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T.O.S. No.16 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.01.2023

CORAM : JUSTICE N.SESHASAYEE

T.O.S. No.16 of 2015

in

(O.P. No.232 of 2013)

1.Mrs.C.Janaki

2.C.Namasivayam

.... Plaintiffs

Vs

1.C.Kanagasabapathy (Deceased)

2.K.Rajathilagam

3.A.Meenakshi

4.K.Rajachidambaram

.... Defendants

(D2 to D4 impleaded as legal heirs of deceased
sole defendant as amended as per order dated
23.12.2021 in A. No.3743 of 2021)

Prayer : Testamentary Original Suit filed under Sections 232, 255 and 276 of the Indian Succession Act and Order XXV Rule 5 of Original Side Rules for issuance of Letters of Administration of the Will dated 31.08.1977.

For Plaintiff : Mr.B.Sudarshan

For Defendants : Mr.K.Ramesh for D2 to D4



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JUDGMENT

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On 17.10.2022, this court recorded that the second plaintiff died on 18.05.2022 and that since steps have not been taken to implead the legal heirs of the deceased second plaintiff, the Testamentary Original Suit as against the second plaintiff is dismissed as abated.

2. The original petition was laid for granting Letters of Administration of the last will and testament dated 31.08.1977, executed by late N.K.Chidambaram, registered as Document No.19 of 1977 on the file of the Registrar of Madras South. The said N.K.Chidambaram, later, died on 04.02.1981, leaving behind him his surviving heirs, namely the petitioners and the respondents. The 1st respondent is the wife of the said N.K.Chidambaram, 1st petitioner and the 3rd respondent are his daughters and the 2nd petitioner and the 2nd respondent are his sons. Original Petition was promptly laid and since one of the legal heirs of the said N.K.Chidambaram, namely his son C.Kanagasabapathy has filed caveat, the OP was converted into a testamentary original suit. The caveator/first defendant, since deceased, his legal representatives were brought on record as defendants 2 to 4.



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3. Evidence in this case was recorded and the propounder examined herself as PW1 and marked Exts.P1 to P11. Ext.P2 is the will of late Shri.N.K.Chidambaram.

4. In this TOS, the affidavit of chief examination of one of the attesting witnesses is marked as Ex.P7. This is an apparent mistake. His evidence should have been received only as PW2. However, since there is no contest for grant of Letters of Administration and since there is no cross examination of the attesting witness, this court, *suo motu* deletes Ex.P7 and receives the evidence of the attesting witness as PW2.

5. This court is satisfied on perusing the documents and reading the oral testimony of witnesses. This court is satisfied that the Will of Late Shri.N.K.Chidambaram, dated 31.08.1977, is genuine.

6. Accordingly, this testamentary original suit is allowed by granting letters of administration with the Will annexed to the plaintiff in respect of the estate bequeathed under the last Will and testament of the late Shri.N.K.Chidambaram, dated 31.08.1977. The first plaintiff is directed to



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execute a security bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** in the name of the Assistant Registrar (Original Side) of this Court. The plaintiff is further directed to file an inventory of assets and statement of accounts within a period of six months and one year, respectively.

05.01.2023

Asr

List of witnesses examined on the side of Plaintiff:

1. Mrs.C.Janaki - PW1
2. Mr.J.Mittalal - PW2 (Attesting witness)

List of exhibits adduced on the side of the Plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	P1	Original death certificate of Shri.N.K.Chidambaram dated 13.02.1987
2	P2	Original will of Shri.N.K.Chidambaram dated 31.08.1977
3	P3	Legal heir certificate of deceased Shri N.K.Chidambaram dated 31.08.1991
4	P4	Affidavit of assets dated 27.02.2013
5	P5	Paper publication in English Daily 'News Today' dated 07.05.2014
6	P6	Paper publication in Tamil Daily 'Malai Chudar' dated 15.05.2014
7	P7	Deleted as per order dated 05.01.2023
8	P8	Consent affidavit of 1st defendant dated 27.02.2013
9	P9	Consent affidavit of 3rd defendant dated 27.02.2013



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<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
10	P10	Consent affidvit of 4th defendant dated 09.08.2022
11	P11	Consent affidavit of defendants 5 and 6 dated 09.08.2022

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