



T.O.S.No.5 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.5 of 2003

(O.P No.765 of 2002)

D.Radhakrishnan

...Petitioner/Plaintiff

..Vs.

B.Jagadeeswari

...Caveator/Defendant

Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration in respect of the last Will and Testament of the deceased E.L.Balakrishnan. Against this petition, a Caveat was filed on 21.01.2002 by the Caveator and the supporting affidavit was filed on 21.01.2003. As per order of this Court, the Original Petition No.765 of 2002 was converted into Testamentary Original Suit No.5 of 2003.



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For Plaintiff : Mr.L.P.Mallikarjun
for M/s.V. Srimathi

For Defendant : Set *ex parte*

JUDGMENT

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

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

The petitioner is the son of the deceased E.L.Balakrishnan. The respondent is the wife of the deceased Testator E.L.Balakrishnan and the mother of the petitioner. The deceased E.L.Balakrishnan. is the son of E.Lakshmipathy Naidu, who died on 04.12.1999. The deceased possessed the property within the jurisdiction of this Court. The last Will and testament of the said E.L.Balakrishnan marked with Letter A was duly executed by him on 11.02.1999 in the presence of the witnesses. The petitioner is the beneficiary of the immovable properties set forth under the said Will. The



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amount of the assets which is likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.4,00,000/- and the net amount of the said assets, after deducting all items which the petitioner/plaintiff is as per law allowed to deduct is only of the value of Rs.3,49,576/-. The petitioner has impleaded all the next of kin or other persons interested as party/respondent. There is no next of kin or other person interested, to be impleaded. The parents of the testator had also predeceased him. Further, no application has been made to any District Court or delegate or to any other High Court for the probate of any Will of the said deceased or Letters of Administration with or without the Will annexed to his property and credits.

3.The petitioner/plaintiff hereby undertakes to duly administer the property and credits of the said late E.L.Balakrishnan, 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 same in this regard within six months from the date of Letters of Administration to the petitioner and also to render to



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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 with the Will.

4.Heard the learned counsel appearing for the plaintiff and perused the records.

5.The plaintiff examined himself as P.W.2 and one Mrs.C.Bharathi as PW1 and Mrs.M.Padmavathy as PW3 and marked Ex.P.1 to Ex.P.6. PW1 had narrated the averments made in the affidavit stating that she is the daughter of Mr.Selvaraj, who was one of the witness to the Will and she is present to identify the signature of her father. Ex.P1 is the cancelled cheque leaf that has been issued by the Tamil Nadu State Apex co-operative Bank Limited, bearing No."191990"6000910341 in the name of her father Mr.Selvaraj. The signature affixed on the cancelled cheque leaf is that of her father. PW2 had narrated the averments made in the affidavit stating that the plaintiff has filed the main Original Petition for the grant of Letters of Administration in respect of the last Will and Testament of the deceased



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E.L.Balakrishnan. Ex.P.2 is the Legalheirship Certificate of

E.L.Balakrishnan, who is the father of the plaintiff, dated 22.02.2000 which

shows that the plaintiff and the defendant are the legal heirs of the deceased

E.L.Balakrishnan. Ex.P.3 is the affidavit of N.Mahalingam dated

18.03.2002. Ex.P.4 is the Death Certificate of E.L.Balakrshnan and the

same has been filed to prove that the deceased died on 30.12.1999. Ex.P.5

is the affidavit of J.Selvaraj dated 18.02.2002. Ex.P.6 is the Will dated

11.02.1999 executed by E.L.Balakrishnan. PW3 had narrated the

avermments made in the affidavit stating that she is the daughter of

Mr.N.Mahalingam, who was one of the witness to the Will and she is

present to identify the signature of her father.

6.Pending the present suit, one of the witness of the Will dated

11.02.1999, viz., Selvaraj died and to prove the same, his daughter, namely,

C.Bharathi filed an affidavit in this regard. To prove the signature of the

said Selvaraj in the Will, his daughter was examined as P.W.1. In her

evidence, she identified the signature of the said Selvaraj in the said Will and

stated that the deceased Selvaraj subscribed his signature as witness.



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Another witness of the Will dated 11.02.1999, viz., Mr.N.Mahalingam died and to prove the same, his daughter, namely, Mrs.Padmavathy filed an affidavit in this regard. To prove the signature of the said Mahalingam in the Will, his daughter was examined as P.W.3. In her evidence, she identified the signature of the said Mahalingam in the said Will and stated that the deceased N.Mahalingam subscribed his signature as witness.

7.Considering the fact that the evidence of PW.1 to PW3 and the documents filed on behalf of the plaintiff remain unchallenged and taking note of the fact that there is no rebuttal evidence against the case of the plaintiff, this Court is of the view that the plaintiff has proved his case and entitled for the issuance of Letters of Administration in his favour.

8.Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration 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)



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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.

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

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.C.Bharathi
P.W.2 - Mr.B.Radhakrishnan
P.W.3 - Ms.M.Padmavathy

Exhibits produced on the side of the plaintiff:

S.N o.	Exhibits	Date	Description
1.	P-1	-	Original canceled cheque leaf, issued by the Tamil Nadu State Apex Co-operative Bank Limited bearing No."191990"6000910341
2.	P-2	22.02.2000	Legalheirship Certificate of E.L.Balakrishnan



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S.N	Exhibits	Date	Description
0.			
3.	P-3	18.03.2002	Affidavit of N.Mahalingam
4.	P-4	30.12.1999	Death Certificate of E.L.Balakrishnan
5.	P-5	18.02.2002	Affidavit of Selvaraj
6.	P-6	11.02.1999	Will executed by E.L.Balakrishnan

Witnesses & documents on the side of the defendant:

Nil.

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Note to office:

Issue order copy on 03.05.2024



WEB COPY



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Issue on 03.05.2024

A.A.NAKKIRAN,J.

mps

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