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TOS.No.31 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2023

PRONOUNCED ON : 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.31 of 2015

1. K.Ramesh

2. K.Ravi

...Plaintiffs

...Vs...

1. Deivani

2. K.Selvaraj

3. K.Dhamayanathi

4. K.Rajendran

5. K.Shanthi (Deceased)

6. Shanmugapriyan

7. Mohana Priya

....Defendants

Prayer:- This Testamentary Original Suit has been filed, under Sections 232, 255 and 276 of the Indian Succession Act and Order 25 Rule 5 of the Original Side Rules, for the grant of Letters of Administration with the Will dated 22.07.1987.

For Plaintiffs : Mr.L.J.Krishnamurthy

For Defendants : Mr.S.Umapathy



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JUDGMENT

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This Testamentary Original Suit has been filed to grant Letters of Administration with the Will, dated 22.07.1987, executed by the deceased Testatrix Muthammal, annexed, in favour of the Plaintiffs, as the grandsons/ beneficiaries under the said Will, having effect throughout the State of Tamil Nadu limited to the property mentioned in the affidavit of assets.

2. The case of the Plaintiffs, as set out, in the plaint is as follows:-

a) The Plaintiffs are the sons of one Late Kathiresan and the one Rathinam, who is his second wife. The 1st Respondent is the first wife of Late Kathiresan. The Defendants 2 to 5 are the children born through the 1st Respondent. The father of the Plaintiffs, ie.Kathiresan was deserted by the 1st respondent wife and joined with the deceased Testatrix Muthammal, wife of Late Arankulavan Achari and grand mother of the Plaintiffs. Thereafter, Kathiresan married the mother of the Plaintiffs, Rathinam and lived along with deceased Testatrix. The deceased Testatrix Muthammal, had executed a registered Will, dated 22.07.1987, on the file



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of the Sub Registrar Office, Alandur, Chennai, in the presence of the witnesses, who attested at the foot, bequeathing the suit properties in favour of the Plaintiffs.

b)The husband of the deceased Testatrix predeceased and her only son Late Kathiresan, was her only Class-I legal heir. The parents of the Testatrix predeceased her. Neither the 1st wife nor her children have any right to claim any property as per the said Will. The Testatrix died on 15.08.1996 and her residence is at Old No.129, New No.165, K.V.B.Garden, Raja Annamalaipuram, Chennai 600 028. The father of the Plaintiffs died on 14.12.2007 at Chennai. In the said Will, no executor was appointed. Out of Items 1 to 4 of the suit properties, Item (3) was sold by the Testatrix. The Testatrix was in a sound and disposing state of mind at the time of execution of the said Will. The Plaintiffs came to know of the existence of WILL very recently and immediately approached this Court. The delay is due to unawareness of the Will.

c)The amount of assets, which is likely come into the hands of the Plaintiffs does not exceed in the aggregate sum of Rs.4,63,219/- and the net amount of the said assets, after deducing all the items, which the



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Plaintiffs, are by law allowed to deduct, is only of the value of Rs.4,63,219/-. The Plaintiffs undertakes to duly administer the property and the credits of the said deceased Testator, in any way concerning her Will, 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 thereof and exhibit the same in the Court, within six months from the date of grant of Letters of Administration, 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. Hence, this Testamentary Original Suit has been filed, seeking to grant Letters of Administration with the said Will.

3.The case of the 2nd Defendant, in a nutshell, as set out in his written statement, is as follows:-

a) It is denied that the deceased Testatrix secured allotment of a Plot through the Slum Clearance Board, on 27.03 1982. But, it is only the



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father of the Defendants, who paid necessary charges to the Board to get the allotment of the same in the name of the deceased Testatrix. The father of Defendants from his own income constructed a small house and he was living there along with his family including the Defendants. The deceased Testatrix had no independent income to secure an allotment and pay necessary charges to the Slum Clearance Board. The Testatrix never executed a Will on 20.02.1987. The deceased Testatrix was an illiterate and she was quite aged at the time of execution of the alleged Will. The existence of the alleged Will came out first time after nearly 23 years after its alleged execution and after 14 years of the death of the Testatrix. The alleged Will is not genuine one. The Plaintiffs are giving different dates about the execution of the alleged Will in different times and different proceedings. The deceased Testatrix was not the owner of the property while executing the alleged Will on 20.02.1987 and she has no right to bequeath the properties to the Plaintiffs under the alleged Will.

