



WEB COPY



CMA.No.3450 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:
THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3450 of 2010
and
CMP.Nos.24961, 25070, 25073 & 25067 of 2023

1. D.Lurthuraj
2. D.Sundarraaj
3. D.Alphonese (died)
4. D.Rajendran
5. D.Rajasekar

...Appellants

Vs.

1. Sakunthala David
2. Jessie Thambiah (Exparte)
3. A.D.David (Died)
4. Sakunthala Sundararaj (Died)
5. Janat Rajarathanam (Exparte)
6. Lilly Chandrakantham (Died) (Exparte)
7. Punitha Sundar
8. Peter Premkumar (Exparte)
9. Suresh David
10. Dharmaseeli
11. Karuna David
12. Samuel David

(R3 died, Respondents R10 to 12 are brought on record as LR's of the deceased R3, vide order dated 17.10.2023 made in CMP.Nos.16558, 16563 & 16566 of 2023 in CMA.No.3450 of 2010.)



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13. Nallavan Devadoss Vidhy Asagar

WEB COPY (R6 died, Respondents R13 is brought on record as LR of the deceased R6, vide order dated 17.10.2023 made in CMP.Nos.16587, 16580 & 16585 of 2023 in CMA.No.3450 of 2010.)

14. John Sundar

15. Williams

16. J.S.Alexander

17. Solomon

(R7 died, Respondents R14 to 17 are brought on record as LR's of the deceased R7, vide order dated 17.10.2023 made in CMP.Nos.16765, 16764 & 16768 of 2023 in CMA.No.3450 of 2010.)

18. Malini Esther Sathyanesan

19. Ranjini Xavier

20. Shree Kumar

21. Rita Augstine

(Respondents R18 to 21 impleaded, vide order dated 17.10.2023 made in CMP.No.16984 of 2023 in CMA.No.3450 of 2010.)

22. Helan Abby Rehana Devi

23. George Benjamin Devaraj

24. Suneerkumari Rajendran

25. Samuel Lincoln Inbaraj

(R4 died, Respondents R22 to 25 are brought on record as LR's of the deceased R4, vide order dated 17.10.2023 made in CMP.Nos.10434, 10452 & 10460 of 2023 in CMA.No.3450 of 2010.)

26. Kamini David

(Respondent R26 impleaded, vide order dated 17.10.2023 made in CMP.No.7910 of 2021 in CMA.No.3450 of 2010.)

...Respondents



CMA.No.3450 of 2010

Civil Miscellaneous Appeal filed under Section 384 of Indian Succession Act, to set aside order and decretal order of the Learned Prl. District Judge of Chengalpattu dated 03.08.2010 in dismissing the Succession Original Petition No.117 of 1998.

For Appellants : Mr.V.Raghupathi

For Respondents R1 : No Appearance

For R2 : Exparte vide order dated 10.03.2021

For R3, 4, 6 & 7 : Died (steps taken)

For R5, 8, 9-13 & 18-21 : Mr.D.Daniel

For R14-17 & 22-25 : Not ready notice

For R26 : C.Rajan

JUDGMENT

Challenging the order and decree dated 03.08.2010 passed by the learned Principal District Judge, Chengalpattu dismissing the Succession Original Petition No.117 of 1998, filed by the appellants herein and two others, for grant of Letters of Administration with the WILL dated 03.09.1995, the present Civil Miscellaneous Appeal has been filed.

2. The case of the appellants is that, the subject scheduled mentioned properties were originally purchased by one B.T.Joel through Court auction held on 17.04.1935 in E.P.No.580 of 1934 and he constructed a house



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thereon and was in absolute possession and enjoyment of the same along with his wife, viz., Soundaram Joel and three daughters, viz., Caroline Grace Joel, Leela and Nagista Soundaryam respectively and all the three daughters are spinsters. While so, after the demise of the said B.T.Joel and Soundaram Joel, the said Nagista Soundaryam, inherited the subject property, as her other sisters predeceased her and she executed a WILL dated 03.09.1995, in favour of one Late.Elizabeth, the mother of the appellants herein, who took care of her till her death, and appointed her as the executor of the WILL. The said Nagista Soundaryam also died on 06.09.1995. Thereafter, the said Elizabeth and the appellants herein have filed S.O.P.No.117 of 1998, seeking grant of Letters of Administration in their favour for probate of the WILL. However, the said petition was dismissed by the present impugned order and decree on the ground that, the appellants have not proved the WILL beyond reasonable doubt. Challenging the same, the appellants have come up with this Appeal.

3. Heard learned counsel on either side and perused the material documents placed on record.



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4. Though very many grounds have been raised by the learned counsel on either side, at the time of arguments, the learned counsel for the appellants restricted the prayer and sought liberty of this Court to file separate suit claiming rights over the subject property. Learned counsel for the respondents have not raised any serious objection for the restricted prayer as sought for by the learned counsel for the appellants.

5. In view of the above, this Court, without going into the merits of the case, grants liberty to the appellants to workout the remedy in the manner known to law, including by way of filing suit. If any such suit is filed, it is open to the parties to canvass all the grounds raised before this Court, before the competent forum, where the suit is to be filed.

6. With the above directions, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.



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22.11.2023

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Copy to:

1. The Principal District Judge,
Chengalpattu.
2. The Section Officer,
VR Section,
Madras High Court.



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M.DHANDAPANI, J.

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