



WEB COPY



T.O.S.No.16 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2023

PRONOUNCED ON : 21.03.2024

CORAM:

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

T.O.S.No.16 of 2018 (O.P No.482 of 2014)

1. A.S.Kalaichelvan
2. A.S. Elangovan (Deceased)
3. E. Sivakumari
4. E. Poongothai
5. E. Pandian

.. Plaintiffs

(Plaintiffs 3 to 5 are brought on record as L.Rs of the 2nd plaintiff vide order of this court in A.No.2828/2022 dated 20.07.2022)

..Vs..

- 1.S. Malliga
2. G. Mohanan
3. Ms.Jothi Lakshmi
4. Vasanth
5. T. Nirmala

... Defendants

Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for grant of Letters of Administration in respect of the last Will and Testament of the deceased M.Arumugam. Against this petition, a Caveat and supporting affidavit was filed by the Caveators. As per order of this Court, the Original Petition No.482 of 2014 was converted into Testamentary Original Suit No.16 of 2018.



T.O.S.No.16 of 2018

For Plaintiffs

: Mr.A. Palaniappan

For Defendants

: Mr.M. Aravind Subramaniam

Senior Counsel

For Mr.M.M. Ajithkumar for D1 to D5

J U D G M E N T

This Testamentary Original Suit is filed for grant of Letters of Administration in respect of the last Will and Testament of the deceased M.Arumugam.

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

The plaintiffs 1, 2 and 5 and 1st defendant and one Tamilarasi are the legal heirs of A. Subramanian and S. Rajeshwari and the deceased M.Arumugam is the father of A. Subramanian. The 3rd plaintiff is the wife of 2nd plaintiff. The 2nd defendant is the husband of the deceased Tamilarasi. The plaintiffs 4 and 5 are the legal heirs of the 3rd plaintiff. The defendants 3 and 4 are the legal heirs of the 2nd defendant. The deceased M.Arumugam had died on 24.03.1995. The parents of the deceased testator had predeceased him. The said Will was duly executed by him on 26.04.1989 in the presence of witnesses (respondents herein) whose names appeared at the



T.O.S.No.16 of 2018

foot thereof and had provided life estate to his son. After the life estate of

A.Subramanian, the deceased testator had provided further life estate in favour of his daughter-in-law S.Rajeswari that she was entitled to enjoy the property which is the subject matter of the Will during her lifetime by utilising the income arising thereof and shall not be entitled to encumber or alienate the property. The respondents who are the grand daughters of the Testator through A.Subramanian were specifically excluded from the bequeath in respect of the property covered by the aforesaid Will. A. Subramanian died on 17.05.2008 and S. Rajeswari died on 26.05.2013. Hence, the petitioners had filed the present suit. The contents of the aforesaid Will clearly provides that the grand daughters were sufficiently provided at the time of their respective marriage and hence they were excluded from the bequeath of property. The same is known to the respondents 1 and 5 and Tamilarasi, whose claim is made by the respondents 2, 3 and 4 herein being her legal heirs.

3. (a) The first respondent/Mallika, Tamilarasi (died) and the 5th respondent are the attestors of the aforesaid Will. By the terms of notice



T.O.S.No.16 of 2018

dated 20.08.2013, the respondents had falsely alleged that the aforesaid Will was not probated as the same was not acted upon by the beneficiaries. The respondents had also fraudulently devised a settlement deed in respect of 1/6 share in respect of the property covered by the Will claiming the same to be the share of S. Rajeswari had procured by fraud, misrepresentation, undue influence without the knowledge of S. Rajeswari. The plaintiffs 1 and 2 had given a reply notice dated 28.08.2013 wherein they have categorically denied all the allegations. They affirmed that the aforesaid Will dated 26.04.1989 registered as Doc.No.46 of 1989 on the file of the SRO Sembium is genuine, valid. They have further stated that they are in effective possession and occupation of the property which is the subject matter of the Will and they are receiving the rents accruing from the said properties after the demise of the second life estate holder S. Rajeswari on 26.05.2013. The Testator M. Arumugam had clearly elucidate his intention for the purpose of providing absolute estate in respect of the property in the name of the plaintiffs 1 and 2. Hence the plaintiffs, in their capacity as the executor of the said Will, has filed the main original petition for the grant of letters of Administration.



