



T.O.S.No.39 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.02.2024

CORAM:

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

T.O.S.No.39 of 2004

(O.P No.360 of 2001)

Y.Doraisami

.. Plaintiff

..Vs.

1.P.Sarojadevi @ P.Hemalatha(died)
2.K.Lalithamma
3.V.Krishnaveni Amma
4.R.Padmavathi
5.Jayalakshmi
6.Manjula
7.Sumalatha

.. Defendants

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 4 of O.S Rules for grant of probate. Against this petition, a Caveat and Objection affidavit was filed by the Caveator. As per order of this Court, the Original Petition No.360 of 2001 was converted into Testamentary Original Suit No.39 of 2004.



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For Plaintiff : Mr.P.Dinesh Kumar

For Defendants 2 to 7 : Set Exparte

J U D G M E N T

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased Y.Hazarathiah.

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

The petitioner/plaintiff is none other than the son of the testator Hazarathiah. The respondent/defendant is the sister of the plaintiff and the daughter of the testator. The said Hazarathiah died on 04.06.2000 leaving the petitioner being his only son and left behind his wife Kamalammal and his five daughters Viz., B.Subburathinamma, K.Lalithamma, Krishnaveni Amma, R.Padmavathi and Y.Saroja Devi as the only legal heirs. The deceased Hazarathiah had executed a Will dated 30.09.1997 vide Doc.no.60 of 1997 in the office of Sub Registrar, Sowcarpet, Madras, in the presence of the witnesses whose names appear at the foot thereof. The petitioner/plaintiff is the executor named in the said Will. The amount of assets which is likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a



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sum of Rs.43,46,260/- 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.43,46,260/-. 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 with or Letters of Administration with or without the Will annexed of his properties and credits. The plaintiff has impleaded all the next of kin or other persons interested as party/respondents. There is no next of kin or other persons interested to be impleaded. The plaintiff hereby undertakes to duly administer the property and credits of the said late Mr.Y.Hazarathiah deceased, in any way concerning his Will by paying first her 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 6 months from the date of grant of probate to the petitioner 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 thereof to have effect throughout the whole of State of Tamil Nadu.

3. The brief facts of the written statement filed by the sole defendant are as follows:



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All the allegations contained in the plaint are denied as false except those that are specifically admitted herein. The allegation that late Y.Hazarathiah had executed a Will on 30.09.1997 is denied. From 1992 onwards, Hazarathiah was affected by some kidney disease and he was not in a position to cogently think and speak and he was in dire need of assistance even to attend his deity chores. He died intestate on 04.06.2000 leaving behind the defendant and other legal heirs in lurch. After his demise, the defendant along with other family members sought for partition of the properties left by Y.Hazarathiah. In the meanwhile, the defendant was shocked and surprised to receive court summons regarding this petition for grant of probate based on the alleged Will said to have been executed by late Y.Hazarathiah dated 30.09.1997. She specifically denies the genuineness, validity, execution, attestation of the alleged Will. Her attempts to settle the matter amicably through mediation of family friends were thwarted by the plaintiff herein. Hence she issued legal notice dated 08.01.2033 to the plaintiff in the present testamentary original suit. The plaintiff replied to the same by reply notice dated 17.01.2003 with some vague statements. Hence the defendant has filed a suit for partition and for



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accounts in C.S No.400 of 2004 before this Court.

