



T.O.S.No.4 of 2007

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2024

CORAM:

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

T.O.S.No.4 of 2007

(O.P No.698 of 2006)

M.Chidambaram

...Plaintiff

..Vs.

C.Kalai Arasi

...Defendant

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in respect of the last Will and Testament of the deceased C.M. Rajan. Against this petition, a Caveat and supporting affidavit was filed by the Caveator. As per order of this Court, the Original Petition No.698 of 2006 was converted into Testamentary Original Suit No.4 of 2003.

For Plaintiff : Mr.V.Selvaraj

For Defendants : R.Ezhilarasan



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JUDGMENT

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased C.M. Rajan.

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

The petitioner/plaintiff is the son of late C.M.Rajan and Sarasa Rajan. The said C.M.Rajan died on 04.01.2004 leaving behind his wife Sarasa Rajan, his son Chidambaram, the petitioner herein, and his daughters Lakshmi and C.Kalai Arasi. Except the respondent, all the other legal heirs have given consent for grant of Letter of Administration in favour of the petitioner. The said C.M.Rajan had executed a Will and Testament on 21.08.1991. The parents of the deceased predeceased him. The plaintiff is the executor named in the Will. Hence, the petitioner/plaintiff, in his capacity as the executor of the said Will, has filed the main Original Petition for the grant of probate. The mother of the petitioner was initially in possession and enjoyment of the property as a life estate holder. After her



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death, the petitioner/plaintiff is entitled to succeed to the property. The petitioner is appointed as the Executor of the Will. The amount of assets which is likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.20,00,000/- and the net amount of the said assets after deducting all items which the plaintiff is as per Law allowed to deduct is only of the value of Rs.20,00,000/-. 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 C.M.Rajan, 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 Court within six months from the date of grant 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 probate of the Will.



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3.The learned counsel for the defendant has no objection for the grant of probate.

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

5.The plaintiff examined himself as P.W.1 and he had narrated the averments made in the petition stating that the plaintiff has filed the main Original Petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testator on 21.08.1991. Ex.P1 is the original Will dated 21.08.1991 executed by C.M.Rajan in favour of the petitioner/plaintiff. Ex.P.2 is the original Death Certificate of C.M.Rajan dated 06.01.2004 and the same has been filed to prove that C.M.Rajan died on 04.01.2004. Ex.P3 is the certified copy of the Gift Deed dated 31.08.1978 registered as Document No.1716 executed by the father of the petitioner/plaintiff C.M.Rajan in favour of the defendant. Ex.P4 is the certified copy of the Gift Deed dated 31.08.1978 registered as Document



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No.1714 executed by the maternal grandmother and others in favour of the defendant. Ex.P.5 is the certified copy of the Gift Deed dated 31.08.1978 registered as Document No.1717 executed by the father of the petitioner C.M.Rajan in favour of the defendant's husband Nagar Pillai. Ex.P.6 is the certified copy of the Gift Deed dated 22.08.2002 registered as Document No.1918 executed by the mother of the petitioner late Sarasa Rajan in favour of Ramya Thangam, daughter of the defendant. Ex.P.7 is the original Partition Deed dated 25.01.1991 registered as Document No.318 of 1991. Ex.P.8 is the Consent affidavit of Sarasa Rajan dated 09.12.2004. Ex.P.9 is the consent affidavit of C.Lakshmi dated 09.12.2004. The counsel for the defendant has objected that the deponent is no more and corrections are there. In the clean copy, there was no signature of the deponent. In original affidavit, all the averments were corrected and these corrections are within the knowledge of deponent or not. Ex.P.10 is the consent affidavit of E.Rajeswari dated 12.06.2023. Ex.P.11 is the consent affidavit of E.Vani dated 12.06.2023. Ex.P.12 is the consent affidavit of G.E.M.Pillai dated 12.06.2023. Ex.P.13 is the signature of the second attesting witness in Ex.P.1 - Will. Ex.P.14 is the signature of the first attesting witness found in



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Ex.P.1 - Will.

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6.One of the attestors of the Will dated 21.08.1991 viz., Mr.Subramanian was examined as P.W.2. In his evidence, P.W.2 has stated that the testator executed his last Will and Testament on 21.08.1991 in his presence and in the presence of one A.Sundara Subramoniam and they subscribed their respective names and signatures at the foot of the testamentary paper as witnesses thereto. While executing the Will, the testator was in a sound and disposing state of mind and in his presence, the attesting witnesses subscribed their signature in the Will. Ex.P.13 is the signature of the second attesting witness in Ex.P.1. The evidence of P.W.2 has not only proved the execution, but also attestation of the Will. Ex.P.14 is the signature found in Ex.P.1 of the first attesting witness A.Sundara Subramoniam who filed proof affidavit dated 17.04.2023.

7. In view of the above facts, I am of the view that the plaintiff has proved the execution and attestation of the Will. Hence, the plaintiff is entitled for the issuance of probate in favour of him.



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8. In the result:

(i) This Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate in respect of the Will dated 21.08.1991.

(ii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.Chidambaram

P.W.2 - Mr.M.Subramanian

P.W.3 - Mr.Sundara Subramonium

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	21.08.1991	Original Will executed by



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S.No.	Exhibits	Date	Description
			C.M.Rajan in favour of the petitioner/plaintiff
2.	P-2	06.01.2004	Original Death Certificate of C.M.Rajan
3.	P-3	31.08.1978	Certified copy of the Gift Deed registered as Document No.1716 executed by the father of the petitioner/plaintiff C.M.Rajan in favour of the defendant
4.	P-4	31.08.1978	Certified copy of the Gift Deed registered as Document No.1714 executed by the maternal grandmother and others in favour of the defendant.
5.	P-5	31.08.1978	Certified copy of the Gift Deed registered as Document No.1717 executed by the father of the petitioner C.M.Rajan in favour of the defendant's husband Nagar Pillai.
6.	P-6	22.08.2002	Certified copy of the Gift Deed registered as Document No.1918 executed by the mother of the petitioner late Sarasa Rajan in favour of Ramya Thangam, daughter of the defendant
7.	P-7	25.01.1991	Original Partition Deed registered as Document No.318 of 1991
8.	P-8	09.12.2004	Consent affidavit of Sarasa Rajan
9.	P-9	09.12.2004	Consent affidavit of C.Lakshmi
10.	P-10	12.06.2023	Consent affidavit of E.Rajeswari



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S.No.	Exhibits	Date	Description
11.	P-11	12.06.2023	Consent affidavit of E.Vani
12.	P-12	12.06.2023	Consent affidavit of G.E.M.Pillai
13.	P-13	-	Signature of the second attesting witness in Ex.P.1 - Will.
14.	P-14	-	Signature of the first attesting witness found in Ex.P.1 - Will.

Witnesses & documents on the side of the defendants:

Nil.

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A.A.NAKKIRAN, J.

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