



TOS. No.4 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.04.2024

Pronounced on:

30.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

TOS. No.4 of 2016

M.Anandakumar

...Plaintiff

Vs.

1.Nedumaran
2.T.Sumathi
3.Rishe (Minor)
4.Ammu (Minor)
5.R.Mythili
6.G.Sangeetha
7.Suman (Minor)
8.S.Thamaraiselvi
9.Gnanselvi
10.M.Saiselvam
11.Ambikavathi

... Caveators/Defendants

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 against this petition Caveat was filed on 24th day of August 2015 and 10th day of September 2015 by the Caveators above named. The supporting affidavit was filed on 24th day of August 2015 and 10th day of September 2015 respectively. As per order of Court dated 07.01.2016 in O.P. No.545 of 2015 the Original Petition is directed to be converted into Testamentary Original Suit.



TOS. No.4 of 2016

For Plaintiff : Mr.N.Jothi
Senior Counsel
for M/s.S.Krishnasamy

For Defendants
For D1 : Mr.P.Amarnath

For D2 to D4
& D9 & D10 : Mr.E.Vinothkumar

For D5 to D8 : Exparte

JUDGMENT

The Plaintiff, as Petitioner filed O.P.No.545 of 2015 for a grant of Letters of Administration with the Will of V.Manickam (deceased), annexed.

2.The brief facts as set out in the petition are as follows:

The petitioner is the son of deceased, V.Manickam who died on 07.12.2011, leaving behind his last Will and testament dated 10.02.2010 which was also registered as Document No.09 of 2010, on the file of the Sub-Registrar, Purasaiwalkam. The petitioner is one of the beneficiaries under the said will. As a legatee, the petitioner has filed Original Petition seeking right to administer the estate of the deceased, V.Manickam in



TOS. No.4 of 2016

terms of the will dated 10.02.2010. The legal representatives of the deceased testator, V.Manickam are cited as respondents.

3.The respondents filed a Caveat and the Original Petition was converted into the above Testamentary Original Suit. However, despite being arrayed as defendants, none of the defendants come forward to contest the proceedings. Despite engaging services of a counsel, the defendants 1 to 4, 9 and 10 have not chosen to file their written statement and the defendants 5 to 8 and 11 have been duly served through Court process and they have also not even chosen to appear and contest the suit.

4.On 27.03.2023, the defendants 1 and 5 to 8 have been set ex-parte. It is also seen that defendants 3 and 4 and 5 to 8 have also been set ex-parte and the following issues were framed on 07.06.2023:

“1. Whether the Will dated 10.02.2010 alleged to have been executed by Late. V. Manickam is true, genuine and valid?”

2. Whether the plaintiff is entitled for the grant of Letters of Administration as prayed for and what relief, if any?”



TOS. No.4 of 2016

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5.The suit was referred to the learned Additional Master II for recording evidence. Thereafter, the plaintiff has examined himself as P.W.1 before the Additional Master and the following documents have been marked on the side of the plaintiff; Ex.P1 is the registered Will dated 10.02.2010; Ex.P2 is the Death Certificate of the father dated 07.12.2011; Ex.P3 is the Legal Heir Certificate of the father dated 20.01.2012 and Ex.P4 is the copy of the Advocate notice with acknowledgment.

6.The plaintiff, in his proof affidavit, has stated that his father has executed a registered Will on 10.02.2010, namely Ex.P1 and though his elder brother Mr.Nedumaran has been appointed as an executor under the Will, his elder brother did not show any interest in taking steps to probate the Will and subsequently, left with no other option, the plaintiff has filed this Original Petition seeking grant of Letters of Administration.

7.One of the attesting witnesses to the said Will dated 10.02.2010, by name S.Suryanarayanan has been examined as PW2. He has identified



TOS. No.4 of 2016

the signature of the testator in Ex.P1, Will and he has also identified his signature and has stated that the testator was in sound state of mind at the time of execution of the Will. He has also stated that one Hamsa has signed as the second attesting witness and in his affidavit of attesting witness, he has stated that he and the other witness, Hamsa have attested the Will in the presence of the testator.

8.From the above evidence of P.W.1 and P.W.2, the statutory requirements of Section 63(c) of the Indian Succession Act, 1925, r/w Section 68 of the Indian Evidence Act, 1872, stand fulfilled. The Will, Ex.P1 has been duly proved to be executed and attested as required under the law. The plaintiff is therefore entitled to grant of Letters of Administration.

9.In the result,

(i) The suit is decreed and the plaintiff shall be entitled to grant of Letters of Administration with the Will dated 10.02.2010 of his father, Late V.Manickam, annexed.

(ii) The plaintiff is directed to duly administer the properties



TOS. No.4 of 2016

and credits of the deceased more fully described in the suit schedule.

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(iii) The plaintiff shall 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.

(iv) The plaintiff is further directed to make a full and true inventory of the property and credits of the deceased testator, V.Manickam to be made and the same be exhibited before this Court, within six months from the date of grant of Letters of Administration to him and also to render a true account of the property and credits of the testator, within one year from the date of obtaining the grant.

(v) Considering the relationship between the parties, there is no order as to costs.

30.04.2024

Index :Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order

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TOS. No.4 of 2016

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Witnesses examined on the side of the plaintiff:

P.W.1. - M.Anandakumar

P.W.2 - S.Surayanarayanan

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	10.02.2010	Registered Will
2.	P-2	07.12.2011	Death Certificate of the father.
3.	P-3	20.01.2012	Legal Heir Certificate of the father.
4.	P-4	...	Copy of the advocate notice with acknowledgment.

Witnesses examined on the side of the defendants.

Nil

Documents produced on the side of the defendants:

Nil

30.04.2024



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TOS. No.4 of 2016

P.B.BALAJI,J.

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Pre-delivery judgment made in
TOS.No.4 of 2016

30.04.2024