



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 23.05.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN**T.O.S. No. 35 of 2022**

Yesa

.....Plaintiff

..Vs..

Saraswathi

....Defendant

Prayer:- Petition filed under section 232 and 276 of the Indian Succession Act XXXIX of 1925 to issue of Letter of Administration under order XXV rule 5 of the original side rules for Letter of Administration with the "Will" annexed may be granted to the Petitioner D. Yesa aged about 59 years, as beneficiary under the Will of the said deceased having effect limited to the State of Tamil nadu and such other orders or orders that may deem fit, proper and necessary under the circumstances of the case.

For Plaintiff

: Mr. C.K.M.Appaji



For Defendant : No Appearance

J U D G M E N T

This Suit is filed for issuing of Letter of Administration under order XXV rule 5 of the original side rules for Letter of Administration with the "Will" annexed may be granted to the Plaintiff, as beneficiary under the Will of the said deceased having effect limited to the State of Tamil nadu.

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

(i) The petitioner is a practising Advocate in the High Court of Judicature of Madras. He is attached with CSI Wesley Church, Royapettah, since 1995. He was the Treasurer of the Church in between 2009-2011 and the Secretary in between 2015 to 2018. Now he is the pastorate committee member of the Church. The Testatrix Santhosh Ved was the baptized member of the CSI Wesley Church, Royapettah and also the sister of the respondent. The Testatrix was so attached with the Petitioner and his family members and the relationship continued for 25 years. Mr.Narayanadas



Mohandas Ved, the husband of the Testatrix also maintained good relationship with the Petitioner and his family members and as the office of the Petitioner bearing No. 86. Old No. 61, New No. 81, Peters Road, Royapattah. Chennai 600014 is located adjacent to Wesley Church, the Testatrix and her Husband were regular in visiting the office of the Petitioner and discussed legal matters, family matter and personal issues with the Petitioner and thereby the Petitioner was closely associated with family members of the Testatrix.

(ii) On 14.11.2006 Mr. Narayanadas Mohandas Ved passed away. As the Testatrix had no children, she was desolated after the demise of her husband. The only surviving sister, the Respondent also stayed in a house at Pallavaram and thus the Testatrix became regular visitor of the house of the Petitioner at 1/10, Peter's Colony, Royapettah and the petitioner, wife and children often visited the house of the Testatrix and gave her care and protection in old age. During May 2014, due to Haemorrhage in the skull, the health condition of the Testatrix got deteriorated and thus the Petitioner herein took the Testatrix to Malar Hospital, Adayar for treatment and as her



condition worsen, she was taken to Omandurar Government Multi-Speciality Hospital where the open skull surgery was conducted and the Haemorrhage in the skull was removed. Much prior thereto the Petitioner herein helped the Testatrix to get the Share Certificate of her husband transferred to her name by filing in O.P. No. 51 of 2008 on the file of the High Court of Judicature at Madras and was also instrumental in getting the Legal Heir Certificate of Mrs. Sarojini Seshu, the sister of the Testatrix in the name of the sisters in O.S. No.8064 of 2007 on the file of the V Assistant City Civil Court in discharge of his professional duties.

(iii) It is submitted that the land and building in Punja 0.11 cents out of 0.22 cents in Survey No. 7/5 measuring an extent of 0.13 and Survey No. 8/1 situated within the Sub-Registration District of Saidapet and Registration District Chennai to an extent of 0.9 cents, the property more fully described in the 'A' schedule originally belonged to S.P. Sarojini Seshu, the 1 sister of the Testatrix. She was a spinster and she died intestate on 08.05.1991 leaving behind two brothers namely S.V.Sheshadri, S.V. Srinivasan and sisters namely Saraswathy (the Respondent herein), Sanam Seshu,



Swasthika, Mrs.Santhosh Ved. The Brothers S.V. Seshadri and S.V. Srinivasan died as Bachelors on 23.06.1997 and 30.12.2002 respectively and the sisters Sanam Seshu and Swasthika died as spinsters on 14.07.2000 and 12.02.2010. Thus, the Testatrix and the Respondent became joint owner of the estate of S.V.Sarojini Seshu in respect of 'A' Schedule property by way of succession.