b)If the said Will is genuine, the Plaintiffs would have produced the same immediately after the death of the deceased Testatrix in the year 1996 and thereby prevented their father from obtaining a Lease cum Sale Agreement initially and thereafter, Sale Deed from the Tamilnadu Slum



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Clearance Board on 03.01.2000. The Plaintiffs did not raise their little finger even after the Sale Deed executed in their father's name in the year 2007. The Title of the property was legally transferred from Tamilnadu Slum Clearance Board to Kathiresan only in the year 2000. After 2000, their father became exclusive owner and was in enjoyment of the same till his death on 14.12.2007.

c)The Plaintiffs failed to state what are the other documents related to the property in the name of Testatrix. No Title documents ever stand in the name of the deceased Testatrix. After execution of the alleged Will, after the death of the deceased Testatrix, there were transactions in respect of the properties in the presence and with the knowledge of the Plaintiffs and at that point of time, the Plaintiffs were only mute witnesses to the transactions and hence, they cannot now blow hot and cold. The suit properties belonged to their father, who died intestate. The Defendants are the successors. The Plaintiffs cannot deny the right, title, interest of the suit properties of the Defendants. The Plaintiffs are the sons born through the 2nd of wife of their father. If at all, they have only a joint right along with the Defendants. In such circumstances, the suit is liable to be dismissed.



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4. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

- (1) Whether the Will, dated 20.02.1987 said to have been executed by Late K.Muthammal is true and valid?
- (2) Whether the Plaintiffs are entitled to Letters of Administration with the copy of the Will annexed?
- (3) To what reliefs the parties are entitled?

5. On the side of the Plaintiffs, Ex.P1 to Ex.P12 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.D1 was marked. No oral evidence was examined.

6. The learned counsel for the plaintiffs would submit that the plaintiffs being the beneficiaries of Will, are the grand children of Late Muthammal who had executed the Ex.P1- Will during the year 1982 wherein it has been specifically mentioned that the property should go to her grand children Ramesh and Ravi aged about 10 years and 8 years



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respectively and the same was registered on 27.07.1987 in favour of the plaintiffs as document No.3/1987 on the file of the Sub-Registrar Office at Alandur, Chennai. There are four items mentioned as properties in the said Will executed by the Testatrix as follows:

a) The Item No.1 and 2 - are Vacant Cultivable lands situated at Pudukkottai of an extent of 1 acre and 46 cents respectively.

b) The Item No.3 - is a Vacant land under Plot No.66, of an extent of 1 ground situated at Madambakkam Village under S.No.7481/2.

c) The 4th Item - is a residential house property at No.129, Plot No.283, KVB Gardden Street, R.A. Puram, Chennai- 600 028.

Out of 4 items, 3rd item was sold during the life time of the Testatrix -Muthammal and 4th item was secured through Slum Clearance Board in her name and paid necessary charges to the Board till her death through her agriculture income and other income derived from house hold job. After her death, her son ie. the Plaintiffs' father had applied in a clandestine manner for the sale deed of the house document in his name and obtained during the year 2000 of the Will Property mentioned as 4th item which is marked as Ex.P7. However, as per the said Will, the Plaintiffs are entitled to the property including the Item No.4 and the Plaintiffs are living in the



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suit premises and paying statutory taxes pertaining to it which have been marked as Ex.P8 to Ex.P10.

7.It has been further submitted by the learned counsel for the plaintiffs that the said Will attested by two witnesses one S.Kannan and M.Palani are no more. Further, as the Will is registered in the presence of Registrar, Alandur and subsequently proved through the documents such as Ex.P2 to Ex.P6, the execution of the Will becomes true and genuine. Since there was no contra oral and documentary let in by the defendants against the plaintiffs and no partition suit was filed by them, both the plaintiffs are entitled to claim the grant of Letters of Administration.

8. The learned counsel for the defendants would submit that while the Testatrix was residing at K.V.B. Garden, R.A. Puram, Chennai, and none of the properties found in the Will are located within the jurisdiction of Alandur, SRO, the said Will was registered at Alandur which is far way from her residence. This act creates to suspicious circumstances about the Execution of Will. Further, while only the left hand thumb impression of K.Muthammal is found in the Ex.P1-Will, the plaintiffs have failed to



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establish that the Testatrix was an illiterate and she was always put only her thumb impression. In this regard, no documentary proof is filed to prove the same. Hence, this also creates suspicious over the alleged Will.

