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T.O.S No.40 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

T.O.S No.40 of 2018
(O.P No.937 of 2017)

V.Asokan

... Plaintiff

Vs

1.M.Malliga
2.U.Malar
3.Jamuna Bai

... Defendants

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 5 of the Original Side Rules 1956, for the grant of Letters of Administration in respect of the Last Will and Testament of the deceased Mr.Varadhan. As per order of this court, the Original Petition No.937 of 2017 has been converted into Testamentary Original Suit No.40 of 2018.

For Plaintiff : Mr.R.T.S Kannan

For Defendants : Mr.C.Jayaprakash



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J U D G M E N T

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The Testamentary Original Suit is filed for grant of Letters of Administration in respect of the last Will and Testament of the deceased Varadhan.

2.0. The brief facts of the case of the plaintiff are as follows:

The plaintiff is none other than the son of late Varadhan. The respondents 1 to 3 in O.P No.937 of 2017 namely, V.Radha, V.Kanitha and S.Vimaladevi are the wife, daughters of the said Varadhan. He died on 18.05.1999 leaving behind the said respondents 1 to 3 and the plaintiff as his only legal heirs. The father and mother of the deceased Varadhan namely Late Chockalingam and Late Bakiammal were predeceased him. The said Varadhan got allotted a property at New No.4, Old No.100, 2nd street, Venkatesapuram New Colony, Kannigapuram, Chennai-600 012 by the Tamil Nadu Slum Clearance Board vide allotment order dated 21.09.1983. He died without paying full amount for the property and did not obtain sale deed from the Tamil Nadu Slum Clearance Board. The Testator executed his Last Will and Testament dated 07.08.1997 registered at the office of the Sub Registrar, Purasawalkam, Chennai vide document



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No.124/1997, No executor has been named as executor in the said Will.

The testator had discharged all his debts during his life time except the instalment amount of Rs.50,815/- payable to the Tamil Nadu Slum Clearance Board. But the said due amount was paid by the plaintiff subsequent to the demise of his father testator on various dates. After the full payment made by the plaintiff, the property bequeathed under the Will was transferred in the name of the first respondent by a registered sale deed dated 28.02.2008 vide document No.939/2008 on the file of SRO, Purasawalkam. At the time of said transfer by said sale deed, the first respondent has ignored about the existence of the Will though the first respondent had attested the Will due to misplacement of the original Will at her residence. The original Will was found only on 19.05.2016 while cleaning the belongings of the 1st respondent and her husband (testator) at the time of death anniversary of the plaintiff's father. Hence there is a delay in filing this petition.

2.01. After the demise of the Testator, the Tamil Nadu Slum Clearance Board with respect to the schedule property, has changed the allotment in the name of the 1st respondent by order dated 27.02.2008



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vide No.Se.Mu.No.1063/E2/08 on the file of the Tamil Nadu Slum Clearance Board and also sold the schedule property in favour of the 1st respondent by an absolute sale deed dated 28.02.2008 vide doc.no.939 of 2008. Thereafter, the respondents 1 to 3 had settled the schedule property in favour of the plaintiff vide registered settlement deed Doc No.1100 of 2008 of SRO, Pursaiwalkam, Chennai. The plaintiff had also obtained a building plan permission and put up a superstructure admeasuring to an extent of about 650 sq.ft. in the property bequeathed under the Will, out of his self savings. In the meanwhile, the defendants 1 to 3 have filed a suit for partition in O.S. No.6275 of 2011 on the file of the XVII Asst. City Civil Court, Chennai against the plaintiff and the respondents 1 to 3 in O.P No.937 of 2017 with respect to the properties at Chengalpattu Taluk and the schedule property. The defendants 1 & 2 (respondents 4 & 5 in O.P No.937 of 2017) filed a caveat expressing their objection for granting Letters of Administration. As on date, there is no liability to the testator as the plaintiff has cleared such dues. The Will was attested by Radha (1st respondent in O.P No.937 of 2017) and one E.Chandran, Son of Elumalai, No.37, K.K Nagar, Chennai. The testator and the witnesses affixed their signatures to the Will in the presence of each other and in the presence of



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Mr.B.Namasivayam, B.Sc., B.L., Advocate. In spite of due diligence and efforts taken by the plaintiff, the whereabouts of the 2nd witness namely E.Chandran cannot be located or found and hence the petitioner is able to examine only the 1st witness namely Mrs. Radha. At the time of execution of the Will, the testator was aged about 60 years and was found to be clear, lucid and independent in his thinking and of sound mind and he died at the age of 62 as per Will. The plaintiff has impleaded all the next of kin namely the respondents 1 to 3 in O.P No.937 of 2017 and respondents 4 to 6, whose names were found in the Will.

