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T.O.S.No.20 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2023

PRONOUNCED ON : 27.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

T.O.S.No.20 of 2016

S.Jayachandran ... Plaintiff / Petitioner

versus

S.Ravichandran ... Defendant / Respondent

PRAYER: This Suit has been filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 and Order XXV Rule 5 of O.S. Rules 1956 for grant of Letters of Administration. As per order of this Court dated 25.01.2016 in O.P.No.693 of 2012, the Original Petition has been converted into Testamentary Original Suit No.20 of 2016.

For Plaintiff : M/s.K.V.Subramanian Associatez

For Defendant : Mr.M.Balchandar



JUDGMENT

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This Testamentary Original Suit has been filed by the plaintiff originally as O.P.No.693 of 2012 for granting Letters of Administration in respect of the Will executed by S.Ankulakshmi, who died on 10.04.2009 at Chennai, since the defendant / respondent has filed caveat it has been converted into T.O.S.

2. The brief case of the plaintiff as stated in the Original Petition is as follows:-

The suit property belonged to one S.Ankulakshmi, who was permanently residing at Old No.19, New Door No.47, V.S.V.Koil Street, Mylapore, Chennai; she had executed a registered Will dated 30.08.2006 during her lifetime in Document No.73 of 2006 in Block No.3 of the Sub-Registrar, Mylapore, Chennai; the plaintiff is the sole beneficiary named in the said Will and he is the elder son of the deceased; the Testator has not appointed any executor for the Will; the plaintiff and the respondent are the sons and legal representatives of the deceased; the father, mother and husband of the deceased predeceased her; hence the plaintiff has filed this Testamentary Original Suit seeking Letters of Administration to administer



the property and the plaintiff undertakes that the credits of the deceased S.Ankulakshmi will be first paid and then the legacies therein as bequeathed and to make a full and true inventory thereof and exhibit the same before this Court within six months from the date of Letters of Administration with Will annexed by the plaintiff and also to render true accounts in respect of the property and the credits to this court within one year from the said date.

3. The defendant has filed the written statement in brief:-

The execution of the Will dated 30.08.2006 is denied; the Will was not executed by their mother in a sound and disposing state of mind; the plaintiff in collusion with the witnesses have got the Will executed by their mother and registered at the Office of the Sub-Registrar; the defendant's residence is only a stone's throw away distance; there was no love lost between the respondent and his deceased mother; she preferred to stay at the plaintiff's house since he was the elder son; however the defendant used to visit his mother and spend time with her regularly; during such meetings, their mother had told that she wanted to distribute all her wealth equally in favour of both of her sons; while so, all of a sudden the plaintiff under the guise of an alleged Will claims the entire right over the property; the



plaintiff has not brought this Will to the knowledge of the defendant; the plaintiff taking advantage of the old age of their mother and her unstable state of mind got the Will executed in his favour and hence, this Testamentary Original Suit is liable to be dismissed with costs.

4. On the basis of the above pleadings, this Court had framed the following issues for trial on 08.10.2021:-

- “(i) Whether the Will dated 30.08.2006 is true and valid?*
- “(ii) Whether the Testatrix, S.Ankulakshmi was in sound and disposing state of mind at the time of execution of the Will?*
- “(iii) Whether the plaintiff is entitled to letters of administration in respect of the Will?*
- “(iv) To what other reliefs the parties are entitled?”*

5. During the course of trial, on the side of the plaintiff, two witnesses have been examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.3 were marked; on the side of the defendant, no witness has been examined and no document was marked.



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6. Ex.P.1 is the registered Will executed by plaintiff's mother on 30.08.2006; the property belongs to the mother of the plaintiff / the deceased Ankulakshmi and the said fact was not denied; the plaintiff and the defendant are the only legal heirs of the deceased Ankulakshmi and her sons; Ankulakshmi died on 16.06.2009 and the parties do not deny the above facts.

7. It is the claim of the plaintiff that their deceased mother executed a registered Will on 30.08.2006 by bequeathing the suit property in his favour; even though the defendant did not deny the execution of the Will or the signature of his mother on the Will, he denied the sound state of mind of his mother at the time of executing the Will.

8. According to the defendant, the deceased mother was living along with the plaintiff because he was the eldest son and there was no love lost between the defendant and his mother; it is further stated that his mother had assured to divide her assets between her two children and hence it is not possible that their mother had executed the Will knowingly that she was giving it only in favour of the first son.



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9. The plaintiff, who was examined as P.W.1 has strongly denied that the defendant had cordial relationship between the defendant and their mother; the Will is a registered one and it was executed in the presence of the two witnesses, one of the attesting witness by name Dr.R.Theagarajan, who has been examined P.W.2, is a retired Professor, Teacher's Training Institute, Taramani, Chennai. In his evidence he has stated that he stood as witness for the Will executed by the deceased Ankulakshmi on 30.08.2006. He has stated that he knew the family of the testatrix from the year 1968 and that the plaintiff's mother was taken care of by the plaintiff only and the defendant hardly visited his mother.

10. During the cross examination of P.W.2, he asserted that Ankulakshmi was in a sound state of mind when she executed the Will. The evidence of P.W.2 appears to be cogent and natural and his evidence does not suffer from any suspicion. So the Will executed by the plaintiff's mother has been proved in a manner known to law.



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11. According to Section 68 of the Indian Evidence Act, 1872, an instrument like a Will which required to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. P.W.2 is one of the attesting witness, who was alone has stated clearly in his evidence the manner in which the Will was executed by the deceased mother of the plaintiff and also about her sound state of mind while executing the Will.

12. Even though the defendant happened to be the younger son of the deceased as per the evidence of P.W.2, it is proved that he was not cordial relationship with the testatrix mother. The cross examination of P.W.2 did not bring out anything that would demolish the credibility of his evidence in chief. Hence, this Court has no hesitation to record that the Will dated 30.08.2006 is true and valid and the testatrix Ankulakshmi was in a sound and disposing state of mind at the time of executing the Will. So this Court is satisfied that the Will of Late Ankulakshmi, dated 30.08.2006 is true and valid one. So the issues (i) to (iii) are answered in favour of the plaintiff.



13. Since the reliefs sought for has already been granted the plaintiff is not entitled to any other reliefs. Thus issue no.(iv) is answered.

14. In the result, T.O.S. No.20 of 2016 is decreed 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 Ankulakshmi, dated 30.08.2006. The plaintiff is directed to 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.

27.04.2023

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List of witnesses examined on the side of Plaintiff:

1. Mr.S.Jayachandran - PW1
2. Dr.R.Theagarajan - 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 Will executed by plaintiff's mother dated 30.08.2006
2	P2	Death Certificate of the Testator dated 16.06.2009

27.04.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Sub-Assistant Registrar,
Original Side,
High Court of Madras.

2.The Record Keeper,
Original Side Records Section,
High Court of Madras.



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R.N.MANJULA, J.

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Pre-Delivery Judgment made in
T.O.S.No.20 of 2016

27.04.2023