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TOS.No.4 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

PRONOUNCED ON : 28.10..2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.4 of 2013

1. Bhanumathi
2. Vairam @ Vairamani
3. Parvathi @ Parvathi Ammal

Plaintiffs

Vs...

1. Geetha
2. Mohana
3. Hemalatha

Defendants

Prayer:- This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act, for the reliefs, as stated therein.

For Plaintiffs : Mr.S.Williams

For Defendants : Mr.R.Gunasekaran

JUDGEMENT

1. This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act for the grant of Letters of Administration for the certified copy of the Will annexed, in favour of the Plaintiffs, as the legal heirs and beneficiaries/legatees of the Will of the deceased Testator, having effect



limited to the State of Tamil Nadu.

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2. The case of the Plaintiffs is that one R.Murugesan @ Murugesu Mudaliar and his wife Jeevaratnammal died on 11.11.1997 and 21.8.1991 respectively leaving behind Shanthi, Santosh Kumar @ Santosh, Parvathi @ Parvathaimmal, Lakshmikanth and Vairam @ Vairamani as their legal heirs. Among the said legal heirs, Lakshmikanth died on 22.11.2007, leaving behind him wife Geetha and daughters namely Mohana and Kutty. The 1st Plaintiff is the grand daughter of the deceased R.Murugesan @ Murugesu Mudaliar and the daughter of Shanti. There is no next kin or other person interested to be impleaded. The parents of the deceased R.Murugesan predeceased him. The deceased R.Murugesan had executed a Will dated 24.05.1995 in the presence of the witnesses, while he was in sound and disposing state of mind. The deceased Testator did not revoke the Will or cancel or modify the Will till his death. One of the two attesting witnesses, namely Krishnan is alive and whereabouts of the other attesting witness Sambanthan is not known. They came to know about the Will when the first Plaintiff's mother and the 2nd and 3rd Plaintiffs sent a legal notice to Late Lakshmikanth seeking partition of the suit property. The amount of assets, which is likely come into the hands of the Plaintiffs does not exceed in the aggregate sum of Rs.3,06,775/- and the net amount of the said assets, after deducting all the items, which the Plaintiffs, are by law allowed to deduct, is only of the value of Rs.2,96,775/-. The



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Plaintiffs undertakes to duly administer the property and the credits of the said deceased Testator, in any way concerning his Will, by paying first his debts and then, the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in the Court, within six months from the date of grant of Probate, with the Will annexed to the Plaintiffs and also to render a true account of the said property and credits within one year from the said date. No application has been made to any District Court or delegate or to any other High Court for probate or any Will of the said deceased or Letters of Administration with or without the Will annexed to his properties and credits. In such circumstances, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.

3. In the written statement filed by the 1st Defendant, it is stated that the late R.Murugesan @ R.Murugesu Mudaliar did not own any properties to create any Will, much less the alleged Will alleged to have been executed on 24.05.1995. The details of the property are not given in the plaint. In such circumstances, the suit is liable to be dismissed.

4. On the pleadings of the parties, the following issues were framed:-

(1) Whether the Will executed by R.Murugesan @ Murugesu Mudaliar is genuine?



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- (2)Whether the late Murugesa Mudaliar, had any right over the property, in respect of which, the alleged Will dated 24.05.1995 is alleged to have been executed so as to bequeath the same, by means of a Will?
- (3)Whether all the grand children of late Murugesa Mudaliar, have been added as parties to the above suit?
- (4)Whether the Plaintiffs are entitled to get letters of administration for the certified copy of the Will annexed in this suit?
- (5)To what relief, if any, the Plaintiffs are entitled?
5. On the side of the Plaintiffs, Ex.P1 to Ex.P4 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.D1 to Ex.D35 were marked and DW.1 was examined.
6. The learned counsel appearing for the Plaintiff submitted that R.Murugesan @ Murugesa Mudaliar and his wife Jeevaratnammal died, on 11.11.1997 and 21.8.1991 respectively leaving behind Shanthi, Santosh Kumar @ Santosh, Parvathi @ Parvathaimmal, Lakshmikanth and Vairam @ Vairamani as their legal heirs. The said R.Murugesan @ Murugesa Mudaliar died, at No.308, Manimegalai Street, Vyasarpadi, Chennai. Further, Lakhmikanth died on 22.11.2007, leaving behind his wife Geetha and daughters, namely, Mohana and Kutty. He further submitted that the 1st Plaintiff is the grand daughter of the deceased R.Murugesan @ Murugasa Mudaliar and the daughter of the first Defendant Shanti. The deceased R.Murugesan had executed a Will



dated 24.05.1995 and has not appointed any executor. The plaintiffs and one Lakhmikanth are beneficiaries of the Will. The said will was executed on his own accord and without any compulsion. He knew the contents of the will. He signed the will in the presence of attestors. The attestors signed the will in the presence of R.Murugesan @ Murugesu Mudaliar. Hence, it is clear that the will is a valid and legal document executed according to law.

