



TOS.No.12 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.10.2023

PRONOUNCED ON : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.12 of 2023
(O.P No.24 of 2022)

Dr.G.Krishnamurthy

... Plaintiff

..Vs..

Kamala

... Defendant

Prayer : Original Petition has been filed under Sections 218 and 278 of the Indian Succession Act XXXIX of 1925 read with order 25 Rule 5 of the Original Side Rules for grant of Letters of Administration in respect of the last Will and Testament of the deceased Andalammal. Against this petition, a Caveat and Objection affidavit was filed by the Caveator. As per order of this Court, the Original Petition No.24 of 2022 was converted into Testamentary Original Suit No.12 of 2023.

For Plaintiffs : Dr.G.Krishnamurthy
Party-in-person

For Defendant : Set Exparte

J U D G M E N T

1. This Testamentary Original Suit has been filed to grant Letters of Administration to the property and credits of the deceased G.Andalammal in favour of the petitioner/plaintiff namely Dr.G.Krishnamurthy, having effect throughout the whole of the State of Tamil Nadu and limited to the property mentioned in the schedule.



2. The case of the Plaintiffs, as set out, in the plaint is as follows:-

- a) The deceased Andalammal died intestate on 03.08.2005 leaving behind her surviving legal heirs namely, 1) the plaintiff, Dr.G.KrishnaMurthy 2) defendant, Kamala 3) Dhamayanthi-daughter-in-law, 4) Jamuna-Grand daughter, 5) Geetha- Grand daughter, 6) Dr.R.Palani, Grand son, 7) J.Asok Kumar- Grand son, 8) J.Mohanasundari-grand daughter, 9) Jamuna-daughter-in-law, 10) E.Rajeswari @ Rajalakshmi, daughter-in-law, 11) E.Balaji - grand son, 12) E.Venugopal-grand son, 13) P.Sridhar-grand son, 14) G.P.Renukadevi-grand daughter, 15) Dr.G.P.Gayathri-grand daughter, 16) Kamala-daughter, 17) G.Venkatesvaralu-son, 18) G.Hemanth Kumar-son, 19) G.Hemalatha-daughter, at No.20/34, M.C.M Garden, 3rd Lane, Old Washermenpet, Chennai-600 021, where she was residing. The deceased G.Andalammal died intestate and that due and diligent search has been made for a Will, but none has been found and the petitioner claims administration of her property estate, effects and credit as his. She is absolute owner of the entire property as owner of land and superstructure by title by prescription. The petitioner being son of deceased G.Andalammal who is entitled for 1/9th share of the property of the deceased estate.
- b) The amount of assets, which is likely come into the hands of the Plaintiff does not exceed in the aggregate sum of Rs.50,00,000/- and the net amount of the said assets, after deducing all the items, which the Plaintiff, is by law allowed to deduct, is only of the value of



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Rs.10,00,000/-. The property being house, ground and premises bearing No.20/34, M.C.M. Garden 3rd Street, Old Washermenpet, Chennai-600 021, measuring an extent of 581 sq.ft. with ground plus two floors constructed built up area with terrace, morefully described in the schedule has been in peaceful possession and enjoyment of the petitioner from 1981.

- c) The land was originally belonging to Manali Ramakrishna Mudaliar. He leased out 4 kawnis 19 grounds and 538 sq.ft. to Pannam Govindaswamy Chettiar. The lease was for a period from 01.03.1941 to 27.02.1950. The said land was leased to engage usufructuous to put up superstructure. Therefore, there were nearly about 100 tenants who occupied the land and were residing there permanently. The petitioner/plaintiff's mother G.Andalammal was one among such tenants, by occupying 581 sq.ft. of land and constructed a superstructure and was residing there from 1941. After the life time of lease holder, Pannam Govindaswamy Chettiar, was continued to be leased as holding the tenants, who were residing in the larger extent of the property. The legal heir of Ramakrishnan Mudaliar filed O.S No.6445 of 1972 against the lease holder, their legal heir and the tenants who were occupying the land as tenants and in which 73 defendants in the said suit. The petitioner's mother G.Andalammal was defendant no.39 in the suit and a decree to evict on 29.09.1983 was granted to Dr.M.R.Srinivasan and 3 others. The above said decree dated 29.09.1983 ought to have been