T.O.S.No.16 of 2018

(b) The amount of assets which is likely to come to the plaintiffs hand does not exceed in the aggregate a sum of Rs.30,00,000/- 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.30,00,000/-. 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 without Will annexed of his properties and credits of the deceased M. Arumugam. The plaintiffs hereby undertakes to duly administer the property and credits of the said late M. Arumugam, deceased, in any way concerning his Will by first paying his 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 grant of probate to the petitioner herein 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, he prays to grant letters of Administration with Will. Annexed to the plaintiffs 1 and 2 as grandsons / beneficiaries under the Will of the said deceased.



T.O.S.No.16 of 2018

4. The written statement filed by the 5th defendant are as follows:

WEB COPY

The 5th respondent denies all the allegations stated in the petition except those that are specifically admitted herein and put the petitioners to the strict proof of the same. It is stated that the petitioners are seeking letters of administration 18 years after the demise of the Testator of the alleged Will. The said property was purchased from the funds of both M.Arumugham and his son A.Subramanian. His son had borne the entire cost of construction of superstructure. It is further stated that had the said Will been really executed by M. Arumugam, the Testator would have appointed his only son as an Executor. The witnesses signed before the Sub-Registrar are the utter strangers. The 1st petitioner came to the house of the 5th respondent and obtained signature from him by telling that his grandfather had requested the 1st petitioner to do so and in the same manner, he obtained signature from other sisters also. It is further stated that the 1st petitioner had prepared the Will and registered the same when the said M. Arumugham was in unsound mind at the age of 82 years and that too, without the knowledge of A. Subramanian. The said fraudulent Will was brought to lime light only after the demise of Rajeswari. The mother of the



T.O.S.No.16 of 2018

plaintiffs were not aware of the existence of the said Will. It is further stated that Rajeswari was in sound state of mind till 2013, she had settled her 1/6th undivided share in favour of her three daughters under a registered settlement deed bearing Doc.No.4746 of 2008, SRO- Purasawalkam. Hence, the said settlement is invalid. It is further stated that the four tenants were paying rent of Rs.20,000/- to Smt. Rajeswari till her life time and now the 1st petitioner is collecting the rent and hence the 1st petitioner is liable to pay the mesne profits to the respondents.

5. Upon hearing both sides and perusing the pleadings, the following issues are framed for consideration:

- 1) Whether the Will dated 26.04.1989 said to have been executed by late M. Arumugam is true and valid?*
- 2) Whether the plaintiffs are entitled to grant of Letters of Administration with a copy of the Will annexed??*
- 3) Whether the plaintiffs have made out sufficient cause for not filing the Original Petition within three years from the death of the Testator?*



T.O.S.No.16 of 2018

4) To what other reliefs the parties are entitled?

WEB COPY

6. The first plaintiff examined himself as P.W.1 and the second plaintiff examined as P.W.2 and one N. Venkat was examined as P.W.3 and marked nine documents as Ex.P1 and Ex.P11. The fifth defendant was examined as DW1 and marked six documents as Ex.D1 to Ex.D6.

7. Heard both sides.

Issue Nos.1 to 4:

8. The learned counsel for the plaintiffs submitted that the late.Arumugam is the absolute owner of the property and he had executed a Will dated 26.04.1989 under registered document No.46 of 1989 in favour of his grandsons, the plaintiffs, A.S.Kalaiselvan and A.S.Elangovan with sound mind and the granddaughters are not beneficiaries under the Will but they had attested the said Will in the manner known to law. He further submitted that the settlement deed dated 26.12.2008 was obtained stealthily by misleading and misrepresenting S.Rajeswari since he was aged about 76 years at the time of the alleged execution of the settlement deed and she was