(iv)It is submitted that during the year 2007 the Testatrix had carved out the 'B' Schedule property admeasuring 2400 Sq. ft. of the vacant land situated in the western portion of the 'A' Schedule property put up a two-storey building admeasuring 2360 sq. ft. and the testatrix staying in the first floor of the old block, let out the ground and first floor of the new block to tenants.

(v)It is submitted that out of love and affection and to fulfill her desire on 30.07.2015 at Chennai, the Testator Santhosh Ved had executed a "Will" in the presence of witnesses Mr. G. Manoharan and Mr. K.Subburaj bequeathing the 'B' Schedule property in favour of the petitioner after her



life. The writing here unto annexed and marked with letter 'A' is her last Will and Testament. The will recites that the last will and the testament was executed on her free will and violation on account of the assistance rendered by the petitioner personally and professionally, the Testatrix was prompt to execute the will in favour of the petitioner in respect of the 'B' Schedule property to take possession, right to effect in the public records, revenue, registering Patta and enjoy the 'B' Schedule property without any hindrance. After the execution of "Will" dated 30.07.2015, the Testatrix came to the house of the Petitioner on 14.08.2015 and handed over the original "Will" and title deeds of the entire property and blessed the Petitioner to get the ownership of the 'B' Schedule property and enjoy the same after her lifetime. No executer was appointed under the Will.

(vi).It is submitted that even thereafter, the petitioner herein extended all the assistance, visiting the house of the Testatrix and took care of all her needs. During the 4th week of August of 2020, the heart functioning of the Testatrix came to a standstill. She was taken into Venkateshwara Hospital, Nandanam, Chennai for Treatment and thereafter



shifted to Rajiv Gandhi Govt. General Hospital, Chennai for further treatment and on 06.09.2020 the Testatrix died in the Hospital due to cardiac arrest. She lastly residing at No. 12/16, 6th main Road, Kasthuri Bai Nagar, Adyar. Chennai, Tamil Nadu, Pin: 600 020 and possessed of and left properties within the jurisdiction of this Hon'ble Court.

(vii).It is submitted that immediately after the death of the Testatrix, the Respondent herein informed the Petitioner that she is well aware of the "Will" executed by the Testatrix in favour of the Petitioner, evinced her interest to execute a will in respect of the remaining portion of the 'A' Schedule property in favour of the Petitioner and accordingly, executed Will dated 16.10.2020 in favour of the petitioner in respect of the remaining A schedule property and her property situated at Pallavaram in favour of the Pastor A.David. After the passing of time, at the ill advice of the land grabbers, the Respondent became inimical towards the Petitioner and showed her dissent.



(viii).It is submitted that the deceased Mrs. Santhosh Ved died on 06.09.2020 leaving properties within the Jurisdiction of this Hon'ble Court to be administered and the Petitioner is desirous of obtaining from the Hon'ble Court a Letter of Administration of the said "Will" above named with effect throughout the State of Tamil Nadu.

(ix).It is submitted that the amount of the assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs. 50,00,000/- (Rupees Fifty lakhs only) and the net amount of the said assets after deducting all the items which the petitioner is by law only of Rs. 50,00,000/- (Rupees fifty Lakhs only).

(x).It is submitted that the Petitioner has impleaded all the next of kin or other persons interested as party Respondent. There is no next of kin or other persons interested to be impleaded. Thus, the Petitioner has sought for Letters of Administrations with the "Will" annexed.