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executed on or before 12 years i.e 29.09.1995. But the same was not executed within the prescribed period under law. As such the petitioner's mother had become the owner of the land and on enjoying the said property for more than 12 years from the date of decree i.e 29.09.1983 and the execution period was expired on 29.09.1995 and her adverse possession for 20 years till 29.09.2015 gave cause of action to the suit for declaration for title by prescription.

- d) The petitioner/plaintiff was working as Central Government Servant and officiating at Nagpur till 10.01.1981 and then he resigned his job and settled at Chennai and started to live with his mother from 11.01.1981. He enrolled as an advocate on 02.12.1981 and right from that date, he is in peaceful possession and enjoyment of the suit schedule mentioned property as a occupant along with his mother. Out of his income from his profession, the petitioner constructed the existing superstructure in the year 1981, after demolishing the very old dilapidated mud house. Subsequently, the petitioner's mother Andalammal died on 03.08.2005. Till the death of his mother, the petitioner was maintaining her because he is administering the property and the petitioner alone had constructed the building out of his income and also ever since the date of death of his mother, the petitioner is in peaceful possession and enjoyment of the property. Earlier, on 02.01.2014, the petitioner has given a representation to authority concerned to issue patta in respect of suit schedule property, but the petitioner did not obtain any result with regard



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to his representation. The petitioner's father late G.D.Govindarajulu died on 09.10.1985. His mother G.Andalammal died on 03.08.2005. The petitioner's parents were blessed with 6 sons and three daughters, namely, 1) G.Ranganathan, retired Chief Accounts Officer, BSNL died on 07.02.2004 at Ahmedabad; the respondents 1 to 4 are the legal heirs of the said Ranganathan, 2) Gajalakshmi, died on 13.08.2002; her husband P.V.Jagadeesan died on 17.08.2008 leaving behind the 5th and 6th respondents, 3) G.Ethirajalu, died on 07.05.2008 leaving behind the respondents 7 to 10, 3) G.Parthasarathy, died on 23.02.2004 leaving behind the respondents 11 to 13, 4) the 14th respondent-Kamala (spinster), 5) 15 respondent G.Venkateswarlu, 6) 16th respondent, G.Hemanth Kumar, 7) 17th respondent G.Hemalatha, and 8) the petitioner G.Krishnamurthy.

- e) In the year 1975, when the Corporation of Chennai issued voter card, there were only 4 voters namely 1. G.D.Govindarajulu, 2.Andalammal, 3.G.Kamala, 4.G.Krishnamurthy. It is clear that the other major sons and daughters were residing elsewhere and not with the petitioner's parents. On completion of his graduation in the year 1974, the petitioner started earning and maintaining the family and the property. He was initially working as clearing and forwarding clerk under G.M.Govias and Sons, Armenian street, Chennai-21 and also conducting private tuition for school children till 1977. Thereafter, he was selected and posted as Office Assistant in the Telegraph Department to the cadre of Group-3.



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All along for 4 years from 1977, being a bachelor the petitioner sent money to his family and also pursued his further studies and completed LLB degree and returned to Chennai from Nagpur, Maharashtra. The petitioner enrolled as an advocate on 02.12.1981 and maintained his family and property. Out of his income, the petitioner demolished the existing highly dilapidated super structure and constructed well concrete building consisting of ground plus 2 floors. He also opened a tea shop for medical expenses and day to day expenses for his mother.