T.O.S.No.16 of 2018

totally not in sound state of mind or good health. The said Rajeswari has not right to execute the said alleged settlement deed. The learned counsel further submitted that out of three attesting witnesses, one attesting witness Tamilarasi died at the time of filing of the petition for letter of administration. Hence, the other two were arrayed as defendants 1 and 5 in the testamentary original suit. Since the said witnesses had taken a false unfounded and baseless stand that they had not attested the Will and their signatures were obtained in the last page containing schedule of property and also taking a stand that the signatures were obtained on blank page is on the face of it inconsistent and self-destructive, to prove the Will, the plaintiffs have examined an identifying witness, by name, Venkat. Hence, none examination of the attesting witnesses in this case, is not a fatal. He further submitted that the Testator Arumugam died on 24.03.1995 and late Subramanian died on 17.05.2008 and subsequently, the limited life estate had devolved upon Rajeswari and the said Rajewari died on 26.05.2013 and thereafter also, the plaintiffs had filed a petition for obtaining Letter of Administration in respect of the said property which is subject matter of the Will. Hence, there is no delay on the part of the defendants. Hence, he



T.O.S.No.16 of 2018

prays to allow the suit.

WEB COPY

9. The learned counsel for the defendants has submitted that the said Late.Arumugam is not entitled to execute Will, since the property belonged to the Late.Arumugam and Late.Subramanian. The plaintiffs have decided to probate the Will after lapse of 18 years from the date of the death of the Testator died i.e., 24.03.1995. Since there is a delay, on this ground, the plaint has to be dismissed. The learned counsel further submitted that the alleged Will was executed by the Testator at the ripe of old age of 82 when the Testator was in an imbalanced state of mind. It is pertinent to state that he was not in a sound health while the will was created. Even in the said Will, the Testator has admitted that 'because of his age and failing health' he has to write this Will. This cause for writing the Will due to his failing health is causing a lot of suspicion. He further submitted the Testator was not in the right mind and he did not understand the nature and effect of the document. The Testator's signature was obtained in the Will by the plaintiffs due to coercion, undue influence and sheet manipulation. He further submitted that the will was registered in the absence of the defendants and



T.O.S.No.16 of 2018

late Subramanian. Hence, the said Will is registered under suspicious circumstances.

10. The learned counsel for the defendants further submitted that Rajeswari had executed the settlement deed dated 26.12.2008 in favour of daughters. Challenging the said settlement deed, the plaintiffs have filed a suit in O.S.No.6100 of 2013 on the file of the XV Assistant City Civil Court at Chennai. However, the said suit was dismissed on 24.08.2016. As against which, the plaintiffs have filed an appeal in A.S.No.268 of 2016 before the file of the II Additional City Civil Court at Chennai, which is pending. When the said appeal is pending, simultaneously, the plaintiffs have filed O.P.No.482 of 2014, which is now converted into T.O.S.No.16 of 2018. The said O.P.No.482 of 2014 was not filed till the decision was taken in O.S.No.6100 of 2013, which was dismissed. After filing of the appeal suit, the plaintiffs have decided to move the above O.P.No.482 of 2014 since they lost the suit. He further submitted that in the disputed Will, their signatures were put without knowing the content of the document. The disputed signatures, which have been shown in the Will, have been obtained



clandestinely and the signatures were taken on the blank sheet and later the last page of the Will was typed. So that the signatures were made to look as genuine. Therefore, he prays for dismissal of the suit.

11. The Will has to be proved in the manner known to law. The principles required for proving the validity and execution of the Will, this Court has to consider two aspects. Firstly, whether the Will is executed by the Testator. Secondly, whether it was the last Will executed by him. Apart from the statutory compliance, broadly it has to be proved that ;

- (a) the testator signed the Will out of his own free will
- (b) at the time of execution, he had a sound state of mind,
- (c) he was aware of the nature and effect thereof and
- (d) the Will was not executed under any suspicious circumstances.

12. The contention of the defendants is that at the time of execution of the Will, the testator has not a sound and disposing state of mind. The Will was not at all executed by their grandfather. In this case, the plaintiffs have not examined the attesting witnesses because they are the defendants,



T.O.S.No.16 of 2018

however, the plaintiffs have examined one identifying witness, by name, Venkat. The said identifying witness, who was in the Registrar Office, is not competent to depose about the health and mind condition of the testator. Therefore, at the time of execution of the Will, the testator is in sound state of mind is not proved by the plaintiffs. Further, the defendants contended that the plaintiffs have obtained the signatures in the last page without knowing the content. To disprove the said contention, the plaintiffs have not examined any witnesses.