2.02. The amount of assets which are likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.22,26,500/- and the net amount of the said assets after deducting all the items which the plaintiff is as per law allowed to deduct is only of the value of Rs.21,78,700/-. No application has been made to any District Court or Delegate or to any other High Court for probate of any Will of the said deceased or Letters of Administration with or without Will annexed of her property and credits. The petitioner/plaintiff hereby undertakes to duly administer the property and credits of the said late Varadhan, in any way



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concerning his Will by first paying his debts and then the legacies therein bequeathed so far as her assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of Letters of Administration with the Will annexed to the petitioner herein and also to render to this Court a true account of the said property and credits within one year from the said date. Hence, he prays to grant Letters of Administration.

3. The brief facts of the written statement filed by the 1st defendant which was adopted by the 2nd and 3rd defendants are as follows:

The defendants are legal heirs of late Varadhan. The deceased Varadhan has got married the 3rd defendant and out of their wedlock, the 1st and 2nd defendants were born. The death of the 1st defendant's father was not a natural death. He has committed suicide and died on 18.05.1999. He was drunkard and he was not in a stable mind during the period of his death. Hence the alleged Will lacks bonafideness. Also it is hard to believe that after a period of 19 years, the Will was discovered. There is no such Will executed by the deceased Varadhan. The Will is fabricated one. The plaintiff himself have stated in para 5 of the petition that V.Radha who is



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the first wife of late Varadhan has attested the said Will as one of the witnesses. Hence, it is clear that she has the knowledge of the Will but has kept her finger crossed for all these years and colluded with her son and file this probate of Will proved that the Will is fabricated to usurp the legal right of the defendants. The plaintiff, his father Varadhan and his siblings namely V.Kavitha and S.Vimaladevi are colluding with each other and have created the fabricated Will dated 07.08.1997 with an intention to defeat the defendant's claim in the partition suit. The defendants 1 to 3 as legal heirs of late Varadhan are having equal share in the schedule property.

3.01. After the death of Varadhan, the said Radha obtained a sale deed from the Tamil Nadu Slum Clearance Board in the year 2008 for the property situated at Perambur Village Block No.6, Plot No.197, Door No.4/7, 2nd Street, Venkatesapuram New Colony Scheme, Chennai-600 012 measuring to an extent of 873.5 sq.ft. The 1st defendant has also paid the charges to the Slum Clearance Board, but the sale deed has been executed in favour of V.Radha, which is highly illegal. The 1st defendant has settled the property to the plaintiff under the settlement deed dated



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18.03.2008 registered as document No.1100/2008 on the file of SRO, Purasaiwalkam. Hence the defendants 1 to 3 have filed a partition suit before the XV Assistant City Civil Court, Chennai in O.S No.6275 of 2011. In the said suit, the settlement deed is challenged and also claimed the appropriate share in the said property. After filing the suit for partition, the plaintiff has filed this probate of Will alleging that the plaintiff is the beneficiary of the Will and the father of the defendants have executed the alleged Will. There is no validity for the Will, because the executor of the Will is not in a position to execute any Will and the Will is fabricated one to defeat the defendant's claim. The death of the said Varadhan is mystery, moreover the police complaint was registered and post-mortem was done and all these materials are available with the plaintiff.

3.02. The name of the 2nd defendant is Malar, but in the alleged Will it happens to be "Malarvizhi" which creates doubt in veracity of the said Will. There is also a discrepancy in the schedule of property which is stated in the alleged Will. The house situated at southern side of the schedule property belongs to one Elumalai. But, in the schedule of property to the Will, it is mentioned that the southern side of property belongs to



Balaraman which is utter false. The southern side of the schedule is bounded with the Elumalai House and not Balaraman House. Also the measurement of the property varies. Actually 872 sq.ft. was allotted to the defendants' father, but it is mentioned in the Will that 800 sq.ft. of land was bequeathed to the plaintiff. It is also mentioned in the Will that the allotment was made by Tamil Nadu Housing Board. Actually, the Tamil Nadu Slum Clearance Board only has allotted the property to the defendants' father. Hence, there are lot of error patently appear in the Will and hence, the Will should not be probated and it has to be ignored. Hence the suit is liable to be dismissed with exemplary costs.