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3.01. The properties bearing Old Door No.75, New No.155, Govindappa Naicken Street, Chennai-1 and Old No.22, New No.3, Arumugam Street, Chennai-79 were the absolute properties of late Y.Hazarathiah, the father of this defendant. Late Hazarathiah had purchased the property situated at Govindappa Naicken Street from one Mr.C.Devichand and others in the year 1959 duly registered as Doc.No.349/1959 in SRO, Sowcarpet, Chennai. He had also purchased the property situated at Arumugam Street from P.Narayana Babu Naidu and others in the year 1973 in favour of the plaintiff for the welfare of the joint family. The said Hazarathiah is also running a lodging house at Govindappa Naicken Street under the name and style of "NELLORE LODGE". Apart from the lodge, some portions of the said building was let out to the tenants for rents. Because of continuing ill health of late Hazarathiah, the plaintiff being the only son, slowly gained the control of the family business from 1992 and took the management of the business and the income from the business and property. During this period, the plaintiff has secretly siphoned off a sizable portion of income. After ill health of the father, serious



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difference of opinion between the family members especially between the plaintiff and late Hazarathiah was arisen. Late Hazarathiah was fell seriously ill and admitted in Vijaya Hospital. Hence, in no occasion he executed any Will or revealed any alleged Will during his life time. Taking advantage of his position, the plaintiff has taken signatures of the deceased father in several papers and taken him for a ride, when he was of not found mind. The alleged Will is not valid in law. The persons said to have signed as witnesses in the alleged Will are loyal persons of the plaintiff herein. Hence the suit is liable to be dismissed with exemplary costs.

4. Based on the aforesaid pleadings, the following issues are framed for consideration:

1. Whether the Will dated 30.09.1997 alleged to have been executed by Y.Hazarathiah is a true and valid one?
2. Whether the subject Will dated 30.09.1997 is the last Will of Y.Hazarathiah?
3. To what relief, the parties are entitled?



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5. After framing of issues, on the side of the plaintiff, the plaintiff and the attesting witnesses were examined as PW1 to PW3 and Ex.P1 to P36 were marked. On the side of the defendant, the defendant P.Saroja Devi was examined as DW1 and Ex.D1 to D12 were marked. After completion of both side evidence, when the present suit was posted for arguments, the sole defendant died and hence, her legal heirs were impleaded as defendants 2 to 7. Though summons were served on the defendants 2 to 7 neither the defendants 2 to 7 nor their counsel had chosen to appear before this Court. Hence, the defendants were set exparte on 31.01.2024.

6. Heard the learned counsel for the plaintiff and perused the records.

7. 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 30.09.1997. Ex.P1 is the original Will executed by the deceased Mr.Y.Hazarathiah. Ex.P2 is the death certificate of Y.Hazarathia. Ex.P2 shows that the testator died on



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04.06.2000. His wife Kamalammal also died on 04.03.2011. Ex.P3 is the affidavit of assets stating that the value of assets is Rs.43,46,260/-. The deed of original partnership deed entered into by the deceased dated 05.04.1967 in respect of Nellore Lodge business is Ex.P4. The deed of partnership dated 01.04.1973 between the deceased and other partners is Ex.P5. Ex.P6 is the original partnership deed dated 01.04.1992. Ex.P7 is the original partnership deed dated 01.04.1993. Ex.P8 is the xerox copy of partnership deed dated 06.06.2000. Ex.P9 is the certified copy of the sale deed dated 24.01.1973 in favour of the plaintiff. The deceased was attending to the business and submitting assessment to Income Tax Officer and the Income Tax assessment orders from the year 1973 to 2003 are marked as Ex.P9 to Ex.P35.

8. One of the attestors of the Will dated 30.09.1997 viz., B.Vasanthi was examined as P.W.3 and the identifying witness namely C.P.Balu was examined as P.W.2. Their evidence clearly establish the fact that the testator was in a sound and disposing state of mind at the time of executing the Will and both the attesting witnesses have seen the testator signing the document



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and the testator also seen the attesting witnesses subscribing their signature in the Will. Ex.D.2 is the affidavit filed by P.W.3 in this regard. The evidence of P.W.2 and P.W.3 has not only proved the execution, but also attestation of the Will and there is no other materials to suspect the Will.

9. From the averments made in the petition and the deposition of P.W.1 to P.W.3 supported by the documents, it is clear that the plaintiff has proved his claim and there is no contra evidence. Hence, I am satisfied that the plaintiff is entitled for the issuance of probate in favour of him.

