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TOS.No.41 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

TOS.No.41 of 2023
(O.P No.425 of 2023)

D.Sethuraman

... Plaintiff

Vs

1.J.Gokulraj

2.Sumathy

... Defendants

Prayer: Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the Original Side Rules 1956, a) Letters of Administration with Will annexed may be granted to his as Brother/Beneficiary/Legatee under the Will of the deceased thereof having effect limited to the State of Tamil Nadu; b) grant any other relief's.

For Plaintiff : Mr.S.William

For Defendants : No appearance



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J U D G M E N T

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The plaintiff seeks issuance of Letters of Administration with a Will dated 08.09.2021 of late, D.Jayakumar, annexed.

2. The brief facts which are necessary for adjudicating the above Testamentary Original Suit are as follows:

The plaintiff, as petitioner has filed Original Petition in O.P.No.425 of 2023 stating that the deceased, D.Jayakumar is his brother and he was owning properties set out in the affidavit of assets. It is the specific case of the petitioner that though his brother, D.Jayakumar was married, the marriage was failure and his estranged wife, Sumathy has been shown as the 2nd respondent. The son of the deceased, testator is shown as the 1st respondent. The testator died on 05.09.2022, leaving behind his last Will and Testament dated 08.09.2021. As a beneficiary under the said Will, the petition for grant of Letters of Administration with the Will annexed came to be filed.

3.The respondents filed a Caveat and subsequently, the Original



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Petition was converted into a Testamentary Original Suit. However, it is seen that despite the conversion of Original Petition into Testamentary Original Suit, the defendants have not come forward to file their written statement and the defendants were set exparte on 29.02.2024.

4.Before the learned Additional Master I, the plaintiff examined himself as P.W.1 and both the attesting witnesses to the Will were examined as P.W.2 and P.W.3 and Exs.P1 to P17 were marked on the side of the plaintiff. Ex.P1 is the original Will executed by D.Jayakumar dated 08.09.2021; Ex.P2 is the certified copy of the Sale Deed in Doc.No.3215 of 2014 dated 22.09.2004; Ex.P3 is the Koor Chit dated 26.08.2017; Ex.P4 is the online copy of the Death Certificate of D.Saroja (certificate u/s. 65-B of Indian Evidence Act produced); Ex.P5 is the Legal Heir Certificate of D.Saroja; Ex.P6 is the Medical Records issued by Rajabather Clinic; Ex.P7 is the Medical Records issued by the T.B.Hospital; Ex.P8 is the Medical Records issued by the Be Well Hospital; Ex.P9 is the Photos (Certificate u/s. 65-B of the Indian Evidence Act produced); Ex.P10 is the No Due Certificate issued by IndusInd Bank dated 22.08.2022; Ex.P11 is the Lease Agreement with R.Nageswari dated 25.04.2019; Ex.P12 is the Lease Agreement with Kannan dated 09.03.2022; Ex.P13 is the Lease Agreement



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with Srikanth dated 25.08.2022; Ex.P14 is the photocopy of the Medical Certificate for cause of death; Ex.P15 is the Burial Ground Death Report dated 06.09.2022; Ex.P16 is the online copy of the Death Certificate of D.Jayakumar dated 01.03.2023 (Certificate u/s. 65-B of the Indian Evidence Act produced) and Ex.P17 (3 Nos.) are the Records issued by the Royapettah Hospital.

5.In proof of due execution and attestation of Ex.P1, Will, both the attesting witnesses to the said Will, namely M.Kandeepan and C.N.Ehoma Saviour were examined as P.W.2 and P.W.3 respectively.

6.The plaintiff P.W.2, M.Kandeepan, has stated that he and the other attesting witness, C.N.Ehoma Saviour were present and witnessed the execution of the Will by the testator, D.Jayakumar and that when he and the other attesting witness attested the Will, the testator, D.Jayakumar was present. He has also stated that the testator was in sound and disposing state of mind, memory and understanding at the time of execution of the Will.

7.Despite filing the caveat, the defendants have not come forward to contest the testamentary proceedings.



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8.The plaintiff, as P.W1, by production Ex.P16, the Death Certificate of D.Jayakumar, has established the factum that death of the testator and thereby his last Will taking effect. By examination of P.W.1 to P.W.3 and due execution and attestation of the Will, I am satisfied that the Will has been proved to have been duly executed and attested in accordance with Section 63(c) of the Indian Succession Act and this Court is of the view that the plaintiff is entitled for the issuance of Letters of Administration in his favour.

9.In the result,

(i) The suit is decreed and the Letters of Administration, having effect throughout Tamil Nadu, shall be issued in favour of the plaintiff, with the Will dated 08.09.2021, annexed.

(ii) The plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the suit schedule.

(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, D.Jayakumar



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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) There shall be no order as to costs.

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Index : Yes/No
Speaking/Non-speaking order

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Witnesses examined on the side of the plaintiff:

P.W.1. - D.Sethuraman

P.W.2 - M.Kandeepan

P.W.3 - C.N.Ehoma Saviour

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	08.09.2021	Original Will executed by the deceased D.Jayakumar
2.	P-2	22.09.2004	Certified copy of the Sale Deed in Doc.No.3215 of 2014
3.	P-3	26.08.2017	Koor Chit
4.	P-4		Online copy of the Death



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			Certificate of D.Saroja
5.	P-5		Legal Heir certificate of D.Saroja
6.	P-6		Medical Records issued by Rajabather Clinic
7.	P-7		Medical Records issued by T.B.Hospital
8.	P-8		Medical Records issued by Be Well Hospital
9.	P-9		Photos
10.	P-10	22.08.2022	NDC issued by IndusInd Bank
11.	P-11	25.04.2019	Lease Agreement with R.Nageswari
12.	P-12	09.03.2022	Lease Agreement with Kannan
13.	P-13	25.08.2022	Lease Agreement with Srikanth
14.	P-14		Photocopy of the Medical Certificate for cause of death
15.	P-15	06.09.2022	Burial Ground Death Report
16.	P-16	01.03.2023	Online copy of the Death Certificate of D.Jayakumar
17.	P-17 series		Royapettah Hospital Records

Witnesses examined on the side of the defendants.

Nil

Documents produced on the side of the defendants:

Nil

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Pre-delivery judgment made in
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