



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2024

PRONOUNCED ON : 30.05.2024

CORAM:

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

T.O.S. No. 41 of 2018

M.
....Plaintiff

Govindasamy

Vs

1.D. Vijayaraghunathan (**Died**)
2.D. Mageswari
3.Kavitha
4.Preetha
....Defendants

(Defendants 2 to 4 have been impleaded as per order passed in A.No. 284 of 2020 dated 13.03.2020)

Prayer:- Petition filed for Probate of the Last Will and Testament under Section 222 & 276 read with Order XXV Rule 4 of O.S.rules for prove the Will in common form and that probate thereof to have limited to the State of Tamilnadu may be granted to him.

For Plaintiff	: Mr.D. Divakaran.
For Defendants	: Mr.S. Sai Shankar for D2 to D4.



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JUDGMENT

This Testamentary Original Suit is filed for prove the Will in common form and that probate thereof to have limited to the State of Tamilnadu may be granted to the plaintiff.

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

(i) The Petitioner states that Mr.Deenadhayalan, Son of P.Duraisamy Naicker, died on 13.11.2009, at No.3-28, Annai Sathya Nagar Main Road, Ramapuram, Chennai- 600 089, wherein he was lastly residing. The said Late Mr. Deenadhayalan had possessed of and left property in Chennai, within the state of Tamilnadu and within the Jurisdiction of this Hon'ble Court.

(ii)The petitioner submits that the said Late Mr.Deenadhayalan had left behind his legal heirs namely his wife and two children. Mr. Deenadhayalan had executed a Registered Will in the Office of the Joint II Sub Registrar, Thousand Lights, as Document No.8/2005, Book III, dated 03.03.2005, bequeathing the schedule mentioned, in favour of his wife with



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Life interest, and thereafter the lifetime of his wife Mariammal (deceased) to the 1st Respondent, who is his daughter. As per the said will, the petitioner herein is appointed as the Executor of the Will. The said Will of Deenadhayan is annexed herewith and marked with letter "A" executed by the deceased Mr. Deenadayalan on 03.03.2005 at Chennai.

(iii) The Petitioner states that the amount of assets which are likely to come into petitioner hands does not exceed in the aggregate the sum of Rs.10,00,000/- being value of the Schedule property of the Testator as shown in the Schedule herein and the net amount of the said assets after deducting all items which the Petitioner is by law allowed to deduct in the value of Rs. 10,00,000/-.

(iv). The Petitioner herein hereby undertakes to duly administer the property and credits of the said Mr.Deenadhayan (deceased), and in any way concerning his will and the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and the exhibit the same in this Court, within six months from the date of grant of probate to the Will annexed in favour of the petitioner herein and also to render to this Hon'ble Court a true account of the said property and credits



within one year from the said date.

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(v). The Petitioner states that the said Mr. Deenadhayan is governed by Hindu Law. The parents of the said Mr. Deenadhayan predeceased him. The Petitioner states that his Wife Mariammal (Deceased) and 1st respondent herein are the only beneficiaries shown under the will. There is no other next of kin or other persons interested, in the estate of deceased Mr. Deenadhayan. No application has been made to any District Court or delegate or to any other High Court for the probate of the will of the said deceased or letter of administration with or without the will annexed of his property and credits.

(vi) The Petitioner states that the respondents are not educated and were not aware of the legal procedures of approaching this Hon'ble Court and getting the order of Probate of the Will from this Hon'ble Court. The petitioner is also not aware of the execution of will and only recently came across the original will, and he had been then advised to approach this Hon'ble Court and get the will probated and accordingly on learning about the procedures, he had filed this Petition without any delay. The non filing of this Petition in time is not willful or wanton but due to the above said



reason. Therefore, the Petitioner prays to grant relief as prayed for.

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2.The case of the Defendants, as set out in the written statement, is as follows:-

Written Statement filed by Defendants 2 to 4:-

(i) The alleged will dated 03.03.2005 is created by the plaintiff and based on the alleged will dated 03.03.2005 the plaintiff herein applied for probate before this Hon'ble court and the same was numbered as O.P. No: 579 of 2016. Since the husband of the 2nd defendant and father of defendants 3 and 4 is one of the legal heir, he was made as 2nd respondent in the said probate petitioner. The husband of the 2nd defendant filed caveat and opposed the said probate on the ground that the testator being the father of 2nd defendant's husband never executed any will and the alleged will dated 03.03.2005 is created with an intention to usurp the property.

ii). It is submitted that after 2nd defendant's husband filed the caveat and opposed the probate, the probate petition was converted into present Testamentary Original Suit in the year 2018. Soon after that 2nd defendant's husband fell ill and died on 4.9.2019. Hence by order dated 13.3.2020 defendants 2 to 4 were impleaded as legal heirs of 1" defendant.