4. Heard the learned counsel on either side and perused the records.

5. The plaintiff examined himself as P.W.2 and he had narrated the averments made in the petition stating that the plaintiff has filed the main original petition for the grant of Letters of Administration in his favour in respect of the Last Will and Testament executed by the testator on 07.08.1997. Ex.P1 is the original Will dated 07.08.1997 executed by the deceased Varadhan. Ex.P2 is the affidavit of V.Radha, who is attesting



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witness of the Will. Ex.P3 is the photocopy of the allotment order issued by the Tamil Nadu Slum Clearance Board in favour of late Varadhan. Ex.P4 is the death certificate of the deceased of Varadhan and the same has been filed to prove that the deceased died on 18.05.1999. Ex.P5 is the legal heir certificate. Ex.P6 series (7 nos.) is the bills for payments and the same has been filed to prove that the plaintiff has paid the dues to the Tamil Nadu Slum Clearance Board. Ex.P8 is the photocopy of the proceedings of the Secretary, Tamil Nadu Slum Clearance Board transferring the allotment in favour of V.Radha, who is the wife of the deceased Varadhan. Ex.P9 is the photocopy of the settlement deed executed by the mother and sisters of the plaintiff in favour of him. Ex.P10 is the consent affidavit separately given by the 3rd defendant namely Jamuna Bai for grant of Letters of Administration in favour of the plaintiff.

6. One of the attestors of the Will dated 07.08.1997 viz., V.Radha was examined as P.W.1. In her evidence, P.W.1 has stated that the testator, who is her husband executed his last Will and Testament on 07.08.1997 in her presence and in the presence of one Chandran and she subscribed his signature as first attesting witness. While executing the



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Will, the testator was in a sound and disposing state of mind and in her presence, the attesting witnesses subscribed their signature in the Will.

Ex.P.2 is the affidavit filed by P.W.1 in this regard. The evidence of P.W.1 has not only proved the execution, but also attestation of the Will.

7. On the side of the defendants, the 1st defendant was examined as DW1 and the 2nd defendant was examined as DW2. During the cross examination, both the defendants have stated that they have no objection to decree the suit. Ex.D2 and Ex.D3 are the consent affidavits separately given by M.Malliga (1st defendant) and U.Malar (2nd defendant), for grant of Letters of Administration in favour of the plaintiff. The 3rd defendant namely Jamunabai had also given consent affidavit in favour of the plaintiff.

8. Considering the fact that the evidence of PW.1 and PW2 and the documents filed on behalf of the plaintiff are not only proved the execution, but also the attestation of the Will and also taking note of the fact that the defendants have also given consent affidavit for grant of Letters of Administration, this Court is of the view that the plaintiff is entitled for



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the issuance of Letters of Administration in his favour.

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9. Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in respect of the Will dated 07.08.1997 in favour of the plaintiff. The plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The plaintiff is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The plaintiff is further directed to render true and correct accounts once in a year. Considering the relationship between the parties, there shall be no order as to costs.

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Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1. - V.Radha (DE BENE ESSE)

P.W.2 - V.Ashokan



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Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	07.08.1997	Original Will executed by the deceased Varadhan.
2.	P-2	...	Affidavit of V.Radha Attesting witness.
3.	P-3		Photocopy of allotment order issued by TNSCB in favour of late C.Varadhan
4.	P-4	...	Death certificate of C.Varadhan
5.	P-5	09.12.2005	Legal Heir certificate
6.	P-6 series		Bills for payments (7 Nos.)
7.	P-7	27.02.2008	Photocopy of proceedings of Secretary, Tamil Nadu SlumClearance Board
8.	P-8	28.02.2008	Photocopy of the sale deed
9.	P-9	18.03.2008	Photocopy of the settlement deed
10.	P-10	...	Consent affidavit of Jamuna Bai

Witnesses examined on the side of the defendants.

D.W.1 - Mrs.M.Malliga

D.W.2 - Mrs.U.Malar



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Documents produced on the side of the defendants:

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S.No.	Exhibits	Date	Description
1.	D-1	...	Photograph
2.	D-2	...	Consent Affidavit of the 1st defendant namely M.Malliga
3.	D-3	...	Consent Affidavit of the 2nd defendant namely U.Malar

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