



TOS.No.2 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment Reserved on
12.04.2024

Judgment Pronounced on
30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

TOS.No.2 of 2017

K.Ravikumar

.. Plaintiff

..Vs.

V.J.Dhakshinamoorthy

.. Defendant

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in respect of the will dated 27.12.2004 of V.M.Jagadeesan, the deceased in common form and that probate thereof to have effect throughout the State of Tamil Nadu.

For Plaintiff : Mr.K.Veeramani

For Defendant : Mr.S.Ratnakaran

J U D G M E N T

The plaintiff filed O.P.No.206 of 2016 for grant of Probate of last Will and Testament of the deceased, V.M.Jagadeesan, dated



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27.12.2004.

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

The testator, V.M. Jagadeesan, executed his last Will and Testament in the presence of D. Murugavel and J.W. James on 27.12.2004, in and by a registered document in Document No.154 of 2004 on the file of the Sub Registrar Officer, Sembium. The said V.M.Jagadeesan died on 15.03.2008, leaving behind his wife, J.Mangalavalli and his children, respondents 1 to 5 in the Original Petition. The wife of the deceased testator, J.Mangalavalli died on 02.10.2013. The petitioner has been appointed as an Executor of the Will dated 27.12.2004. The deceased had given a life interest to his wife and vested remainder to all his children, the respondents 1 to 5 in the Original Petition in the ratio of 5%, 5%, 30%, 30% and 30% respectively.

3.Two daughters, namely R.Padmini and R.Lalitha and one son, namely V.J.Nithiyanantham have filed their consent affidavits. However, in view of the Caveat having been filed by the one of the sons, namely V.J.Dhakshinamoorthy, the Original Petition was converted into a Testamentary Original Suit.



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4.Despite conversion of the Original Petition into the Testamentary Original Suit, the defendant has not even come forward to file his written statement.

5.The plaintiff examined himself as P.W.1 and he has marked Exs.P1 to P15 on his side. Ex.P1 is the Original Sale Deed executed in favour of Testator Mr.V.M.Jagadeesan dated 15.07.2002; Ex.P2 is the Original agreement for construction of flat entered into Shri Ganga Foundations and Mr.V.M.Jagadeesan dated 15.07.2002; Ex.P3 is the Original Will executed by Mr.V.M.Jagadeesan dated 27.12.2004; Ex.P4 is the Photocopy of the Death Certificate of Mr.V.M.Jagadeesan who died on 15.03.2008; Ex.P5 is the Original Legal Heirship Certificate of Mr.V.M.Jagadeesan dated 21.02.2011; Ex.P6 is the Photocopy of the Death Certificate of Mrs.V.J.Mangalavalli, wife of Mr.V.M.Jagadeesan who died on 02.10.2013; Ex.P7 is the Affidavit of attesting witnesses J.W.James; Ex.P8 is the Death Certificate of attesting witness, J.W.James who died on 23.10.2017; Ex.P9 is the Consent affidavit of Mrs.P.Padmini; Ex.P10 is the Consent affidavit of



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Mr.V.J.Nithiyanantham; Ex.P11 is the Consent affidavit of Mrs.R.Lalitha; Ex.P12 is the Printout of Property Tax receipt; Ex.P13 is the Affidavit of assets; Ex.P14 is the Photocopy of the Aadhaar Card of Patrick Raj and Ex.P15 is the Second attesting witness signature found in the Will, Ex.P3.

6.The attesting witness, Patrick Raj, was examined as P.W.2 and he has deposed that the father died on 15.03.2008 and in witness box he has been able to identify the signature of the father. In order to prove the signature of the testator, P.W.3, the daughter of the V.M.Jagadeesan, has been examined and she has spoken about the signature of the testator and has been able to identify the testator's signature in the original Will.

7.Though the plaintiff is only an Executor and he is not a beneficiary. From the evidence of P.W.1 to P.W.3, I am satisfied that the Will has been duly proved in accordance with law as required under Section 63(c) of the Indian Succession Act. Though the attesting witnesses have not deposed before the Court, in compliance with Section 69 of the Indian Evidence Act, the propounder/plaintiff has proved the attestation of one of the attesting witnesses to be in hand writing and also



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S.No.	Exhibits	Date	Description
1.	P-1	15.07.2002	Original Sale Deed executed in favour of Testator Mr.V.M.Jagadeesan
2.	P-2	15.07.2002	Original agreement for construction of flat entered into Shri Ganga Foundations and Mr.V.M.Jagadeesan
3.	P-3	27.12.2004	Original Will executed by Mr.V.M.Jagadeesan
4.	P-4	15.03.2008	Photocopy of the Death Certificate of Mr.V.M.Jagadeesan
5.	P-5	21.02.2011	Original Legal Heirship Certificate of Mr.V.M.Jagadeesan
6.	P-6	02.10.2013	Photocopy of the Death Certificate of Mrs.V.J.Mangalavalli, wife of Mr.V.M.Jagadeesan
7.	P-7		Affidavit of attesting witnesses J.W.James
8	P-8	23.10.2017	Death Certificate of attesting witness, J.W.James
9	P-9		Consent affidavit of Mrs.P.Padmini
10	P-10		Consent affidavit of Mr.V.J.Nithiyanantham.
11	P-11		Consent affidavit of Mrs.R.Lalitha.
12	P-12		Printout of Property Tax receipt.
13	P-13		Affidavit of assets.
14	P-14		Photocopy of the Aadhaar Card of Patrick Raj.
15	P-14		Second attesting witness signature found in the Will, Ex.P3.

Witnesses examined on the side of the defendants:

Nil.

Documents marked on the side of the defendants:

Nil.



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P.B.BALAJI,J.

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Pre-delivery judgment made in
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