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TOS. No.32 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.32 of 2019

(OP.No.78 of 2019

1. Hamsavalli
2. L. Devika Rani
3.D. Chandrasekaran
4. C. Dinesh Kumar
5. C. Thara ...Plaintiffs/petitioners
(L.Rs of the deceased 1st plaintiff are brought on record
as P3 to P5 as per order dated 27.09.2022 in A.No.4225/2022)
.Vs.

1. L. Sridhar
2. Santa Kumar ... Defendants/Caveators

Petition filed under Sections 222 and 276 of the Indian Succession Act, XXXIX of 1925 for grant of probate.

For Plaintiff : Mr.P.Saravanan

For Defendants : D1 set exparte on 30.11.2022
No appearance for D2

J U D G M E N T

The plaintiff has come up with the above suit praying for grant of probate.



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2. The brief facts of the plaint are as follows:

(i) The petitioner's father Mr.M.Loganatham Chettiar who expired on 23.11.1997 and the writing marked with letter 'A' is the last Will testament of the deceased. The deceased executed his last WILL and Testament and registered as Doc. No.13 of 1983 in Book 3 dated 18.02.1983 registered on the file of Sub-Registrar, Kodambakkam, had bequeathed the property to petitioners and only after his life and his wife's life time, the property should pass on to the petitioners herein, absolutely and without any restriction. He further submits that the petitioner's mother also died on 26.05.2018. It is further stated that the father has executed last registered Will dated 17.02.1983 vide Doc.No.13 of 1983 SRO, Kodambakkam and has purchased a plot of land in the name of his son L. Sridhar (petitioner's first brother) and land and construction bearing Plot No.129, Pammal Village, presently Door No.18, Muthusamy Street, Muthamiz Nagar, Pammal, Anna Nagar, Chennai 600 075 within the Sub Registrar of Pallavaram. It is further stated that he settled the property land and construction by a settlement



deed dated 21.01.1983 in favour of his third son M.L.Hariharan, petitioner's third brother herein. Subsequently he has taken possession absolutely by him only.

3. It is further stated that the said property is his self acquired property and no one has any right over the same and further stating that after his life time, his wife Vaduvambal, shall be entitled to enjoy the said property to receive rents and profits and also clearly stating that she will have no right to alienate the said property, after his life time and after the life time of his wife, his daughters C. Hamsavalli and L. Devikarani shall be entitled to the said property absolutely in equal shares with all powers of alienations. If his wife pre-deceases him, the petitioners after his life time, shall take the property in equal shares. The abovesaid entire fact has been mentioned in un-registered agreement dated 17.02.1983 and all of them have been signed in this agreement.

4. The petitioners would submit that Mr.Raji Chettiyar and S.Nambiraan who has signed in the above said Will have already been



expired. A.Dhakshinamurthy, who was the family friend of the witnesses, also can identify the signature of the witnesses.

5. The petitioners would submit that the amount of the assets which are likely to come to the petitioners' hand does not exceed in the aggregate sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs only) and the net amount of the said assets. After deducting all items which the petitioner is by way allowed to deduct is of the value of Rs.1,20,00,000/-/

6. He further submitted that the petitioners undertake to duly administer the property and credits of the said deceased and in any way concerning his Will by paying first his 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 name within 6 months from the grant of probate of Will to them and also to render to this court true accounts of the said property and credits within one year from the said date.



7. On 30.11.2022, there was no representation on the side of the first defendant and he was called absent and hence set exparte. Today, there is no representation for the second defendant.

8. In this case, the consent affidavit filed by the second defendant was marked as Ex.P6.

9. On the side of the plaintiff, the third plaintiff was examined as PW1, the second plaintiff was examined as PW2 and PW3 and PW4 were also examined. Exs.P1 to P6 were marked.

10. Heard the learned counsel for the plaintiffs.

11. The learned counsel for the plaintiffs has submitted that M. Loganatham Chettiar has executed a Will in favour of the plaintiffs 1 and 2. Raji Chettiar and Nambiraan attested the Will. Since those two attesting witnesses died, A.Dhakshinamoorthy and V.Lakshmi Narayanan who were family friends of M.Loganatham Chettiar, identified the signatures of the attesting witnesses. Therefore, he prays to allow the



12. PW1 has deposed that M.Loganatham Chettiar executed a Will on 17.02.1983 in which it is stated that the property No.9, Padmanabha Pillai Street, Chennai – 24, the daughters C.Hamsavalli and L.Devikarani shall be entitled to the said property absolutely in equal shares with all powers of alienations. It is further deposed that Raji Chettiyar and Nambiraan attested the Will. A. Dhakshinamurthy and V. Lakshmi Narayanan, who are the family friends of the witnesses have identified the signatures of the attesting witnesses. PW2 also deposed the same.

13. To prove the contention of the plaintiff, PW1 to PW4 were examined and Exs.P1 to P6 were marked. The second defendant has given consent. The first defendant was set ex parte. Perused the contents of all the documents available on record. A perusal of oral and documentary evidences and deposition of PW1 to PW4 proves the execution of the Will. Therefore, this court is inclined to allow this suit.



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14. In the result, the suit for grant of probate of the said Will is decreed as prayed for. The Probate shall be issued in favour of the plaintiffs in respect of the Will executed by the deceased M. Loganatham Chettiar. No costs.

15. The Plaintiffs are directed to render true and correct accounts once in a year.

25.09.2023

Index : No
Internet : Yes
Speaking order/ Non-speaking order

gv

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

1. P.W.1 – Mr.D.Chandrasekaran
2. PW2 - Mrs.L. Devika Rani
3. PW3 - Mr.A.Dhakshinamurthy
4. PW4 - Mr.V . Lakshmi Narayanan



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gv

2. List of Exhibits Marked on the side of the Plaintiff:-
1. Ex.P1 is the Original Registered Will bearing No.13/1983 dated 18.02.1983
 2. Ex.P2 is the original death certificate of Late M.Loganatham Chettiar
 3. Ex.P3 is the the original death certificate of Late Mrs.L.Vaduvambal
 4. Ex.P4 is the copy of the property document (sale deed) dated 01.12.1958
 5. Ex.P5 is the un-registered agreement dated 17.02.1983
 6. Ex.P6 is the original Legal Heirship certificate of Late M.Loganatham Chettiar.
3. Two documents viz., notice dated 14.07.2018 issued by the defendants through their counsel to the plaintiffs along with acknowledgment cards & returned cover – photocopy and
- b) reply dated 23.07.2018 issued by the counsel for plaintiffs to the counsel for the defendants- photocopy were filed on the side of the defendants.

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