- f) The petitioner filed a petition in W.P No.3666 of 2004 on behalf of his mother against the Chennai Metro Water Supply and Sewerage Board and the same was disposed of on 27.07.2018 without noting that Andalammal died on 03.08.2005. The respondents never objected nor raised any demand against the petitioner because he had properly managed the property. He was regularly paying property tax, metro water charges, electricity charges etc. from 1981 directly. Since there was apprehension of reaching limitation bar to file a suit for declaration to declare the suit schedule land is belonging to the petitioner and the respondents by title by prescription, the petitioner after consulting the respondents filed O.S No.2390 of 2017 before the VIII Assistant City Civil Court, Chennai against the legal heirs of land owners and government officials claiming adverse title of schedule property because the defendants 1 to 4 in O.S No.2390 of 2017 failed to execute the decree dated 29.09.1983 in O.S No.6445 of 1972 on the file of II



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Assistant City Civil Court, Chennai.

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- g) During the pendency of the suit in O.S No.2390 of 2017, as per the direction of the Court, the petitioner impleaded the respondents 1 to 17 as defendants 10 to 26 in the said suit. In the said suit, the learned Judge had given a finding that the petitioner's mother is entitled for declaration of title as owner, but dismissed the suit against the petitioner since the suit was filed by him without any deed executed by his mother in favour of him. The Court did not disclose the adverse possession of this petitioner against other legal heir issues. The petitioner did not want to claim adverse possession against the respondents 1 to 17 and challenge the dismissal of the suit in O.S No.2390 of 2017 by judgement dated 29.01.2020.
- h) The Plaintiff undertakes to duly administer the property and the credits of the said deceased and to make the full and inventory there off and exhibit the same in this Court within 6 months from the grant of letters of administration to him and also to render to this Court a true account of the said property and credits within one year from the said date. Unless, letters of administration is granted in respect of schedule property, it is difficult to maintain the property because the local authorities want legal representative to work out dispute in the schedule property is being taxed with heavy surcharge from 2005. Though the petitioner's mother died on 03.08.2005 there was no compelling necessity to file an application of Letters of Administration within 3 years from the date of



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death of the deceased Andalammal. The petitioner now left without remedy due to judgment dated 29.01.2020 to file this application for Letters of Administration to administer the entire schedule property on behalf of his share and also on behalf of other respondents. No application has been made to any District Court or delegate or to any other High Court for Letters of Administration to his property and credits. Hence, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.

3. Though citation was issued to the sole defendant, she had not entered appearance before this Court and hence, she was set exparte on 07.09.2023.
4. On the side of the Plaintiff, the plaintiff examined himself as PW1 and marked Ex.P1 to Ex.P13.
5. This Court heard the submissions of the learned counsel for the plaintiff.
6. The learned counsel for the Plaintiff has submitted that the mother of the plaintiff namely Andalammal is the absolute owner of the suit schedule property and she died on 03.05.2008 leaving behind the legal heirs including the plaintiff; the plaintiff has been in peaceful possession and enjoyment of the suit schedule property from 1981; the land was originally belongs to one



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Manali Ramakrishna Mudaliar. He leased out 4 kawnis, 19 grounds and 538 sq.ft. to one Pannam Govindaswamy Chettiyar from 01.03.1941 to 27.02.1950 and the said land was leased to engage usufructuous to put up superstructure; there were nearly about 100 tenants who occupied the land and were residing there permanently; the mother of the plaintiff was one among such tenants by occupying 581 sq.ft. of land and constructed a superstructure. He further submitted that the legal heir of Ramakrishnan Mudaliar filed a suit in O.S No.6445 of 1972 against the lease holder namely Pannam Govindaswamy, their legal heirs and the tenants who were occupying the land as tenants including the deceased Andalammal and the suit was decreed on 29.09.1983 to evict the occupants; the said decree ought to have been executed within a period of 12 years i.e. 29.09.1995; but the said decree was not executed within the prescribed period; as such the plaintiff's mother had become the owner of the land and had been in possession of the same for more than 12 years from the date of decree.

