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TOS. 28 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-12-2024

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

TOS. 28 of 2018

(OP.No.935 of 2016)

WILL OF

K.DESAMMAL(DECEASED)

1.G.Arumugam

2.G.Muthu (deceased)

3.G. Govindarajan

4. G. Shanmugam (deceased)

5. G. Parvathi

6. S.Jeeva

7. Anitha

8. Kavitha

9. M. Subramani

10. M. Chandrasekar

(Plaintiffs 6 to 8 brought on records as L.Rs of the deceased 4th plaintiff

and plaintiff 9 and 10 brought on records as L.Rs of the deceased 2nd plaintiff and

the amendment carried out as per order dt 20.06.2024 inn

A.Nos.2565 to 2567,

2568/2024 in TOS.No.28 of 2018 and A.Nos.2570 to 2572/2024

in TOS.No.28 of 2018)

...Plaintiffs

Vs

1. P.SRINIVASAN

S/O.LATE KANNUSAMY & MUNIAMMAL, NO.4/203,

KANTHAMANIAMMAL NAGAR, PUTHIYA

VENMANAMPUTHUR, KADAMBATTUR, TIRUVALLUR

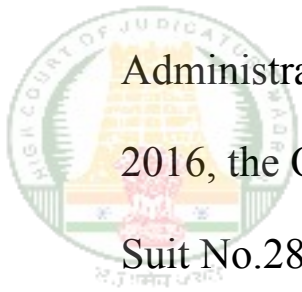
DISTRICT.

2. P. Selvamohan

....Defendants

PRAYER: Testamentary Original Suit filed under Sections 232 and 276 of

the Indian Succession Act XXXIX of 1925 for the grant of Letters of



Administration. As per order of this court dated 12.03.2018 in OP.No.!

2016, the Original Petition has been converted into Testamentary Original
Suit No.28 of 2018.

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For Appellant(s):

M/S.P.BALAMURALI
FOR PETITIONERS/PLAINTIFFS
NO.27/8, JOURNALIST COLONY,
SRINIVASAPURAM, THIRUVANMIYUR,
CHENNAI – 600 041

J U D G M E N T

The Testamentary Original Suit is filed for grant of Letters of Administration in
respect of the last Will and Testament of the deceased K.Desammal.

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

The plaintiff's mother Late Govindammal filed the probate of the Will dated
09.04.1984 on 03.07.2010 and during the pendency of the same, she died on
15.11.2020. Hence, this petition for Letters of Administration of the Will. The
Late Desammal had two daughters namely Govindammal and Muniammal.

b) The writing hereunto annexed and marked with letter 'A' is the last Will and

Testament of the said Desammal and was duly executed by her at Chennai on

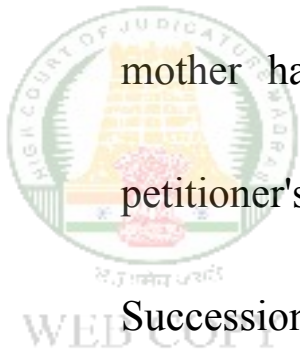


09.04.1984 registered before the SRO Puralaswalkam as Doc.No.17 in

the presence of the witness whose names appear at the foot thereof.

c) The said Muniammal had one son namely P. Gopal and out of his wed lock with 1st respondent, 2nd respondent was born. The petitioner's mother late Govindammal is the beneficiary under the Will executed by late Desammal and not the respondents herein. The said property was purchased by the husband of the deceased vide sale deed dated 31.03.1937 in Doc.No.765 of 1937 and he executed a Registered Will in favour of the Govindammal dated 09.04.1984 in Doc.No.17 of 1984 at SRO Purasawalkam. The respondents 3 and 4 filed OS.NO.9394 of 2009 before the XVII Assistant City Civil Court, Chennai, for injunction not to alienate the half share of the house property under the Will and they altered their father name as Kannusamy but still they are using 'P' as their initial. No documents are filed to prove that they are the sons of late Muniammal & Kannusamy. The lower court erred in decreeing the suit till the disposal of the probate proceeding.

d) It is stated that the amount of assets which are likely to come to the petitioner's



mother hand does not exceed in the aggregate sum of Rs.5,00 The

petitioner's mother is the only beneficiary under the Will. According to the Indian

Succession Act, there is no next kin or other interested to be impleaded. No

executor is appointed under the Will. No application has been made to any district

or delegate or to any other High Court for probate of any Will of the deceased or

Letters of Administration with or without the Will annexed to her property are

credits.

e)After the death of petitioner's mother, the petition for letters of Administration

was returned by the Registry to file a fresh petition, so the delay in filing the

petition for Letters of Administration before this court.

f) Plaintiffs duly undertake to administer the property and credits of the deceased

Desammal, any way concerning her Will by paying first her debts and then the

legacies therein bequeathed and so far as the assets will extend and to make a full

and true inventory thereof and exhibit the same in this court within six months

from the date of grant of Letters of Administration with the Will annexed to the

plaintiff and also to render true and correct account of the said property and



credits within one year from the date.



