



TOS.No.42 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

TOS.No.42 of 2022

S.Jayalakshmi

... Plaintiff

Vs.

1.Srividya Iyer

2.S.Rekha

3.S.Arjun

4.S.Adithya

Minor rep. by his mother and
natural guardian S.Rekha

... Defendants

PRAYER : Testamentary Original Suit filed under Sections 222 and 276 of the Indian Succession Act read with Order XXV Rule 4 of the Original Side Rules, praying to allow the plaintiff to prove the Will in common form and the probate may be granted to the plaintiff having effect limited to the State of Tamil Nadu.

For Plaintiff : Mr.K.S.Navin Balaji

For Defendants : Mr.K.Balamurali for

Mr.Shivakumar for D2 to D4

JUDGMENT

The Testamentary Original Suit has been filed to grant probate in favour of the plaintiff having effect throughout the State of Tamil Nadu.



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2. The 'A' schedule property belonged to Mr.K.Sundaresan, who is husband of the plaintiff and on which, there is no dispute. The said Sundaresan had executed an unregistered Will dated 12.05.2007 in respect of the 'A' schedule property by bequeathing the same in favour of the plaintiff herein for her absolute enjoyment. The said Sundaresan died on 05.03.2020. The plaintiff herself has been appointed as an executor of the Will after the demise of the said Sundaresan. Accordingly, she filed a petition seeking grant of probate in her favour.

3. Originally, the petitioner has filed a petition in O.P.No.796 of 2021 for grant of probate in favour of the petitioner / plaintiff. In view of the caveat filed by R2 to R4, the Original Petition in O.P.No.796 of 2021 has been converted as TOS.No.42 of 2022 and the pleadings received.

4. After the issues were framed, trial commenced. The plaintiff examined herself as P.W.1 and one of the attestor of the Will as P.W.2.



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5. The said facts about the antecedents of the suit property has been spoken by the plaintiff / P.W.1 in chief examination. P.W.1 was not cross examined on these aspects. One of the attestors of the Will by name K.Mohan has been examined as P.W.2. He has stated in his evidence about the execution of the Will by the testator Sundaresan and the role played by him in attesting the same. He also identified the signature of the testator. He was also not cross examined. The said Will dated 12.05.2007 has been marked as Ex.P2.

6. Today when the matter was taken up, the learned counsels for both sides submitted a memo of compromise signed by the plaintiff and the defendants 2 to 4. The first defendant who is the daughter of the plaintiff did not file any caveat. So, she has no objection to grant probate of the Will as prayed by the plaintiff.

7. The second defendant is the wife of the pre-deceased son of the plaintiff and the defendants 3 and 4 are the children of the second defendant. The third defendant who is the elder son of the second



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defendant is said to be in abroad and he has given power of attorney in favour of his mother, the second defendant herein. The fourth defendant is a minor son and hence the second defendant had signed the memo of compromise for herself and as power of attorney for the third defendant and as the mother and natural guardian for the fourth defendant.

8. When the Court insisted for the personal appearance of the parties, the learned counsel for the plaintiff submitted that the plaintiff is aged about 80 years and hence, it is not be possible for her to make her appearance in person. Similarly, the learned counsel for the defendants also expressed certain inconvenience for causing appearance of the defendants 2 to 4. In view of the above said reasons, the parties are permitted to make their appearance through Whatsapp video call.

9. The plaintiff appeared through Whatapp video call made by the learned counsel through his Mobile Number 9840166608 to plaintiff's Mobile Number 9840175026. Similarly, the second defendant appeared through Whatsapp video call made by her learned counsel through his



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mobile number 9840088887 to the second defendant's Mobile Number 9840224975. When they appeared through Whatsapp video call, the plaintiff and the second defendant were identified by their respective counsels and the terms of the compromise were briefed to the parties and they agreed them to be correct and stated that they have signed the memo of compromise by fully understanding the terms. In view of the same, the memo of compromise is recorded.

10. The evidence of P.W.1 and P.W.2 does not suffer from any suspicious circumstances so as to render the Will as a doubtful instrument. Since the plaintiff has proved the Will in the manner known to law, I feel it is appropriate to decree the suit as prayed for and the probate should be issued in favour of the plaintiff.

11. In the result, this Testamentary Original Suit is decreed and the Registry is directed to grant probate in favour of the plaintiff. The memo of compromise is also recorded and it shall form part of the order. No costs.



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WEB COPY 12. Even though the second defendant has filed caveat, she did not contest the matter and conceded to pass decree in view of the compromise entered into between herself and the plaintiff herein. The subject matter of the compromise involves the properties other than the 'A' schedule property for which the Will has been executed. The interest of the defendants 2 to 4 appears to be only in respect of the other items of the suit property viz., schedule B, C and D. So far as the 'A' schedule property for which the Will is executed, the second defendant has also consented to probate the Will in favour of the plaintiff and hence, the Court fee is ordered to be refunded. For disbursement of refund of Court fee, the Registry shall not insist for the personal presence of the plaintiff and however her appearance can be caused through Whatsapp video call as how it has been done today.

Index : Yes/No
Internet : Yes/ No
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