3.The case of the Defendant in TOS, as set out in the written



statement, is as follows:-

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i. The defendant denies all the averments and allegations made in the petition except those that are specifically admitted herein and the plaintiff is directed to put strict proof of the same by evidence. The above suit is not maintainable either in law or on facts and the same is liable to be dismissed in limine.

ii. The Defendant States that she is aged about 89 years and she is a retired Government School Teacher from Kilpauk Government Higher Secondary School, Chennai. The defendant father, mother, two brothers and four sisters including the Testatrix are deceased and the defendant is the only legal heir for the entire assets.

iii. The defendant states that Testatrix husband Mr.Narayana Das Died intestate on 14.11.2006 and they both out of their wed lock had no children therefore the defendant and her deceased sister Testatrix and

Swasthika all are stayed in the adyar residence together and thereafter they

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decided to divide their property assets equally in the year 2007 for that they approached the plaintiff in the year 2007, the plaintiff stated to defendant for dividing the assets the defendant and her sisters need to get Legal heir certificate along with the Hon'ble Court direction and the plaintiff filed in O.S. No. 8064/2007 in the Hon'ble City Civil Court from there onwards the plaintiff is looking after all legal matters of the defendant.

iv. The defendant states that her deceased second younger sister Ms. Swasthika being unmarried died intestate on 12.02.2010. The defendant and the Testatrix are mentally upset and depressed. on 27.11.2013 the Hon'ble court ordered to issue the legal heir certificate where the defendant and the Testatrix are the only two legal heirs for their assets.

v. The defendant states that on 27.05.2014 due to Haemorrhage in the skull the health condition of the Testatrix is worsen and the defendant taken the Testatrix to Malar Hospital immediately and Testatrix condition

was more worsen the defendant taken the Testatrix and admitted in



Omandurar Government Multi-specialty Hospital on 29.05.2014 where the open skull surgery was conducted on 09.06.2014 and the Haemorrhage in the skull was removed and the Testatrix get discharged on 01.07.2014. The defendant has well taken care of her sister Testatrix in her home and given hospitality treatment in the home itself but again on 07.07.2014 the Testatrix health condition get worsen and the defendant admitted the Testatrix in the C.S.I. Kalyani Multi Specialty Hospital and the treatment is went on and the Testatrix was discharged from the hospital on 18.07.2014.

vi. The defendant states that the defendant family Doctor Dr. Srinivasan is a Geriatric Physician had diagnosed the Testatrix and said that she was affected by kidney infection and breathing problem on 13.08.2020 and further the Testatrix health condition was get worsen and due to the defendant aging ailment she could not able to take her to the hospital and the defendant contacted the plaintiff in a good faith and informed the situation to the plaintiff on behalf of the hope that the plaintiff is her family

Advocate and also a family friend for so many years. The defendant submits



that the defendant given Rs.3,00,000/- from her bank account to the plaintiff to take care of the Testatrix medical expenses and informed the plaintiff to admit the Testatrix in Venkateshwara Hospital situated at Nandanam, Chennai and she was admitted only for few days in that hospital after that she was taken and admitted in the Rajiv Gandhi government hospital by the plaintiff without the knowledge of the defendant and the defendant came to know this after Testatrix died in the Rajiv Gandhi government hospital on 06.09.2020. The plaintiff didn't spent the entire amount given by her to the plaintiff for medical expenses to take care of the Testatrix treatment.

vii.The defendant states that the plaintiff approached the defendant within a month after the Testatrix died with an hurry bury in the month of October 2020 and stated that the defendant need to file in the Hon'ble Court for getting legal heir certificate when there is no urgency is there for the defendant but the plaintiff forced the defendant to sign in more than 12 pages of unknown documents when the defendant is very mentally distressed and depressed due to the loss of her sister Testatrix and then the

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Plaintiff filed the suit in the Hon'ble City Civil Court in an S.R.No.8456 on 31.10.2020 and it was returned on 04.11.2020 just as an drama.

viii. The defendant states that the plaintiff approached the defendant in the month of November 2020 with an hurry bury and introduced Mr.G.Manoharan as an stamp vendor and to let him as an tenant in ground floor premises in Adyar property for a monthly rental and the defendant also entered into an tenancy agreement with the said G.Manoharan on 09.11.2020.