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4. On the side of the Plaintiffs, witnesses P.W.1 and P.W.2 were examined and Ex.P1 and Ex.P8 were marked.

5. This Court heard the learned counsel for the plaintiffs and considered his submissions and also perused the materials placed on record.

6. In the proof affidavit of the first plaintiff/PW1, it was stated that the last Will of the deceased Desammal was duly executed by her on 09.04.1984 under Doc.No.17 of 1984 in SRO Purasawalkam in the presence of the two witnesses whose names appear at the foot thereof. vide Ex.P4. He has also stated that the respondents 3 and 4 filed OS.NO.9394 of 2009 before the XVII Assistant City Civil Court, Chennai for injunction not to alienate the half share of the house property under the Will and they are the sons of late Muniammal & Pandu but they altered their father's name as Kannusamy but still they are using 'P' as their initial. No documents were filed before the lower court that they are the sons of



late Muniammal & Kannusamy. The lower court erred in decreeing on

13.01.2015 after the death of their mother. Hence, the plaintiff undertakes to duly administer the property and credit of the Testatrix. Thus, the plaintiff prays to grant Letters of Administration in favour of the plaintiffs.

7. P.W2 being the 2nd attesting witnesses in the Will dated 09.04.1984 averred in his affidavit that he and the 1st attesting witness signed in the said Will dated 09.04.1984 in the presence of the Testatrix. She has also affixes her thumb impression in the said Will in their presence after reading out the contents and explained to her in Tamil by the Advocate who drafted the Will. He further stated that at that time of execution of the Will, the Testatrix was in sound disposing state of mind and good health.

8. Considering the evidences of P.W.1 & P.W.2 and the documents vide Ex.P1 to Ex.P8 filed on behalf of the plaintiffs and as there was no representations on the side of the defendants, they were set exparte, this Court is of the view that the



plaintiffs are entitled for the issuance of Letters of Administration in the will of the deceased. The plaintiffs are directed to render true and correct accounts once in a year.



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9. Accordingly, this Testamentary Original Suit is decreed as prayed for. No costs. Issue Letters of Administration in respect of the Will dated 09.04.1984 in favour of the plaintiffs. The plaintiffs are directed to duly administer the properties and credits of the deceased. 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 are further directed to render true and correct accounts once in a year.

06.12.2024

Index : Yes/No

Speaking/Non-speaking order

gv



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A.A.NAKKIRAN,J.

gv

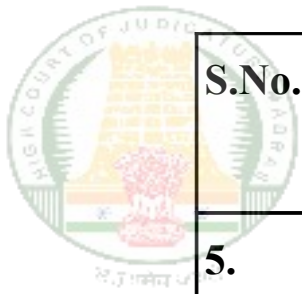
Witnesses examined on the side of the plaintiffs:

P.W.1. - Mr.G. Arumugam

P.W.2 – Mr.G.Govindarajan

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibit s	Date	Description
1.	P-1	17.05.1945	Original Settlement Deed
2.	P-2	24.12.1968	Photocopy of the Death Certificate of Kalappa Maistry
3.	P-3	09.06.1991	Photocopy of the Death Certificate of Desammal
4.	P-4	09.04.1984	Original Registered Will of Desammal
		20.04.2010	Original Legal Heir Certificate of



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S.No.	Exhibits	Date	Description
5.	P-5		Desammal
6.	P-6	30.07.2010	Original Petition filed by late Govindammal for Probate along with return endorsement of the Court
7.	P-7	15.11.2010	Photocopy of the Death Certificate of Govindammal
8.	P-8	18.01.2011	Original Legal Heir Certificate of Govindammal

06.12.2024

T.O.S No.28 of 2018

06-12-2024



To

1. P.SRINIVASAN

S/O.LATE KANNUSAMY & MUNIAMMAL,
NO.4/203, KANTHAMANIAMMAL NAGAR,
PUTHIYA VENMANAMPUTHUR, KADAMBATTUR,
TIRUVALLUR DISTRICT.

2. P.SELVAMOHAN

S/O.LATE KANNUSAMY & MUNIAMMAL,
NO.1/173, RAJEEV GANDHI NAGAR,
KADAMBATTUR,
TIRUVALLUR DISTRICT.