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TOS.No.24 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2022

PRONOUNCED ON : 22.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.24 of 2019

L.Loganathan

Plaintiff

Vs

L.Ramalingam

Defendant

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

For Plaintiff : Mr.V.Balasubramanian

For Defendant : Set Exparte

JUDGEMENT

1. This Testamentary Original Suit has been filed, for the grant of Letters of Administration with the last Will and Testament of the deceased Lakshalingam annexed, in favour of the Plaintiff, as one of the son/legatee under the said Will of the deceased, having effect limited to the State of Tamil Nadu.
2. The case of the Plaintiff is that the father of the Plaintiff, late Lakshalingam, who died on 4.5.1999, during his life time, had executed a registered Will dated 29.01.1979, in the presence of the witnesses, in favour of the Plaintiff and the Defendant. The mother of the Plaintiff also died on 19.06.2015. The legal heirs of the deceased Testator are his two sons, the Plaintiff and the



TOS.No.24 of 2019

WEB COPY

Defendant and three daughters, S.Jayalakshmi, V.Bhuvaneswari and Late Lalitha, who died on 24.6.2012, leaving behind her two sons, R.Arun Kumar and R.Deepak. As per the Will, the Plaintiff is entitled to half share of the property mentioned in the Will. Since the Defendant has been keeping the original registered Will and in spite of the order of this Court, he did not produce the Original Will, a certified copy of the same is filed. No Executor has been named in the Will. The amount of assets, which is likely come into the hands of the Plaintiff does not exceed in the aggregate sum of Rs.70,00,000/- and the net amount of the said assets, after deducing all the items, which the Plaintiff, is by law allowed to deduct, is only of the value of Rs.70,00,000/-. The Plaintiff 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 Plaintiff 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. Hence, this Testamentary Original Suit suit has been filed, seeking the reliefs, as stated above.



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3. Though the Defendant was served, no written statement has been filed by the Defendant and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered to be recorded, by the order of this court, dated 06.07.2022. Thereafter, the Plaintiff has filed his proof affidavit for his chief examination and receipt of as many as four documents. In the Exparte Evidence, the Plaintiff examined himself as PW.1 and marked Ex.P1 to Ex.P4.

4. Ex.P1 is the certified copy of the Will, dated 29.01.1979. Ex.P2 is the print out of death certificate of the Testator, dated 5.7.2016. Ex.P3 is the print out of death certificate of L.Kanniammal, dated 05.07.2016. Ex.P4 is the certified copy of the order in A.No.4500 of 2016, dated 14.02.2017. Since there was no further evidence on the side of the Plaintiff, his evidence was closed on 16.08.2022.

5. Section 68 of the Indian Evidence Act read as follows:-

“68. Proof of execution of document required by law to be attested:- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

6. In this case, though it is the case of the Plaintiff that the Will had been executed in the presence of the witnesses, whose names appear at the foot thereof, in the Exparte Evidence, except the Plaintiff, who examined himself as PW.1, none of the attesting witnesses has not been examined by the Plaintiff to prove the Will, for which, no proper explanation has been given by



TOS.No.24 of 2019

WEB COPY

the Plaintiff. Further, if the Plaintiff is unable to produce any one of the attesting witnesses to prove their signatures, at least, he ought to have taken steps to examine the person, who can identify and prove their signatures. In this case, the Plaintiff has failed to take such steps to prove the Will.

7. Though it is seen that the Defendant is not interested in prosecuting the case, by filing a written statement and consequently, the Defendant had been set exparte, since the Plaintiff has failed to prove the Will, by examining one of the attesting witnesses or by examining the person, who can identify and prove the signature of those attesting witnesses, it can be safely held that the Will Ex.P1 has not been proved by the Plaintiff, in a manner known to law. Consequently, this Court holds that the Plaintiff is not entitled for the grant of Letters of Administration.

8. In the result, this TOS is dismissed. No costs.

22.08.2022

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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

1. PW.1 - L.Loganathan

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

1. Ex.P1 is the certified copy of the Will dated 29.01.1979.
2. Ex.P2 is the print out of death certificate of the Testator, dated 5.7.2016
3. Ex.P3 is the print out of death certificate of L.Kanniammal, dated 05.07.2016.
4. Ex.P4 is the certified copy of the order in A.No.4500 of 2016, dated



WEB COPY

14.02.2017.



TOS.No.24 of 2019

22.08.2022



WEB COPY



TOS.No.24 of 2019

A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
TOS.No.24 of 2019

22.08.2022