ix. The defendant states that when she was alone in her residence the plaintiff along with his friend named A.David illegally trespassed into the defendant bedroom on 05.12.2020 and threatened the defendant stating that "Hey old lady what are you going to do with so much of property? I am having wife son and daughter's you are an widow and not at all having any one of blood relations I will kill you and send you to

heaven where your deceased Sister Testatrix went give all the original



property documents to me and be quit till your death which will come very soon till that I will take care of you if you will never open your mouth to anybody" then the plaintiff and his friend opened the cupboard and looted all the Original property deed documents, Original Patta, discharge summary of the Testatrix, gold jewels etc., and went away. Due to fear and aging, the defendant could not able to stop the plaintiff and his friend. Thereon she came to know the real face of the plaintiff who is in the ill intention to grab the defendant assets.

x.The defendant states that after that incident, the defendant lodged a complaint in J-2, Adyar Police Station on 06.12.2020 against the plaintiff and registered as a CSR No.368/2020 on 12.12.2020. The J-2 Inspector of Police Mr.K.Shanmugha Sundaram came to the defendant house and made an enquiry against the plaintiff and his friend A.David on that enquiry the plaintiff's friend A.David on 09.01.2020 handed over the items which he thefited to the defendant along with the written statement in front of the Inspector of Police but the plaintiff handed over only the Xerox



copies of the defendant's Adyar property original documents on 17.12.2020 along with the written statement in front of the Inspector of Police. The plaintiff influenced the Inspector of police by the way of money and political support.

xi. The defendant states that on 01.09.2021, the plaintiff sent a legal notice to the defendant stating that the defendant sister Testatrix executed a 'Unregister Will' on 30.07.2015 in favour of the plaintiff. The defendant was shock and surprise and the defendant lodged a complaint to the commissioner of police on 06.09.2021 and the complaint was registered as C.No.479/COP/Visitors/2021 on 07.09.2021 in that enquiry the plaintiff has given a written statement stating that the plaintiff filed the original property documents in the Hon'ble High Court in S.R. No.75221/2021 to probate the "Unregistered Will" of the Testatrix. The plaintiff again influenced the police because he is an advocate thereafter the defendant never stopped and sent a complaint to the Director General of Police on 27.12.2021 and also to the Chief Minister of Tamil Nadu Special Cell on 27.12.2021. The defendant submits that after given the complaint to the



higher officials, the defendant received a closure letter from the commissioner of police on 07.01.2022 stating that the defendant complaint will not come under the land grabbing act hence it is closed due to the influence made by the plaintiff.

xii. The defendant states that the defendant will never lost her faith till getting justice and the defendant soul will not rest. The defendant filed a complaint against the plaintiff in The Tamil Nadu Bar Council on 19.01.2022 and it was registered as a Complaint No.33/2022 on 10.02.2022 and also sent a complaint to the Tamil Nadu Human Rights Commission on 11.02.2022. The defendant received a copy of the comments filed by the plaintiff in the bar council complaint number 33/2022 on 22.08.2022. The defendant was shocked and surprise on seeing another bogus 'Will' fabricated by the plaintiff in the name of the defendant and also the pan card of the defendant is also forged one which was attached in that 'Will'. This evidence clearly proves that the plaintiff obtained the signature from the defendant in a fraudulent way and also the Testatrix 'Will' is absolutely



bogus one by the way the witness in the both the 'Will' is Mr.G.Manoharan is a tenant who entered into an tenancy agreement with defendant on 09.11.2020 and this G.Manoharan was introduced by the plaintiff and to let him as an tenant in ground floor premises in Adyar property with the defendant.

xiii.The defendant states that the plaintiff has ventured to stab truth, so recklessly and so seriously, that it should not go unnoticed by a Court of law which works under the constitutional symbol proclaiming to the world that Truth, and truth alone ultimately flourishes.

xiv. The defendant further states that the plaintiff had suppressed all the material facts with false, the considerable time and strain of brain had been involved in drafting and forging the will with such meticulous hints and advice on fabrication and the plaintiff petition containing false statement on oath and forged documents have been filed in this Hon'ble court. In any event, the present petition is liable to be dismissed in limine and all the original documents looted by the plaintiff to be handed



over to the defendant. It is therefore prayed that this Hon'ble Court may be pleased to dismiss the above suit with an exemplary costs and thus render justice.