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iii). It is submitted that father-in-law of 2nd defendant never executed any will in his lifetime. Further 2nd defendant's father-in-law sustained paralysis attack on the right side of his body in the beginning of the year 2005 itself and during the period of the execution of the alleged will dated 03.03.2005 it was not possible for him to hold a pen and put his signature. Further the father-in-law of 2nd defendant was mentally upset due to the said ailment and he was more dependant on the husband of the 2nd defendant being his only son.

iv). It is submitted that during the lifetime of father-in-law of the 2nd defendant, he never took any decision especially with respect to the transaction of properties without consulting the husband of the 2nd defendant. Since the husband of the 2nd defendant is his only son, he was more affectionate towards him and it was for that reason he often expressed his intention to gift the suit schedule property to the husband the 2nd defendant and he had no intention to bequeath the property to his daughter being the wife of the plaintiff herein. It was for that reasons the 2nd defendant's father-



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in-law gave the possession of the suit schedule property to the 2nd defendant's husband and his family and not to the plaintiff or his wife. The defendants are in possession of the suit schedule property by maintaining the same by paying all taxes to the government. Further, the 2nd defendant's father-in-law had high regards on the 2nd defendant since she is an educated lady and working as government school teacher. Hence he used to consult with 2nd defendant also with respect to the transaction of properties. The 2nd defendant's father-in-law had no intention to execute any will and he was often expressing his intention to execute a settlement deed with respect to the suit schedule property, once he recovers from paralysis stroke, in favour of the husband of the 2nd defendant. However the 2nd defendant's father-in-law died intestate on 13.11.2009 and leaving behind his wife, the husband of the 2nd defendant being his only son, and his daughter being the wife of the plaintiff herein. After six years of the demise of the 2nd defendant's father-in-law, the plaintiffs have applied for probate before this Hon'ble Court with respect to a forged will dated 03.03.2005 and after receiving notice in the said probate petition, the husband of the 2nd defendant herein filed caveat opposing the probate on the ground that the



alleged will dated 03.03.2005 is forged.

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v). It is submitted that 2nd defendant's mother-in-law also died intestate on 24.6.2016 and after the demise of all elderly members of the family of the 2nd defendant, the plaintiff has created a fake will as though the 2nd defendant's father-in-law executed the will during his lifetime and the probate petition is filed after a period of six years of the demise of the 2nd defendant's father-in-law and the same is explicit that the intention of the plaintiff is to wait for demise of all elderly members of the family and usurp the property. The plaintiff has swindled the bank deposits of the 2nd defendant's father-in-law and the gold ornaments of the 2nd defendant's mother-in-law after their demise. In similar fashion, the plaintiff is now trying to usurp the suit schedule property also. If the 2nd defendant's father-in-law had not suffered stroke, he would have executed settlement deed in favour of his son being the husband of the 2nd defendant. The intention of the 2nd defendant's father-in-law to gift the suit schedule property to the family of the defendants is explicit from the fact that the defendants are in possession and enjoyment of the suit schedule property till date by paying all government taxes.



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vi). It is submitted that the attesting witness of the alleged Will are strangers and their address mentioned in the alleged Will is not genuine. While there are many relatives and friends for the 2nd defendant's father- in-law the need to get the attestation of some strangers as witness also shows that the alleged will is fake and the same is created by the plaintiff.

vii). In such circumstances, the present case of the plaintiff claiming for entire right over the property based on the alleged will dated 03.03.2005 is nothing but evil design of the plaintiff with a malevolent intention to grab the suit schedule property based on forged will dated 03.03.2005. It is therefore most humbly prayed that this Hon'ble Court be pleased to dismiss the above Testamentary Original Suit with exemplary cost and thus render justice.

4. On the pleadings of the parties and hearing the learned counsel appearing for both sides, the following issues were framed for determination:-



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i) *Whether Mr.Deenadhayalan executed a registered Will, registered in the office of Joint-II Sub Registrar, Thousand Lights, as Document No.8/2005, Book III, dated 03.03.2005?*

ii) *Whether he bequeathed the schedule property in favour of the first respondent, who was his wife to her life interest and thereafter to the first respondent who is his daughter?*

iii) *Whether the alleged Will dated 03.03.2005 is created and forged by the plaintiff?*

iv) *Whether Mr.Deenadhayalan died intestate leaving behind his wife, husband of the second defendant and his daughter as his legal heirs?*

v) *Whether the plaintiff is entitled for the relief of grant of probate as claimed in the plaint?*



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5. On the side of the Plaintiff, PW.1 and PW.2 were examined and Ex.P1 and Ex.P2 were marked and On the side of the Defendants, DW.1 was examined and no documents were marked.

6. Heard both sides and perused the material available on record.

Issue Nos.1 to 6

7. The learned counsel for the plaintiff submits that the said Late Mr. Deenadhayalan had left behind his legal heirs namely his wife and two children. Mr. Deenadhayalan had executed a Registered Will in the Office of the Joint II Sub Registrar, Thousand Lights, as Document No.8/2005, Book III, dated 03.03.2005, bequeathing the schedule mentioned, in favour of his wife with Life interest, and thereafter the lifetime of his wife Mariammal (deceased) to the 1st Respondent, who is his daughter. As per the said will, the petitioner herein is appointed as the Executor of the Will.



