



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS. No.12 of 2006
(OP.No.9 of 2004)

E. Kanniyammal

...Plaintiff

vs

1. E. Pandurangan
2. V. Susila Viswanathan
3. E. Kamalakannan
4. E. Karnan

..Defendants

Prayer: This Testamentary Original Suit has been filed under Sections 222 and 276 of the Indian Succession Act, 1925 for the grant of probate.

For Plaintiff : Ms.R.V.Rukmani

for Mr.P.B.Ramanujam

For Defendants : D1 to D4 - Set exparte on 01.08.2023

J U D G M E N T

The plaintiff has come up with the above suit praying for grant of probate.

2. The brief facts of the plaint are as follows:



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The petitioner has submitted that the deceased C.Visalakshi died on 04.02.1996 permanently resided at No.41, South Coovum River Road, Komaleeswaranpet, Chennai – 600 002, possessed of the properties within the State of Tamilnadu The writing annexed, now shown to the petitioner and marked with letter “A” is the last Will and Testament of the said deceased C. Visalakshy and was duly executed by her on 26.10.1987 in the presence of two witnessess, who are well known to the deceased, whose names appear at the foot thereof. She is the sole Executrix appointed under the Will of the deceased and one of the daughters of the Testatrix. The deceased C. Visalakshy died on 04.02.1996 leaving behind the legal heirs namely Mrs.E. Kanniammal, J. Bhanumathi, G. Lalitha Bai, G. Manjula Ravi, E. Pandurangan, V. Susila Viswanathan, V. Ramesh, V. Radhika, E. Kamalakannan and E. Karnan. The husband of the Testatrix died on 19.05.2001 and the parents of the deceased and her son C. Viswanathan also pre-deceased her. It is further submitted that the deceased bequeathed her house property in favour of her four daughters namely E. Kanniammal, E. Bhanumathi, E. Lalitha Bai and E. Manjula equally and absolutely. Though the property was purchased by the Testatrix by Registered Deed inn



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Doc.No.3713/1987, on the file of the SRO, Virugambakkam, by inadvertence and by oversight the document number of the said sale deed was mentioned in para 2 of the original Will of the Testatrix as No.3773/87 instead of No.3713/87. There is no next of kin or other persons interested to be impleaded. The respondents 1 to 3 have given consent affidavit. The petitioner undertakes to duly administer the property and credits of the deceased C.Visalakshi by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory and exhibit the same in this court within six months from the date of grant of probate to the petitioner. Therefore, she prays to allow this suit.

3. On the side of the plaintiff, namely Mrs.E. Kanniyammal, has filed the proof affidavit for her chief examination and receipt of 8 documents as documentary evidence to prove the suit claim. In the Evidence, Mrs.E.Kanniyammal was examined as PW.1 and marked the following documents as Exs.P1 to P8 as documentary evidences in order to prove the suit claim.

1. Ex.P1 is the Original Will dated 26.10.1987 (Will is in the



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safe custody)

2. Ex.P2 is the Original Death Certificate of Visalakshi, date of registration – 05.02.1996.
3. Ex.P3 is the Original death certificate of Ellappan.K, date of registration 25.06.2001.
4. Ex.P4 is the consent affidavit of R1 dated 06.12.2003.
5. Ex.P5 is the consent affidavit of R2 dated 06.12.2003.
6. Ex.P6 is the consent affidavit of R3 dated 06.12.2003.
7. Ex.P7 is the certified copy of the sale deed dated 15.10.1987.
8. Ex.P8 is the affidavit of assets.

4. Neither there was representation on the side of the defendants on the date of hearing nor they file written statement, they are called absent and were set ex-parte by order dated 01.08.2023 of this Court. Today, there is no representation for the defendants.

5. On perusal of the records, it is seen that the plaintiff examined



herself as PW1 and examined the other witness, PW2 / B.Karthikeyan, who are the attesting witness to the Will and had produced Exs.P1 to P8, in order to substantiate her case. PW2/B.Karthikeyan has also filed the Proof affidavit to prove the Will.

6. This Court heard the submissions of the learned counsel on the plaintiff's side. There is no representation on the side of the defendants. Perused the materials available on record.

8. Perused the proof affidavit of PW2/ B.Karthikeyan wherein it is stated that he is the third party to the court proceedings and his role here is only to identify the signatures of his father and grandmother / testatrix of the said Will. Ex.P8 is the death certificate of one V. Balakrishnan, who is the father of PW2. PW2 has stated that he is well acquainted with the signatures of his father and Testatrix who is his grandmother/C.Visalakshy. He deposed that the signatures at the foot of each page and on the back of the 1st page of the Will dated 26.10.1987, is identified to be that of his grandmother/testatrix and the signature of the second attesting witness in the



said Will is identified to be the signature of his father.

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9. Considering the facts and circumstances of the case, plaint and the oral and documentary evidences, viz. Ex.P1 to Ex.P8, adduced by P.W.1 and also on the proof affidavit of PW2, this Court is of the view that the plaintiff has proved the suit claim.

10. In the result, this TOS is decreed as prayed for. Issue probate in favour of the Plaintiff in respect of the Will executed by the deceased Mrs.C. Visalakshy. No costs.

20.10.2023

gv

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 – Mrs.E.Kanniyammal
 2. PW2 - M.B.Karthikeyan
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the Original Will dated 26.10.1987 (Will is in the safe custody)
 2. Ex.P2 is the Original Death Certificate of Visalakshi, date



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of registration – 05.02.1996.

3. Ex.P3 is the Original death certificate of Ellappan.K, date of registration 25.06.2001.
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Index : No

Internet : Yes

Speaking order/ Non-speaking order
gv



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A.A.NAKKIRAN.J.,
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