4. On the pleading of the TOS, the following issues were framed:

i) Whether the deceased testatrix Santhosh Ved had executed a Will bequeathing 'B' schedule property in favour of the petitioner on 30.07.2015?

ii) Whether this Will is a forged and bogus Will?

iii) Whether the plaintiff had created a Will on 16.10.2020, alleged to have been executed by the defendant S.Saraswathi in favour of A.David?

iv) Whether the plaintiff had fraudulently obtained



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signature from Santhosh Ved and Saraswathi and created the aforesaid bogus Wills?

v)Whether the plaintiff is entitled for the grant of letters of administration with the Will annexure as claimed in the plaint?

vi)to what relief if any, plaintiff is entitled?

5. On the side of the plaintiff, P.W1 to PW3 were examined and Ex.P1 to Ex.P6 were marked. On the side of the defendant, D.W1 was marked and Ex.D1 to Ex.D17 were marked on the side of the defendant.

6. Heard the learned counsel for the plaintiff and there is no appearance on the side of the defendant despite written statement has been filed and D.W.1 was examined during the Trial.

Issue No.1 to 6



7.The learned counsel for the plaintiff would submit that the petitioner herein extended all the assistance, visiting the house of the Testatrix and took care of all her needs. During the hospitalization of the Testatrix, the plaintiff extended all the assistance to her. On 06.09.2020 the Testatrix died in the Rajiv Gandhi Government Hospital due to cardiac arrest. She lastly residing at No. 12/16, 6th main Road, Kasthuri Bai Nagar, Adyar. Chennai, Tamil Nadu, Pin: 600 020 and possessed of and left properties within the jurisdiction of this Hon'ble Court.

8.It has been further submitted by the learned counsel for the plaintiff that out of love and affection and to fulfill her desire on 30.07.2015 at Chennai, the Testator Santhosh Ved had executed a "Will" in the presence of witnesses Mr. G. Manoharan and Mr. K.Subburaj bequeathing the 'B' Schedule property in favour of the petitioner after her life. The will recites that the last will and the testament was executed on her free will and violation on account of the assistance rendered by the petitioner personally and professionally, the Testatrix was prompt to execute the will in favour of



the petitioner in respect of the 'B' Schedule property to take possession, right to effect in the public records, revenue, registering Patta and enjoy the 'B' Schedule property without any hindrance. After the execution of "Will" dated 30.07.2015, the Testatrix came to the house of the Petitioner on 14.08.2015 and handed over the original "Will" and title deeds of the entire property and blessed the Petitioner to get the ownership of the 'B' Schedule property and enjoy the same after her lifetime. No executer was appointed under the Will.

9.The learned counsel for the plaintiff would further submit that after the death of the Testatrix, the Respondent/defendant informed the Petitioner that she is well aware of the "Will" executed by the Testatrix in favour of the Petitioner, evinced her interest to execute a will in respect of the remaining portion of the 'A' Schedule property in favour of the Petitioner and accordingly, executed Will dated 16.10.2020 in favour of the petitioner in respect of the remaining A schedule property and her property

situated at Pallavaram in favour o the Pastor A.David. After the passing of



time, at the ill advice of the land grabbers, the Respondent became inimical towards the Petitioner and showed her dissent. Thus, the Petitioner seeks this Court to grant Letters of Administrations with the "Will" annexed.

10. In this case, the plaintiff had no blood relationship with the Testatrix and acted upon as a Family advocate to the Testatrix and Defendant and extended assistance accordingly. Even though the Will dated 30.07.2015, said to have been executed by the Testatrix in favour of the plaintiff, on seeing the Written Statement filed by the defendant, the various complaints have been lodged by the defendant against the plaintiff before the various Authorities seeking action against the plaintiff for stealing various articles containing Keys, Jewels and documents and forging of the Will. vide Ex.D11 to EX.D16. Further, on a perusal of the Ex.D8, it is seen that the plaintiff had handed over various articles containing Keys, Jewels and documents to the defendant endorsing both signature which were said to have been deprived from the defendant. Hence, it creates suspicion in the execution of the said Will.



