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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

T.O.S No.10 of 2015
(OP.No.54 of 2014)

S.Sakthivel

... Plaintiff

Vs

1. S. Vasantha (since deceased)

2.S.Shenbagam

... Defendants

(By a memo dated 09.07.2024 and order of this court dated 30.07.2024, the death of the D1 was recorded and the plaintiff and the D2 are recorded as L.Rs of the D1)

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration. As per order of this court dated 25.11.2014 in OP.No.54 of 2014, the Original Petition has been converted into Testamentary Original Suit No.10 of 2015.

For Plaintiff : Mr.K.V.Babu

for Ms.R.Priyanka

For Defendants : Ms. S. Shenbagam /R2 appeared in person

J U D G M E N T

The Testamentary Original Suit is filed for grant of Letters of Administration in respect of the last Will and Testament of the deceased S.P.Sadasivan.



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

The plaintiff is the son of the deceased and the defendants 1 and 2 are the wife and daughter of the deceased respectively. The deceased S.P.Sadasivan died on 24.01.2011 leaving behind the plaintiff as his son and defendants 1 and 2 as his wife and daughter respectively. The parents of the deceased pre-deceased him. By the said Will, he deceased appointed his wife as the sole executor but she is not taking any steps to probate the Will and hence the plaintiff is entitled to the legatee. The writing annexed and marked as 'A' is the Last Will and Testament of the deceased S.P.Sadasivan and was duly executed on 14.07.1996 in the presence of the witnesses and registered in the office of the Sub-Registrar, Myalpore, as Document No.126/196, Book-III. The amount of assets does not exceed in the aggregate sum of Rs.9 lakhs and the net amount of the said assets after deducting all items is Rs.9 lakhs only. No application has been made to any District Court or delegate or to any other High Court for grant of Probate of any of the Will of the deceased or letters of Administration with or without Will annexed of the deceased with the description of properties and credits. The first plaintiff undertakes to duly administer the properties



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and the credits of the said deceased S.P.Sadasivan and in any way concerning his Will by paying first his debts and then legacies therein bequeathed as the assets still extend and making full and true inventory thereof and exhibit the same to this court within six months time from the grant of letters of Administration and also render to this court true account of the said properties and credits within one year from the said date. Hence, he prays to grant Letters of Administration.

3. In the written statement, filed by the first defendant, it is stated that she is the executor of the said Will. Her husband has set apart undivided half share in the schedule property and enjoy the same till her life time and thereafter to her son/plaintiff and hence, the Plaintiff cannot alienate the property to any third parties till the life time of the first defendant as she is living in the property. The plaintiff cannot create any charge or mortgage the undivided half share in the property. The plaintiff has wrongly stated in his sworn affidavit that he is the sole beneficiary under the Will suppressing the contents of the Will as the D1 is having undivided half share in the property till her life time. She further submitted that when the executor in the Will is appointed, the relief for letters of



administration does not arise. The plaintiff is not entitled to any relief, as prayed for in this Testamentary Original Suit.

4. The second defendant appeared as party-in-person.

5. Learned counsel for the plaintiff has filed a memo stating that the 1st defendant died on 10.06.2024 leaving behind the plaintiff and the 2nd defendant as her legal heirs. He has also filed a joint compromise memo before this court.

6. This Court heard the learned counsel for the plaintiff and the second defendant, considered their submissions and also perused the materials placed on record.

7. Learned counsel for the plaintiff submitted that the joint compromise memo of the plaintiff and 2nd defendant have already been filed stating that the 2nd defendant has no objection whatsoever in decreeing the TOS and also for the grant of Letters of Administration annexed with the Will, executed by her father in which the Testator has



bequeath the property covered under the Will in favour of the plaintiff.

She has no objection whatsoever in granting and issuing of the letters of administration with the Will annexed, to her brother/plaintiff and the same have been duly signed by the plaintiff and the 2nd defendant.

8. After the death of the 1st defendant, the plaintiff and the 2nd defendant have desired to amicably resolve the entire dispute under this suit and have entered into this memorandum of Joint Compromise Memo.

9. Considering the fact that the plaintiff and 2nd defendant have also given joint compromise memo for grant of Letters of Administration, this Court is of the view that the plaintiff is entitled for the issuance of Letters of Administration in his favour.

10. Accordingly, this Testamentary Original Suit is decreed as prayed for in terms of joint compromise memo. Issue Letters of Administration in respect of the Will dated 14.07.1996 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) 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.

11. The said joint compromise memo shall form part and parcel of the
decree.

12. Considering the relationship between the parties, there shall be no
order as to costs.

30.08.2024

Index : Yes/No

Speaking/Non-speaking order

gv



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A.A.NAKKIRAN,J.

gv

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