



CORAM:

**A.S.No.48 of 2023**



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## **J U D G M E N T**

For the sake of convenience, parties are referred to herein as per their litigative status before the Trial Court.

2. The unsuccessful plaintiff is the appellant herein.

3(a) The plaintiff filed the suit for declaration to declare the plaintiff is entitled to receive the Fixed Deposit kept by the deceased Xavier Regina Marie with the defendant Bank under the Fixed Deposit for the purpose of distributing the amount to the relatives as per the terms of the Will of the said Xavier Regina Marie dated 09.01.2017 and for further declaration to declare that the plaintiff is entitled to open the Locker No.95 maintained by the deceased Xavier Regina Marie with the defendant Bank and to pass a mandatory injunction directing the defendant Bank to release the Fixed Deposits standing in the name of the deceased Xavier Regina Marie and for a mandatory injunction directing the defendant Bank to permit the plaintiff to open the Bank Locker No.255 maintained in the name of the deceased as per the Will of Xavier Regina Marie.



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3(b) The plaintiff proceeds on the basis that Smt. Xavier Regina Marie

W/o Late Xavier Arockinathan is an account holder in Indian Overseas Bank, Karaikal, the defendant bank herein. The plaintiff is concerned that she is a distant relative of Smt. Xavier Regina Marie. Smt.Xavier Regina Marie was living at No.223, Church Street, Karaikal and died on 04.12.2018 in her home at Karaikal and her death was duly registered at Karaikal Municipality, vide Registration No.2018/01075.

3(c) The plaintiff further submits that the said Xavier Arockianathan who is the husband of Xavier Regina Marie predeceased her even as early as on 08.09.1968 at Karaikal. Smt. Xavier Regina Marie has got three sons for Xavier Arokianathan and the names of the sons are 1. Xavier Alphonse Radjou Julien 2.Xavier Anna Antonie and 3. Xavier Theodore. All the three sons of Xavier Regina Marie died as bachelors and unmarried without leaving any heirs. The 2<sup>nd</sup> son Xavier Anna Antonie died at France on 28.05.1998. The 1<sup>st</sup> son Xavier Alphonse Radjou Julien died at France on 06.05.2001 and their death were duly registered at France. The younger son Xavier Deothore also died on 07.11.2015 at Karaikal as unmarried and his death was duly



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registered at Karaikal Municipality. Therefore, all three sons and husband of

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Xavier Regina Marie predeceased her.

3(d) The plaintiff further submits that Xavier Regina Marie was owning a residential house at Church Street, Karaikal and she has also kept fixed deposit amounts with the defendant bank, Karaikal. Since there was no legal heirs to Smt. Xavier Regina Marie, during her life time, on 09.01.2017, Smt. Xavier Regina Marie has duly executed a registered Will and the Will was duly registered at Sub- Registrar Office, Karaikal in document No.16/2017 and the Will was executed in the presence of competent witnesses. The Will dated 09.01.2017 is the last Will of Smt. Xavier Regina Marie which has not been cancelled or modified during her life time.

3(e) According to terms of the Will, Xavier Regina Marie bequeathed her residential house to Holy Lady of Angel's Church at Karaikal and in respect of fixed deposit amounts kept by her with the defendant bank, she bequeathed various amounts to her relatives and several charitable institutions. In her Will, Xavier Regina Marie expressively declared that since



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she has no direct descendants to inherit her movable and immovable properties and deposit amounts, she wanted to bequeath her house property to church and fixed deposit amounts to her relatives and charitable institutions. The details of deposits made by Smt.Xavier Regina Marie had been annexed with the registered Will dated 09.01.2017.

3(f) In order to comply with the wishes of Smt.Xavier Regina Marie in terms of her Will, she has appointed the plaintiff as an executor of the Will directing her to hand over the residential house to church and receive fixed deposit amounts from the defendant bank and distribute various amounts to her relatives and charitable institutions. Further wishes of executant of Will Smt.Xavier Regina Marie that the sale proceeds obtained by her by selling her jewels also kept by her were also taken over by the plaintiff and utilize the money for charitable purposes.

3(g) The plaintiff submits that Smt.Xavier Regina Marie have been kept her jewels in Locker No.255 maintained by Xavier Regina Marie with the defendant Bank and unfortunately she could not sell the jewels and convert



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them as monies as her death was happened suddenly. However, Xavier

Regina Marie handed over key of the locker to the plaintiff in order to fulfil her wishes in terms of the Will.