9. It has been further submitted that though there were two witnesses signed in the Will, except the name of the Witnesses, full details of the witnesses were not given in the said Will. Hence, it creates suspicious whether the witnesses were present at the time of the execution of the alleged Will by Testatrix. While the attesting witnesses are no more, the plaintiffs neither produced their death certificate nor examined legal heirs of the attesting witnesses who can able to identify the signature of the Witnesses.

10. The learned counsel for the defendants would further submit that P.W.2 being the own mother of the plaintiffs was examined on the side of the plaintiffs. She is only a interested witness and she is no way connected with the alleged Will. Thus, the plaintiffs have not taken any single efforts or steps to prove the genuineness of the Will before this Court.



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11. It has been further submitted by the learned counsel for the defendants that under Section 63 (c) of the Indian Succession Act, 1925, the Will shall be attested by 2 or more witnesses. Further, under Section 68 of the Indian Evidence Act, 1872, if a document is required by Law to be attested, it shall not be used as evidence, until one of the attesting witness has been called for the purpose of proving its execution. While being so, even though two attesting witnesses have been stated as they are no more, the plaintiffs has to prove the same by oral and documentary evidence either producing death certificate or examining their legal heirs.

12. In support of his argument, he has relied upon the Judgment in the cases of (i) "*Janki Narayan Bohir Vs. Narayan Namdeo Kadam*" reported in (2003) 2 Supreme Court Cases 91, (ii) "*J. Naval Kishore Vs. D. Swarna Bhadran*" reported in (2008) 1 CTC 97, and (iii) "*Govindaraj Vs. Ramadoss*" reported in (2011) 3 CTC 433 covering the point of non-examination of attesting witnesses.



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13. Heard both sides and perused the materials available on record.

14. A perusal of the Will dated 22.07.1987, reveals that Ex.P1 Will, which is the certified copy of the Will, is of the year 1982. It is seen from the Ex.P1 that the Attesting Witnesses have put their signatures only as S.Kannan and M. Palani respectively without any details, such as their father's name, age and residing address. While attesting witnesses are said to have been died, the Plaintiffs at least, have to produce their death certificate or examine the person, who can identify and prove the signature of those attesting witnesses to prove the said Will.

15. At the same time, the Plaintiffs have not produced the Original Will dated 22.07.1987 registered on the file of the SRO, Alandur. While the Plaintiffs are unable to produce the Original Will dated 22.07.1987 executed by the Testatrix, they have to prove the Will, either producing any other supporting document to prove the thumb impression of the Testatrix or examining the expert of thumb impression as a witness, who can identify and prove the thumb impression of the Testatrix. Thus, the plaintiffs have failed to prove the Will dated 22.07.1987 by producing oral and documentary evidence in the manner known to law. Accordingly,



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Issue No.1 is answered. Since issue no.1 is answered against the Plaintiffs, issue no.2 does not arise at all and it need not be considered at this stage.

The Plaintiffs are not entitled to Letters of Administration or any other relief. Accordingly, issue nos.3 is answered. Thus, all the issues in TOS are answered against the Plaintiffs.

16. In the result, the Testamentary Original Suit is dismissed. No

Costs.

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Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Srcm/lbm



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

1. PW.1 – K.Ramesh
2. PW.2 - L.Ratinam

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

1. Ex.P1 is the certified copy of the Will dated 22.07.1987.
2. Ex.P2 is the certified copy of the Death Certificate dated 15.08.1996.
3. Ex.P3 is the certified copy of Death Certificate of Kathiresan dated 14.12.2007.
4. Ex.P4 is the certified copy of Lease cum sale agreement dated, 27.03.1982.
5. Ex.P5 is the certified copy of No objection letter issued by T.N.S.B for obtaining Electricity Connection on Metro Water Connection dated 26.03.1992.
6. Ex.P6 is the certified copy Lease cum sale agreement receipt dated 23.05.1983 to 17.03.1992.
7. Ex.P7 is the certified copy of sale deed dated 03.01.2000.
8. Ex.P8 is the certified copy of property tax year 1992-1993.
9. Ex.P9 is the certified copy of Electricity Card with Bill in the name of Muthammal.
10. Ex.P10 is the certified copy of payment receipt of Metro Water with card.



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WEB COPY 11.Ex.P11 is the certified copy of Ration Card.

12.Ex.P12 is the certified copy of ID of Plaintiffs.

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

1. Ex.D1 is the certified copy of the Judgement and decree passed in S1294/14 on the file of 17th Assistant City Civil Court, Chennai

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A.A.NAKKIRAN, J.

Srem/Lbm

Pre-Delivery Judgement in
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