceased plaintiff has been impleaded as party to the proceedings and filed this application seeking for amendment of the plaint, which is just and necessary.

6. Per contra, the counsel appearing for the respondents has filed a detailed counter and submitted that the alleged Holograph Will dated 20.01.1997 was a fabricated one and it is a Holograph Will of the maternal grand mother of the applicant, which was obtained by force, undue influence, coercion, misrepresentation and fraud. Further, the Holograph Will was written by Kasinathan, who was an advocate and in order to take away the property, the executrix had filed the Original Petition for probate, which has been duly converted into TOS. The entire Holograph Will was attested by advocates, who are the close friends of Kasinathan and the Holograph Will is not a genuine one. Further, the executrix died and the beneficiaries cannot convert the above said proceedings by stepping into the shoes of executrix by sub planting herself in the aforesaid proceedings and by seeking for a prayer to amend the relief.

7. The learned counsel for the respondents also contend that the relief sought for by the applicant permitting her to prove the Holograph Will in common form and the grant of Letters of Administration to the applicant is



unsustainable in law. The applicant cannot convert the same by amending the prayer and separate evidence has to be recorded from the stand point of person seeking for the Letters of Administration in respect of the above said Holograph Will. Hence he submits that the petition for grant of probate is only confined to the executrix and the relief sought for probate does not survive after the demise of executrix and all the contents in the petition does not continue and the beneficiaries presently seeking for the letters of administration in respect of the Holograph Will is not acceptable and submitted that it is unsustainable. The learned counsel to substantiate his contention has relied on the Judgment of the High Court of Bombay in Appeal No.83 of 2007 [Thrity Sam Shroff Vs. Shiraz Byramji Anklesaria and Another].

8. Heard the learned counsel on either side and perused the documents placed on record. In fact, the Judgment relied on by the learned counsel for the defendants is not relevant to the present case on hand.

9. On going through the averments in the petition as well as in the counter, it is seen that the Original Petition No.109 of 2002 was filed by the deceased plaintiff, namely, Chandra Kasinathan for relief of grant of probate. The prayer in the said petition is that “she may be allowed to prove



the Holograph Will in the common form and, that probate thereof to have effect throughout the State of Tamilnadu may be granted to her”. Against the Holograph Will dated 21.01.1997, executed by the maternal grandmother of the applicant, the plaintiff, who is the mother of the applicant and daughter of one late K.Suseela, filed a probate proceedings. After the said proceedings were initiated and after the matter being contested by the either parties, Original Petition has been converted into T.O.S., and examination of the parties were also proceeded with.

10. At that juncture, since the plaintiff, viz., Chandra Kasinathan, the mother of the applicant, who was appointed as Executor of the Holograph Will died, the said Will has become ineffective and inoperative and hence the Will has to be proved and the same has to be given effect. There arises the necessity to amend the prayer. As the issues have already been framed and the proceedings are in continuous progress, the applicant, who is the daughter of the plaintiff / executor has come up with this application seeking “to permit the applicant to amend the prayer as Letters of Administration may be granted to the applicant / petitioner to have effect limited to the State of Tamilnadu’ and that the present amendment is consequential and no prejudice would be caused to any of the contesting parties, thereby prayed for allowing the amendment.



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11. It is pertinent to point out that the applicant, who is the legal heir of the executor is one of the beneficiary of the Holograph Will, seeking for grant of letters of administration by filing the present application to amend the prayer. The applicant sought for amendment to the prayer of the plaint, as mentioned above and the same is opposed by the respondents / defendants stating that owing to the death of the executor, the entire proceedings have been abated and it could not be continued. In fact, the proceedings with regard to the probate and letters of administration are of similar in nature and therefore, this Court is of the view that the proceedings cannot abate. The function of the executor is to execute the Holograph Will and the main purpose can very well be achieved by obtaining the letters of administration so that the property can be administered by the administrator as per Section 232 of the Indian Succession Act, 1925. In reality, the object of the executor in these proceedings is to execute the Holograph Will, in which she is personally interested and to promote the Will of the deceased for the benefit of those, who took an interest in the Will, therefore, when the executor applied for probate, it does not mean that she is fighting for her personal cause, but fighting for all the beneficiaries of the Will. Therefore, an action of the executor in applying for a probate is



beneficiaries under the Will. Therefore, the action of an executor in applying for a probate is not in substance a personal action and if the executor fails in his / her duty any of those who he represents are entitled to intervene and carry on the proceedings with the formal modification and prayer must be then for letters of administration with the Will annexed, as opined by the **Hon'ble Supreme Court in Civil Appeal No.1618 of 2011 [Vatsala Srinivasan Vs. Shyamala Raghunathan]**

12. It is pertinent to point out that the Hon'ble Supreme Court in the case reported in **(2000) 9 Supreme Court Cases 717 [Shambhu Prasad Agarwal and Others Vs. Bhola Ram Agarwal]** held that *“It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration.”*

13. Considering the fact that issues have been framed as early as on 21.09.2006, wherein the 1st issue itself is, “Whether the Will alleged to be the holograph Will of late Mrs.Suseela was true and genuine and it had been executed in a sound and disposing state of mind? And applying the



principles laid down by the Hon'ble Supreme Court mentioned supra to the present case on hand, this Court is of the view that the present application filed by the applicant seeking for issuance of letters of administration, is liable to be allowed.

14. Accordingly, the present application is allowed and the applicant is hereby permitted to amend the prayer in the T.O.S and proceed further in this issue.

Sd/-V.B.S.J.
27.04.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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SU/05.05.2022