7. The learned counsel further submitted that one of the attesting witnesses, namely Krishnan is alive and whereabouts of the other attesting witness namely Sambanathan is not known. The plaintiffs came to know the execution of the Will recently only. On verification of the records of the Sub-Registrar's office, the plaintiffs found that the said R.Murugesan @ Murugesu Mudaliar executed a registered Will and they obtained certified copies, on 10.04.2008. The original Will was under the custody of the third defendant's husband Late Mr. Lakshmi Kanth and is now under the custody of the third defendant. He further submitted that the first defendant has given consent for granting letter of administration. Hence, the learned counsel prays for grant of letter of administration in favour of the plaintiffs.

8. The learned counsel appearing for the defendants submitted that the late R.Murugesan @ Murugesu Mudaliar did not own any properties to create a Will. The Will was created by Krishnan, who is the husband of the second



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plaintiff Vairam @ Vairamani. The first plaintiff is the daughter of Mrs. Shanthi. They are in collusion and filed this TOS. The first Defendant is the absolute owner of the property and also she had sold certain extent of the properties. He further submitted that the said R.Murugesan @ Muruges Mudaliar got separated from his wife, since he developed illegal intimacy with one Lakshmiammal. Hence, he started permanently residing with her. Till the death of Lakshmikandan, nobody whispered about the alleged Will dated 24.05.1995. In this TOS, the other grand children of the said R.Murugesan @ Muruges Mudaliar had not been added as party. Hence, the learned counsel prays for dismissal of this TOS.

9. Heard both sides.

10.Issue Nos. 1 to 5

In this case, the original Will was not produced before the Court. Further, P.W.1, in her evidence deposed that "I do not know who is original owner of the property. I have filed documents to shows that the property belonged to Muruges Mudaliar. Witness Adds: On perusal of the plaintiff's documents, no document has been filed to show that the property belonged to Mr.Muruges Mudaliar". Further he deposed that "the suit property is called as Temple property". P.W.1 has not let in any evidence to prove the suit



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property belongs to Murugesa Mudaliar.

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11. On a perusal of the plaint, it is stated that "the petitioners came to know of the existence of the Will only recently, when the 1st petitioner's mother and the 2nd and 3rd petitioners sent a legal notice to Late Lakshmikanth requesting for partition of the suit property. In the course of time on verification of the records in the Sub-Registrar's office during the year 2008, the petitioners found that the 2nd petitioner's father and the 1st petitioner's grand father Late Murugesan @ Murugesu Mudaliar executed a registered Will. They have obtained the certified copy on 10.04.2008, from the Registrar's office and filed herewith". Copy of the legal notice dated 10.11.2005 has been marked as Ex.D9.

12. In this case, P.W.1 in her evidence deposed that "It is correct to state that we know the existence of the Will, even during the life time of Lakshmikanth. It is not correct to state that we came to know about the existence of the Will only on verification of records in the Sub-Registrar's office in the year 2008 as mentioned in the petition".

13. P.W.2 in his cross examination deposed that "I know about the partition suit filed before the City Civil Court and it is pending". Further he deposed that "I



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came to know the existing Will on the day when it was executed. I informed to my wife, Vairam @ Vairamani about the suit Will, Ex.P1. I do not inform the execution of the Will to any other person except my wife. At the time of informing to my wife about the execution of the Will, I have stated about all the beneficiaries of the Will. I do not know the reasons for not taking any legal action about the Will till the death of Lakshmikanth in the year 2007. I do not know as to whether the fact of Ex.P1-Will mentioned in the partition suit filed before the City Civil Court, Chennai".

14. Mr. Lakshmikanth died on 22.11.2007. However, the plaintiffs in TOS have filed partition case in the year 2008. In view of the above, it is clear that there is contradiction between the plaintiffs evidence and the P.W.2's evidence. This is not clarified. Further, the status of the partition is not known. A perusal of Ex.A1, Sambandam and Samuvel are the attestors, but the plaintiffs have not taken any steps to examine the said attestors.