13. Regarding execution of the Will, there are contradictions. P.W.3 deposed that the Will was drafted by one Shankar in the Office of the Sub Registrar. If it is so, there is no clear evidence when and where they obtained the Testator's signature. Further, the son of the said late Subramaniam was not present before the Registrar Officer, which creates suspicious. Further, P.W2 in his chief examination deposed about the execution of the will alone and he has not deposed about the drafting of the Will and timing and registration of the drafting of the Will. P.W1 during his cross examination has deposed that all of his three sisters/defendants and



T.O.S.No.16 of 2018

father/Testator were present during registration of the Will. However, P.W.2 during his cross examination deposed that his three sisters were not present during the registration of the Will since the grandfather did not want them to come. Therefore, there are contradictions between the evidence of P.W.1 and P.W.2. P.W.3 has not whispered anything about the attesting witnesses. Further, P.W.3, identifying witness, deposed that as per Audhar Card, his name is Venkatakrishnan, however, he has signed as N.Venkat, which also creates suspicious. Therefore, the Will dated 26.04.1989 has not been proved. Accordingly, the Issue No.1 is answered in favour of the defendants. Since the Issue No.1 is answered in favour of the defendants, the plaintiffs are not entitled to grant of Letter of Administration with a copy of the Will. Accordingly, the Issue No.2 is answered in favour of the defendants.

14. The plaintiffs had stated that they had filed the petition for obtaining Letter of Administration after the demise of the said Rajeswari. Hence, the plaintiffs have made out sufficient cause for not filing the Original Petition in time. Therefore, the third is answered in favour of the



T.O.S.No.16 of 2018

plaintiffs. Since the issue Nos.1 and 2 have been decided against the plaintiffs, they are not entitled to any other relief. Hence, the issue No.4 is answered accordingly.

15. In the result, the Testamentary Original Suit is dismissed. No costs..

21.03.2024

Index : Yes/No
Speaking/Non-speaking order
gv/skn

Witnesses examined on the side of the plaintiffs:

P.W.1. - A.S.Kalaichelvan
P.W.2 - A.S.Elangovan
P.W.3 - N.Venkat

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	06.04.1995	Death Certificate of Mr.Arumuga Mudali
2.	P-2	17.05.2008	Death Certificate of A.Subramaniya Mudaliar
3.	P-3	26.05.2013	Death Certificate of R. Rajeswari
4.	P-4	26.04.1989	Xerox Copy of Will executed by Arumuga Mudali



T.O.S.No.16 of 2018

S.No.	Exhibits	Date	Description
5.	P-5	20.08.2013	Legal Notice issued by contesting defendants to the plaintiffs
6.	P-6	28.08.2013	Reply notice given by the plaintiffs to the defendants.
7.	P-7	August 2013	Legal Heirship Certificate
8.	P-8	October,2013	Plaint filed on OS.No.6100/2013
9.	P-9	30.01.2014	Written statement in OS.No.6100/2013
10.	P-10	24.08.2016	Judgment and Decree in OS.No.6100/2013
11.	P-11	24.10.2013	Appeal Grounds in AS.No.268/2016

Witnesses examined on the side of the defendants:

D.W.1 - T.Nirmala

Exhibits produced on the side of the defendants:

S.No.	Exhibits	Date	Description
1.	D-1	31.03.1958	Sale Deed- Doc.No.730/1958 along with the clean copy
2.	D-2	10.12.2014 to 14.10.2015	Cross Examination of A.S.Kalaichelvan in OS.No.6100/2013
3.	D-3	16.12.2015	Cross examination of A.S.Elangovan in



WEB COPY



T.O.S.No.16 of 2018

S.No.	Exhibits	Date	Description
			OS.No.6100/2013
4.	D-4		
5.	D-5	22.10.1969	Sale Deed (Doc.No.4046/1969) executed between Arumuga Mudali and A. Subramanian along with the clean copy)
6.	D-6	15.06.2019	Property Tax Receipt

21 .03.2024



WEB COPY



T.O.S.No.16 of 2018

A.A.NAKKIRAN,J.

Gv/skn

T.O.S.No.16 of 2018 (O.P No.482 of 2014)

21.03.2024