



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

MONDAY, THE 28TH DAY OF MARCH 2022

THE HON'BLE MR.JUSTICE P.VELMURUGAN

A.No.995 of 2021
in
O.P.No.163 of 2020

In the matter of Indian
Succession Act, 1925
and
In the matter of Last Will and
Testament of Late
K.Ramaswamy Dated 2.7.2003
died on 30.08.2009.

Mr.R.Kesavanathan
S/o. Mr.Late. K.Ramaswamy
No.26/22, Perumal Koil Street,
Mettupalayam, West Mambalam,
Chennai – 33.

.....Applicant/Petitioner

Vs

1. Mrs.Usha
W/o. M.Chandrasekaran
H-52/3, 21st East Street,
Kamaraj Nagar, Thiruvanmiyur,
Chennai 41.

2. Mrs.B.Seetha,
W/o. Balasubramanian
3000, 23rd Main, 23rd Cross,
Vijayanagar 2nd Street,
Mysore – 570 017.



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3. Mrs.S.Bhuvaneswari
W/o. Soundar,
4, Hanumar Koil Street,
West Mambalam, Chennai – 33.

4. Mrs.Lakshmi Priya (43 yrs)
W/o. P.Viswanath,
D/o. Late Vijayalakshmi
401, Tower 10, Orchard Residency,
LBS Marg, Ghatkapur (W)
Mumbai – 400 086.

5. Mrs.Madhumathi (38 yrs)
W/o. B.Aravind
D/o. Late Vijayalakshmi
401, Tower 10, Orchard Residency,
LBS Marg, Ghatkapur (W)
Mumbai – 400 086.

: Respondents/Respondents

A.No.995 of 2021:

Application praying that this Hon'ble Court be pleased to pass an order to withdraw and transfer O.S.No.7093 of 2019 pending on the file of the VII Additional City Civil Court, Chennai, to this Hon'ble High Court and try the same along with O.P.No.163 of 2020.

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



This application has been filed by the applicant/petitioner to withdraw and transfer O.S.No.7093 of 2019, which is pending on the file of the VII Additional City Civil Court, Chennai to this Court to try along with the present O.P.No.163 of 2020, pending on the file of this Court.

2. Reason stated in the accompanying affidavit is that the suit in O.S.No.7093 of 2019 is filed for partition and the property covered under the Will for Probate and the property covered in O.S.No.7093 of 2019 is one and the same. Therefore, the Suit in O.S.No.7093 of 2019 on the file of the VII Additional City Civil Court, Chennai may be transferred to the file of this Court.

3. Heard the learned counsel for the applicant and perused the materials available on record.

4. Originally, the suit in C.S.No.441 of 2011 was filed before this Court for partition. Subsequently, after amendment of pecuniary jurisdiction and the Original Side Rules of this Court, the suit in C.S.No.441 of 2011 was transferred to the file of VII Additional City Civil Court, Chennai and the same was re-numbered as O.S.No.7093 of 2019. Even the



itself. The defendants have stated about the existence of the Will. But, till filing of this Original Petition in the year 2019, they have not taken any steps to probate the Will. They have filed the original petition in the year 2019 and the same was taken on file in the year 2020 and now it is pending as O.P.No.163 of 2020 before this Court. Therefore, pending O.P is nothing to do with the suit for partition. However, the suit has been filed even prior to the filing of the present O.P. Therefore, under these circumstances, no conflict of decisions would arise, since the suit in O.S.No.7093 of 2019 is the suit for partition and O.P.No.163 of 2020 is only for probate of the Will, dated 02.07.2013. The learned counsel for the applicant has also admitted that the knowledge of the existence of the Will came to known even at the time of filing the written statement in the year 2012 itself in C.S.No.441 of 2011. Therefore, under these circumstances, this Court is not inclined to encourage this type of application. However, the parties in the suit are at liberty to proceed the case in accordance with law before the VII Additional City Civil Court, Chennai and the O.P.No.163 of 2020 for probate could be dealt with in the manner known to law before this Court. Since the scope of probate is only to find out the genuineness of the Will, not to adjudicate the rights of the parties in the suit and hence the transfer of O.S does not arise. Hence, this application is dismissed.



5. Fresh notice to the unserved respondents returnable by 22.04.2022.

Private notice is also permitted.

6. List the matter on 22.04.2022, for filing proof of service.

Sd./-NSSJ.

18/02/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 01/04/2022