3(h) Smt. Xavier Regina Marie has handed over all original fixed deposit receipts, bank locker key and original Will to the plaintiff, even during her life time and as a result of which, the plaintiff is in custody of all original fixed deposit receipts and bank locker keys and the original Will. The plaintiff submits that unfortunately and unexpectedly Smt.Xavier Regina Marie died on 04.12.2018 due to her old age and as a result thereof, the Will dated 09.01.2017 has come into effect.

3(i) As desired by Xavier Regina Marie, as per terms of Will, the plaintiff has already handed over the residential house to Church at Karaikal, under a registered deed of assurance dated 05.05.2019 and that the deed has been duly registered at Sub Registrar Office, Karaikal in document No.654 of 2019 and the possession of the building has also been handed over to the church. Therefore, a part of obligation contained in the Will has already been



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completed and she has to complete her remaining obligation by distributing various amounts referred in the Will to the relatives of Xavier Regina Marie and charitable institutions by receiving the fixed deposit amounts from the defendant bank.

3(j) In order to carry out the terms of the Will, the plaintiff gave a letter to the defendant bank on 10.01.2019 along with required documents. The letter and documents were duly acknowledged by the defendant bank and as per letter, the plaintiff has requested the defendant bank to transfer the fixed deposit amounts to her Savings Bank Account No.003301000030151 maintained by her with the defendant Bank which was not done by the defendant bank.

4. In spite of issuance of legal notice, there was no reply from the defendant Bank. In the written statement filed by the Manager, Indian Overseas Bank, Karaikal, it is stated that the Fixed Deposits and the Savings Bank Accounts mentioned in the plaint are maintained in the defendant's Bank. He would further state that in the absence of any nominee to the deceased Account, the relief sought for in the suit cannot be granted and there



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is no specific recital with regard to the two Savings Bank and one Locker

No.255 in the said Will.

5. The Trial Court has formulated five issues which are as follows -

- (i) Whether the alleged Will dated 09.01.2017 of Xavier Regina Marie is true and genuine ?
- (ii) Whether the subject Will dated 09.01.2017 of Xavier Regina Marie is the last Will or not ?
- (iii) Whether the plaintiff is entitled for declaration relief as prayed for ?
- (iv) Whether the plaintiff is entitled for permanent injunction ?
- (v) To what other relief the plaintiff is entitled to ?

6. Before the Trial Court, the plaintiff examined herself as PW1 and testator of the Will was examined as PW2 and marked Exs.A1 to A23. On behalf of the defendant Bank, one Asisu Sidhanath Maistry was examined as DW1 but no document was marked.



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7. On consideration of the oral and documentary evidence, the Trial Court came to the conclusion that in the absence of any recital with regard to the Locker and Account Numbers, the prayer in the suit was rejected and hence the present appeal.

8. The learned counsel for the appellant made submissions and the learned Standing Counsel appearing for the defendant Bank made submissions in support of the findings of the Trial Court.

9. After perusing the pleadings and the arguments advanced by the learned counsel on the respective sides, following points arise for consideration -

(i) Whether the alleged Will dated 09.01.2017 is true and valid ?

(ii) Whether the said Will is the last Will of Xavier Regina Marie ?

(iii) Whether the plaintiff is entitled for the relief of declaration ?

(iv) Whether the plaintiff is entitled for mandatory



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injunction as prayed for ?

(v) To what other relief ?

10. After perusing the evidence of PW1 & PW2 and DW1, I find that the said Xavier Regina Marie is an Indian Christian and governed by Indian Succession Act. Section 213 (ii) of Indian Succession Act expressly declares that it is not a legal requirement to probate the Will by the court of law in case of Mohamedans and Indian Christians. Thus, there is a specific exemption granted under a law that a Will executed by Indian Christian need not to be probated before the Probate Court.

11. PW2 – Deivarayan who is the attestor of the Will spoke about the mental health condition of the said Xavier Regina Marie on the date of execution of the Will. After perusing the evidence, I find that on the date of execution of the Will, the said Xavier Regina Marie has signed the said Will- Ex.A11, in good and sound physical and mental condition. Besides the same, the Will is also registered before the jurisdictional Sub Registrar Office on 09.01.2017 before the Sub Registrar, Karaikal in Doc.No.16 of 2011. PW2 who is the attesting witness of the Will was also present before the Sub



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Registrar Office, Karaikal for the purpose of registration of the Will, assumes significance. Hence, I find that the essential ingredients for proving the Will under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act stands proved. Hence, I find no hesitation to come to the conclusion that Ex.A11-Will is that of Smt.Xavier Regina Marie and the on the date of execution of the Will, she was in good and sound disposing state of mind and the same is registered with the Sub Registrar Office at Karaikal.