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8.It has been further submitted by the learned counsel for the plaintiff that the Testator's Wife Mariammal (Deceased) and 1st respondent herein are the only beneficiaries shown under the will. There is no other next of kin or other persons interested, in the estate of deceased Mr. Deenadhayalan. To prove on the side of the plaintiff, PW.1 and PW.2 were examined and Ex.P1 and Ex.P2 were marked. Thus, the Petitioner prays this Court to grant relief as prayed for.

9.The learned counsel for the defendants submits that the father-in-law of 2nd defendant never executed any will in his lifetime. Further 2nd defendant's father-in-law sustained paralysis attack on the right side of his body in the beginning of the year 2005 itself and during the period of the execution of the alleged will dated 03.03.2005 it was not possible for him to hold a pen and put his signature. Further the father-in-law of 2nd defendant was mentally upset due to the said ailment and he was more dependant on the husband of the 2nd defendant being his only son.



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10. It has been further submitted by the learned counsel for the defendants that the defendants are in possession of the suit schedule property by maintaining the same by paying all taxes to the government. The 2nd defendant's father-in-law had no intention to execute any will and he was often expressing his intention to execute a settlement deed with respect to the suit schedule property, once he recovers from paralysis stroke, in favour of the husband of the 2nd defendant. However the 2nd defendant's father-in-law died intestate on 13.11.2009 and leaving behind his wife, the husband of the 2nd defendant being his only son, and his daughter being the wife of the plaintiff herein. After six years of the demise of the 2nd defendant's father-in-law, the plaintiffs have applied for probate before this Hon'ble Court with respect to a forged will dated 03.03.2005 and after receiving notice in the said probate petition, the husband of the 2nd defendant herein filed caveat opposing the probate on the ground that the alleged will dated 03.03.2005 is forged.

11. The learned counsel for the defendants further submit that



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the 2nd defendant's mother-in-law also died intestate on 24.6.2016 and after the demise of all elderly members of the family of the 2nd defendant, the plaintiff has created a fake will as though the 2nd defendant's father-in-law executed the will during his lifetime and the probate petition is filed after a period of six years of the demise of the 2nd defendant's father-in-law and the same is explicit that the intention of the plaintiff is to wait for demise of all elderly members of the family and usurp the property. The plaintiff has swindled the bank deposits of the 2nd defendant's father-in-law and the gold ornaments of the 2nd defendant's mother-in-law after their demise. In similar fashion, the plaintiff is now trying to usurp the suit schedule property also.

12. It has been submitted by the learned counsel for the defendants that the attesting witness of the alleged Will are strangers and their address mentioned in the alleged Will is not genuine. While there are many relatives and friends for the 2nd defendant's father-in-law the need to get the attestation of some strangers as witness also shows that the alleged will is fake and the same is created by the plaintiff. Thus, he seeks this Court to dismiss the suit.



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13. On a perusal of the said Will dated 03.03.2005, it can be seen that the two attesting witnesses have endorsed their signature in the said Will. However, the plaintiff has not filed any proof affidavit of the attesting witnesses during the probate proceeding. Even though P.W.1 and P.W.2 were examined on the side of the plaintiff, there is no averment with regard to both attesting witnesses who said to have endorsed their signature during the execution of the said Will. In the evidence of P.W.1, he did not say about the Attesting witnesses whether they are alive or died and notices were served to them informing the probate proceeding. In the cross examination of P.W.2, he has deposed that he saw only the Testator signing in the Will and he did not know about the contents of the Will and he has further deposed that he did not know about the attesting witnesses who said to have put their signatures in the said Will.

14. Under such circumstances, the plaintiff is at the obligation of proving the Will in accordance with the provisions of Section 68 of the Indian Evidence Act. Even though two attesting witnesses are no more, the plaintiff being the son-in-law of the Testator, is bound to prove the signature



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of the Testator by producing oral and documentary evidence. If the Plaintiff is unable to produce any one of the witnesses to prove the signature, at least, he has to examine the person, who can identify and prove the signature of those attesting witnesses. In this case, the Plaintiff failed to prove the Will, by examining the person as a witness, who can identify and prove the signatures of the attesting witnesses. So he miserably failed to take steps to examine the witnesses. Therefore, the Plaintiff has not proved the Will by oral and documentary evidence. Accordingly, Issue No.3 is answered against the plaintiff. Since issue no.3 is answered against the Plaintiff, other issues does not arise and it need not be considered at this stage. The Plaintiff is not entitled to Probate or any other relief.

15. In the result, the Testamentary Original Suit is dismissed.

No Costs.

30.05.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
lbm



Witnesses examined on the side of the plaintiff and defendants:-

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P.W.1. - M. Govindasamy
P.W.2. - P. Devendran
D.W.1. - V. Maheswari

Exhibits produced on the side of the plaintiff:

S. No.	Exhibits	Description of Documents	Date
1.	EX.P1	Original Will executed by Mr. Dheenadayalan	03.03.2005
2.	EX.P2	Photocopy of the Aadhaar Card of Devendran.	-

Exhibits produced on the side of the defendants:

Nil

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A.A. NAKKIRAN, J.

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