7. The learned counsel further submitted that out of his income, the plaintiff demolished the existing highly dilapidated superstructure and constructed a well concrete building, ground floor plus 2 floors and he was regularly paying property tax, metro water charges, electricity charges from 1981. Hence, her adverse possession for 20 years till 29.09.2015 gave cause of action to file the suit for declaration of title by prescription. Hence, the plaintiff filed a suit in O.S.No.2390 of 2017 before the VIII Assistant City Civil Court, Chennai



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against the legal heirs of land owners and government officials claiming adverse title of schedule property and in the said suit, the learned Judge had given a finding that the plaintiff's mother is entitled for declaration of title as owner, but dismissed the suit for the reason that the suit was filed by the plaintiff without producing any deed executed by his mother in favour of him. The Court did not disclose the adverse possession of the petitioner against the other legal heirs. Challenging the dismissal of the said suit, the plaintiff may file an appeal suit after obtaining Letters of Administration to claim declaration. The plaintiff being son of deceased G.Andalammal who is entitled for 1/9th share of the property of the deceased estate. Hence, he prays to grant Letters of Administration in favour of him. The Court did not disclose the adverse possession of the petitioner against the other legal heirs. Challenging the dismissal of the said suit, the plaintiff may file an appeal suit after obtaining Letters of Administration to claim declaration. The plaintiff being son of deceased G.Andalammal who is entitled for 1/9th share of the property of the deceased estate. Hence, he prays to grant Letters of Administration in favour of him.

8. This Court considered the submissions of the learned counsel for the plaintiff and also perused the materials available on record.
9. On perusal of the records, it is seen that in the plaint, it is stated that in the suit filed by the plaintiff in O.S.No.2390/2017 for the relief of declaration, the



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VIII Assistant City Civil Judge, Chennai had given a finding that the plaintiff's mother Andalammal is entitled for declaration of title as owner, but dismissed the suit since it was filed by the plaintiff without filing any deed executed by his mother in favour of him and the Court did not disclose the adverse possession of the plaintiff against other legal heirs. The plaintiff has approached this Court for grant of Letters of Administration. Further, no copy of decrees and judgments in OS.No.2390 of 2017 and OS.No.6415 of 1972 and other relevant documents marked as exhibits on the side of the plaintiff to prove his contention. The contention of the plaintiff that after obtaining Letters of Administration from this Court, he may file an appeal suit against the said judgement, is not acceptable. Hence the prayer sought for by the plaintiff is liable to be rejected.

10.In fine, this Testamentary Original Suit is dismissed. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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List of Witnesses examined on the side of the Plaintiff:-

PW.1 - Dr.G.Krishnamurthy

1. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 07.10.2021 Computer generated copy of the death certificate of Govinda Rajulu Chettiar
2. Ex.P2 07.10.2021 Computer generated copy of the death certificate of Gaja Lakshmi
3. Ex.P3 07.10.2021 Computer generated copy of the death certificate of G.Parthasarathy
4. Ex.P4 10.05.2021 Computer generated copy of the death certificate of Gaja Lakshmi
5. Ex.P5 07.10.2021 Computer generated copy of the death certificate of P.V.Jagadeesan
6. Ex.P6 27.12.2022 Computer generated copy of the e-receipt of water tax and charges.
7. Ex.P7 27.12.2022 Computer generated copy of the property tax receipt
8. Ex.P8 04.03.1983 Photocopy of the house plan obtained by the petitioner.
9. Ex.P9 ... Photocopy of the Aadhar card of the plaintiff.
- 10.Ex.P10 Photocopy of the plaint filed in O.S No.2390 of 2017 filed by the plaintiff.
- 11.Ex.P11 27.07.2018 Photocopy of the order passed in W.P No.3666 of 2004 & WMP No.4332 of 2004.
- 12.Ex.P12 17.03.2021 Office copy of the legal notice sent by the plaintiff to the Senior Accounts Officer, Chennai Metropolitan Water Supply and Sewerage Board and The Area Engineer, (MWS & S Board), MKB Nagar.
13. ... Family tree of the plaintiff.

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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
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