12. It remains to be seen that Exs.A18 & A19 are the thumb impression and signature of Xavier Regina Marie in Ex.P11-Will. So also, Exs.A20 & A21 are the two signatures and thumb impressions of PW2 - attester of the Will. Exs.A22 & A23 are the two signatures and thumb impressions of one Ganapathy Suresh, second attester of the Will. As per Ex.A10 dated 18.12.2018, death certificate, the said Xavier Regina Marie died on 04.12.2018. The marriage certificate of the said person is marked as Ex.A1 and registration of marriage is marked as Ex.A2. Exs.A3 to A5 are the birth certificate of sons of Xavier Regina Marie. Ex.A6 is the death certificate of Mr.Xavier Arokianathan, husband of Xavier Regina Marie. Ex.A7 to A9 are



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the death certificate of sons of Xavier Regina Marie. Hence, I find that

Ex.A11 – Will is the last Will of Xavier Regina Marie, as there is no endorsement found in the certified copy issued by the competent territorial Sub Registrar Office, Karaikal and the said Will has been proved in the manner known to law. Point Nos.1 & 2 are answered accordingly.

**Point Nos.3 & 4 :-**

13. Both in pleadings and evidence of PW1, it is seen that the plaintiff was appointed for execution of certain terms of the Will. As per the recitals in the Will, the house belonging to testatrix Xavier Regina Marie has to be handed over to the Church. Accordingly, the executor of the Will – PW1 has executed necessary deed of assurance, as required under the local law and the house was bequeathed to the Church, as could be seen from Ex.A12 and various Fixed Deposits made by the said Xavier Regina Marie (testatrix) given to the executor of the Will, namely 31 Fixed Deposits marked as A17 - series goes to show that during the life time of the testatrix, she has handed over those things to the plaintiff.

14. The learned counsel for the respondent/defendant Bank would



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contend that in Ex.A11-Will, there is no specific recital with regard to the Account Number and Fixed Deposit Numbers. Hence, the Bank has some reservation regarding the amount in favour of the plaintiff. This Court is unable to accept the said contention of the learned counsel for the respondent for more than one reason namely that on perusal of the certified copy of the Will dated 09.01.2017 under Ex.A11, I find that initially the testatrix had executed a Will on 17.06.1989 and registered the same on 26.06.1989 before the Sub Registrar, Karaikal in Document No.18 of 1989 and subsequently, since all her three sons have died without marriage, she had made certain changes to the above said Will, in the present Will. There is a specific recital that the previous namely Will dated 17.06.1989 registered on 29.06.1989 stands cancelled and the attestor is PW2 and the second attestor is Ganapathy Suresh whose thumb impression is marked as Exs.A22 & A23, as stated supra, assumes significance.

15. At page 5 of the Will, the deposit receipts has been duly mentioned and the accounts maintained by her in the Bank has also been mentioned. Hence, in view of the specific recital contained in the Will which is held to be



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proved in the manner known to law, for the reasons stated in the preceding paragraphs and after perusing the same, I find that the plaintiff is entitled to the relief sought for. It is a registered Will and the attestor has also been examined. Since the testatrix is an Indian Christian, the probate of the Will is not mandatory and hence in consonance with the points answered for 1 & 2, I have no hesitation to hold that the plaintiff is entitled for the relief of mandatory injunction by way of direction as prayed in the suit. Accordingly, the plaintiff is entitled for all the reliefs and the suit is decreed as prayed for.

16. In view of the above findings, all the points are answered in affirmation in favour of the appellant/plaintiff and against the respondent/defendant.



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In the result, **the Appeal Suit is allowed** setting aside the judgment and decree dated 05.08.2021 made in O.S.No.34 of 2019 on the file of the District Judge at Karaikal. **Consequently, O.S.No.34 of 2019 is decreed as prayed for.** No Costs.

**30.10.2024**

Index : Yes / No  
Neutral Citation : Yes/No  
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To

1.The District Judge,  
Karaikal.

2.The Section Officer,  
VR Section, High Court,  
Madras.



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**RMT.TEEKAA RAMAN, J.**

(igr)

**Judgment in  
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**30.10.2024**