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T.O.S.No.27 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.08.2024

CORAM:

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

T.O.S.No.27 of 2023

(O.P No.854 of 2017)

1.S.Manoharan
2.S.Udayakumar
3.R.Tamil Selvi

.. Plaintiffs

..Vs.

P.Sasikala

.. Defendant

Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 5 of Original Side Rules for the grant of Letter of Administration in respect of the last Will and Testament of the deceased D.Swaminathan. Against this petition, a Caveat and Supporting affidavit was filed by the Caveator. As per order of this Court, the Original Petition No.854 of 2017 was converted into Testamentary Original Suit No.27 of 2023.

For Plaintiffs : M/s.Veeramarthini

For Defendant : Set Exparte

J U D G M E N T



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WEB COPY The Testamentary Original Suit is filed for grant of Letter of Administration in respect of the last Will and Testament of the deceased D.Swaminathan.

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

The plaintiffs, the defendant and one S.Leelakumari @ Banumathi D.Thenmozhi (1st and 3rd respondents in O.P) are sons and daughters of the Testator Late D.Swaminathan. The said Swaminathan died on 13.06.2006. The deceased Swaminathan, during his life time, had purchased immovable properties namely, Item-I, Land and House situated at Old Door No.48, New Door No.104, Perumal Koil Street, Saidapet, Chennai-600 015 measuring one ground and 384 square feet of vacant land and a house in ground and first floor, Item-II, Vacant agricultural land situated at Priyankuppan Village, Thiruvallur Taluk, Thiruvallur District measuring acre 0.87 cents and had executed a Will dated 09.01.2004 registered as Document No.1/2004 in Book III before the Joint Sub Registrar II, Saidapet on the same day by bequeathing the said Item I property by dividing the same as



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Schedule A, B, C and D properties and bequeathing the above said Item-II property as Schedule-E property in the Will. The Schedule A property situated at Old Door No.48, New Door No.104, Perumal Koil Street, Saidapet, Chennai-600 015 measuring 910 square feet out of 2784 sq.ft. was bequeathed in favour of the first plaintiff. The Schedule B property situated at Old Door No.48, New Door No.104, Perumal Koil Street, Saidapet, Chennai-600 015 measuring 910 square feet out of 2784 square feet was bequeathed in favour of the second plaintiff. The schedule C property situated at Old Door No.48, New Door No.104, Perumal Koil Street, Saidapet, Chennai-600 015 measuring 423-1/2 sq.ft. out of 2784 sq.ft. was bequeathed in favour of the third plaintiff which are morefully describd in the Annexure A of the Assets of the Estate. The schedule D property situated at Old Door No.48, New Door No.104, Perumal Koil Street, Saidapet, Chennai-600 015 measuring 577-1/2 sq.ft. out of 2784 sq.ft. was bequeathed in favour of the fourth respondent namely Appu @ Krishnakumar. The schedule E property was jointly bequeathed in favour of all the sons and daughters of the Testators. The testator did not appoint any executor for his last Will. The amount of assets which is likely to come to



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the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.1,06,00,000/- and the net amount of the said assets after deducting all items which the plaintiffs is as per law allowed to deduct is only of the value of Rs.1,06,00,000/-. The wife of the Testator namely, S.Ambika predeceased him on 27.02.1986. The parent of the testator predeceased him long back. The elder son of the testator viz., S.Santhanam also died intestate on 15.03.2007 leaving behind the respondents 5 to 8 in O.P No.854 of 2017. No application has been made to any District Court or Delegate or to any other High Court for probate of any Will of the said deceased with or Letters of Administration with or without the Will annexed of his properties and credits. The plaintiffs hereby undertakes to duly administer the property and credits of the said late Mr.D.Swaminathan, deceased, in any way concerning his Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this regard within six months from the date of Letters of Administration with the Will annexed to the petitioners 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. Hence, they prayed to grant Letters of



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Administration with the Will.

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3. Though summons were served on the defendant, neither the defendant nor her counsel had chosen to appear before this Court. Hence, the defendant was set exparte on 29.01.2024.

4. Heard the learned counsel for the plaintiffs and perused the records.

5. The plaintiffs examined themselves as P.W.1 to P.W.3 and they had narrated the averments made in the petition stating that the plaintiffs have filed the main original petition for the grant of Letters of Administration in their favour in respect of the Last Will and Testament executed by the testator on 09.01.2004. Ex.P3 is the original Will executed by the deceased Mr.D.Swaminathan. Ex.P1 is the death certificate of D.Swaminathan and the same has been filed to prove that testator died on 13.06.2006. Ex.P2 is the legal heirship certificate of the deceased, which shows that the plaintiffs and the defendant are the legal heirs of the deceased Swaminathan. Ex.P4 is the death certificate of S.Santhanam, who is the elder son of the testator.



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Ex.P4 shows that the elder son of the testator died on 15.03.2007. Ex.P5 is the photocopy of legal heirship certificate of S.Santhanam which shows that the respondents 5 to 8 in O.P No.854 of 2017 are his legal heirs.

6. One of the attestors of the Will dated 09.01.2004 viz., S.P.Vedhagiri was examined as attesting witness. In his evidence, he has stated that the testator executed his last Will and Testament on 09.01.2004 in his presence and in the presence of one V.Shanmuganathan. At the request of the testator, the said S.P.Vedhagiri subscribed his signature as first attesting witness along with V.Shanmuganathan, who attested the Will as the second attesting witness in the presence of the testator. While executing the Will, the testator was in a sound and disposing state of mind and in his presence, the attesting witnesses subscribed their signature in the Will. The evidence of attesting witness has not only proved the execution, but also attestation of the Will.

7. Considering the fact that the evidence of PW.1 to PW.3 and the documents filed on behalf of the plaintiffs remain unchallenged and taking



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note of the fact that there is no rebuttal evidence against the case of the plaintiffs, this Court is of the view that the plaintiffs have proved their case and entitled for the issuance of Letters of Administration in their favour.

8. Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in favour of the plaintiffs. The plaintiffs are directed to duly administer the properties and credits of the deceased more fully described in the schedule. The plaintiffs are 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 plaintiffs is further directed to render true and correct accounts once in a year.

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Index : Yes/No
Internet : Yes
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiffs:

P.W.1. - S.Manoharan
P.W.2 - S.Udayakumar



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P.W.3 - R.Tamil Selvi @ Tamil Chelvi
Witness - S.P.Vedhagiri

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Exhibits produced on the side of the plaintiffs:

S.No	Exhibits	Date	Description
1.	P-1	13.06.2006	Death certificate of D.Swaminathan
2	P-2	----	Attested true copy of Legal heir certificate of D.Swaminathan
3.	P-3	090104	Original Will
4.	P-4	15.03.2007	Death Certificate of S.Santhanam
5.	P-5		True copy of Legalheirship certificate of S.Santhanam

Witnesses & documents on the side of the defendant:

Nil.

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A.A.NAKKIRAN,J

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