10. In the result, this Testamentary Original Suit is decreed as prayed for with cost and the Registry is directed to issue probate in respect of the Will dated 30.09.1997.

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

P.W.1. - Y.Doraisamy



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P.W.2 - C.P.Balu
P.W.3 - B.Vasanthi

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Documents marked on the side of the plaintiff:

Ex.P1 30.09.1997	Original Will executed by the deceased Mr.Y.Hazarathiah.
Ex.P2 04.06.2000	Original death certificate of Y.Hazarathia
Ex.P3	Original Affidavit of assets
Ex.P4. 05.04.1967	Deed of original partnership deed entered into by the deceased in respect of Nellore Lodge business
Ex.P5 01.04.1973	Deed of partnership entered into between the deceased and other partners.
Ex.P6 01.04.1992	Original partnership deed
Ex.P7 01.04.1993	Original partnership deed
Ex.P8 06.06.2000	Xerox copy of partnership deed
Ex.P9 24.01.1973	Certified copy of the sale deed in favour of the plaintiff.
Ex.P10 25.02.1969	Income Tax Assessment order
Ex.P11 25.08.1972	Income Tax Assessment order
Ex.P12 30.07.1973	Income Tax Assessment order
Ex.P13 11.09.1974	Income Tax Assessment order
Ex.P14 24.09.1975	Income Tax Assessment order
Ex.P15 08.07.1977	Income Tax Assessment order



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Ex.P16 11.01.1980	Income Tax Assessment order
Ex.P17 11.01.1980	Income Tax Assessment order
Ex.P18 18.08.1982	Income Tax Assessment order
Ex.P19 18.08.1992	Income Tax Assessment order
Ex.P20 18.08.1982	Income Tax Assessment order
Ex.P21 12.03.1984	Income Tax Assessment order
Ex.P22 03.09.1985	Income Tax Assessment order
Ex.P23 08.09.1985	Income Tax Assessment order
Ex.P24 10.10.1986	Income Tax Assessment order
Ex.P25 19.10.1987	Income Tax Assessment order
Ex.P26 13.11.1992	Income Tax Assessment order
Ex.P27 11.09.1992	Income Tax Assessment order
Ex.P28 22.03.1993	Income Tax Assessment order
Ex.P29 22.03.1993	Income Tax Assessment order
Ex.P30 18.08.1993	Income Tax Assessment order
Ex.P31 07.02.1996	Income Tax Assessment order
Ex.P32 29.05.1997	Income Tax Assessment order
Ex.P33 29.05.1997	Income Tax Assessment order
Ex.P34 25.02.2003	Income Tax Assessment order
Ex.P35 03.03.2003	Income Tax Assessment order
Ex.P36 09.03.2017	Notice to produce

Witnesses examined on the side of the defendant

D.W.1 - P.Saroja Devi @ P.Hemalatha

Documents marked on the side of the defendant:



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Ex.D1 30.01.1987 Certified copy of the Will

Ex.D2 10.03.2001 Original Affidavit of attesting witness - B.Vasanthi

Ex.D3 10.08.2009 Copy of affidavit and Judges summons in
O.A.No.4377 of 2009.

Ex.D4 2006-2015 Income Particulars from the property at No.75,
Govindappa Naicken Street

Ex.D5 True copy of common counter in O.A No.1011 of 2010
& 5297 of 2010

Ex.D6 ... Copy of affidavit and Judges summons in
O.A No.5297 of 2010.

Ex.D7 25.07.2011 Original letter

Ex.D8 09.11.2011 Counter in Contempt Petition No.1357 of 2011

Ex.D9 1996-2000 Certified copy of the medical records

Ex.D10 01.06.2000 Medical Reports

Ex.D11 30.01.1987 Photocopy of Will and Testament

Ex.D12 30.01.1997 Photocopy of Will and Testament

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