11. On perusal of the records, there is no specific reason mentioned by the Testatrix in the said Will for executing the Will in favour of the plaintiff who is a third party and excluding the defendant who is the sister of the Testatrix. Further, the plaintiff being the 3rd party has to prove the health and mental status of the Testatrix during the execution of the Will by examining any independent witness such as any relative of the Testatrix or Doctor who have given treatment to the Testatrix. In the absence of such evidence, the Court is of the view that the plaintiff has failed to prove the Will.

12. It is well settled law that the onus probandi in every case upon the party propounding a Will and it is also well settled that if the circumstances surrounding the execution of the Will is shrouded with suspicion, it is the duty of the propounder to remove that suspicion by leading satisfactory evidence. In the suspicious circumstances surrounding the execution of the Will and the proof of testamentary capacity as required by law would not be sufficient to discharge the onus.

13. In the present case, the plaintiff has failed to prove the Will



by oral and documentary evidence in the manner known to law as stated above. Hence, this Court is of the view neither the execution is proved nor the suspicious circumstances was removed.

14. In view of the above discussions, Issue No.2 is answered against the plaintiff. Since issue no.2 is answered against the Plaintiff, other issues does not arise at all and it need not be considered at this stage. The Plaintiff is not entitled to Letters of Administration or any other relief. Thus, all the issues in TOS are answered against the Plaintiff.

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

No Costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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

P.W.1. - D.Yesa @ Aaseer Yesa

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P.W.2. - G.Manoharan
P.W.3. - K.Subburaj
D.W.1. - S.Saraswathi

Exhibits produced on the side of the plaintiff and Defendant:-

S. No.	Exhibits	Description of Documents	Date
1.	EX.P1	The original sale deed in the name of Sarojini Seshu.	04.05.1960
2.	EX.P2	The original legal heirship certificate of Sarojini Seshu.	27.11.2019
3.	EX.P3	The original Will executed by Mrs. S.Santhosh Ved.	30.07.2015
4.	EX.P4	The print out copy of the death certificate of Santhosh Ved.	30.09.2020
5.	EX.P5	The original Will executed in favour by Mrs. S.Saraswathi W/o Late Rajkumar.	16.10.2020
6.	EX.P6	The true copy of Resolution passed by the Bar Council of Tamil Nadu and Puduchery.	26.08.2022

1.	EX.D1	Original legal heirship certificate of Late. Sarojini Seshu.	27.11.2019
2.	EX.D2	Original Discharge Summary of the Testatrix.	01.07.2014
3.	EX.D3	Original Medical Record of the Testatrix.	06.07.2014
4.	EX.D4	Original Medical Record of the Testatrix	18.07.2014
5.	EX.D5	Original Complaint bearing S.R. No.8456 of 2020 filed by the defendant.	
6.	EX.D6	Original Rental Agreement of PW-2.	09.11.2020
7.	EX.D7	Original CSR bearing No.386 of 2020.	12.12.2020
8.	EX.D8	Original Written Statement of A.David.	09.12.2020
9.	EX.D9	Original Written Statement of Plaintiff.	17.12.2020
10.	EX.D10	Original Legal Notice sent by the plaintiff.	01.09.2021
11.	EX.D11	Original Receipt of Complaint issued by the Commissioner of Police.	07.09.2021
12.	EX.D12	Original Acknowledgement Card.	28.12.2021
13.	EX.D13	Photocopy of the Complaint sent by the defendant to C.M. Cell, along with the Acknowledgment Card.	27.12.2021



S. No.	Exhibits	Description of Documents	Date
14.	EX.D14	Original Reply from Office of the Commissioner of Police.	07.01.2022
15.	EX.D15	Original Receipt of Complaint issued by Bar Council of Tamil Nadu and Puduchery.	10.02.2022
16.	EX.D16	Original comments of plaintiff filed before the Bar Council of Tamil Nadu and Puduchery.	22.08.2022
17.	EX.D17	Photocopy of the PAN Card of the defendant.	02.07.2011

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A.A. NAKKIRAN, J.
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