15. Further, it can be seen on perusal of the exhibits D1 and D2 that there is no cordial relationship between the attesor Mr.Krishnan and the said Mr. Murugesan @ Murugesu Mudaliar. So, it creates suspicion. Further, in this case, D.W.1 has not deposed anything about the grand children of Murugesu Mudaliar.



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16.In view of the above, this Court is of the considered view that the plaintiffs have not proved alleged Will by letting in oral and documentary evidence and hence, the plaintiffs are not entitled for letter of administration. Accordingly, all the issues are answered.

17.In the result, the TOS is dismissed. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm/skn/lbm



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1. List of Witnesses examined on the side of the Plaintiffs:-

1. PW.1 - B.Bhanumathi
2. PW.2 - J.Krishnan

2. List of Exhibits marked on the side of the Plaintiffs:-

1. Ex.P1 is the original Will
2. Ex.P2 is the original death certificate of Murugesan Mudaliar, dated 31.12.1997.
3. Ex.P3 is the original death certificate of Jeevarathinam Ammal dated, 19.09.1991.
4. Ex.P4 is the original death certificate of Lakshmi Kanthan, dated 27.02.2010.

3. List of Witnesses examined on the side of the Defendants:-

1. DW.1 - L.Geetha

4. List of Exhibits marked on the side of the Defendants:-

1. Ex.D1 is the original letter dated 05.01.1995.
2. Ex.D2 is the original letter dated 05.01.1995.
3. Ex.D3 is the copy of the assignment order dated 20.05.1974.
4. Ex.D4 is the original assignment order dated 20.05.1974.
5. Ex.D5 is the original rough sketch of the year 1974.
6. Ex.D6 is the original registered Will, dated 28.12.1986.
7. Ex.D7 is the original photo dated 09.02.1992 of the articles.
8. Ex.D8 is the original letter dated 13.12.1992.
9. Ex.D9 is the certified copy of the notice dated 10.11.2005.
10. Ex.D10 is the certified copy of the reply dated 22.11.2005.
11. Ex.D11 is the certified copy of the settlement deed dated 06.02.2006.
12. Ex.D12 is the original house warming invitation dated 04.02.2007.
13. Ex.D13 is the certified copy of General power of attorney dated



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- 14.Ex.D14 is the original property tax assessment order dated 09.03.2007 in the name of 1st defendant.
- 15.Ex.D15 is the original property tax receipt dated 17.03.2007 in the name of the 1st defendant.
- 16.Ex.D16 is the original CMWS service connection payment challan the name of 1st defendant.
- 17.Ex.D17 is the original CMWS service connection order in the name of the 1st defendant.
- 18.Ex.D18 is the original no objection certificate dated 11.05.2007.
- 19.Ex.D19 is the original property tax demand card in the name of the 1st defendant.
- 20.Ex.D20 is the original CMWSS Board water and Sewerage tax cum charges card of the year 2007-2008.
- 21.Ex.D21 is the copy of the notice dated 30.11.2007.
- 22.Ex.D22 is the certified copy of the sale deed dated 06.12.2007.
- 23.Ex.D23 is the original CMWSS Board Tax and charges receipt dated 18.02.2008 in the name of the 1st defendant.
- 24.Ex.D24 is the online certified copy of the sale deed dated 11.06.2008.
- 25.Ex.D25 is the certified copy of the plaint dated 04.11.2008 filed in OS No.7748/2008.
- 26.Ex.D26 is the certified copy of Written statement filed in OS.7748/2008.
- 27.Ex.D27 is the original CMWSS Board Tax and charges receipt dated 30.08.2010 in the name of the 1st defendant.
- 28.Ex.D28 is the original electricity bill dated 22.03.2010 in the name



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of the 1st defendant.

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29.Ex.D29 is the office copy of the notice (series 3 nos) dated 05.05.2011.

30.Ex.D30 is the office copy of the notice to produce documents dated 03.07.2014.

31.Ex.D31 is the office copy of the notice to produce documents dated 09.10.2014.

32.Ex.D32 is the office copy of the notice to produce documents dated 20.11.2014.

33.Ex.D33 is the office copy of the notice to produce documents dated 01.02.2014.

34.Ex.D34 is the office copy of the reply dated 03.02.2015.

35.Ex.D35 is the office copy of the notice to produce documents dated 14.04.2014.

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Srcm/skn/lbm

Pre-Delivery Judgement in
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