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TOS No. 22 of 2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-10-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

TOS No. 22 of 2011

L.Sankar

-Petitioner/Plaintiff

Vs.

1. L.Vijayakumar

-Caveator/Defendant

PRAYER

This Testamentary Original Suit is filed under Section 222 and 276 of the Indian Succession Act. XXXIX of 1925, praying to allow the plaintiff to prove the Will in common form and the probate may be granted to the plaintiff having effect limited to the State of Tamil Nadu.

For Petitioner

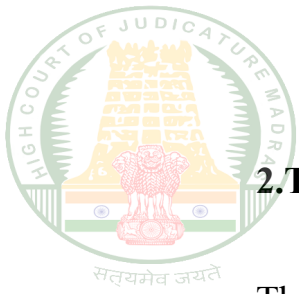
Mr.V.Manohar

For Respondent:

Mr.V.Lokeshkumar

JUDGEMENT

This original petition is filed by the plaintiff seeking a grant of probate having effect limited to the State of Tamil Nadu. in OP No. 843 of 2010, which has been converted into T.O.S. No. 22/2011 in view of the caveat filed by the defendant.

**2.The averments made by the plaintiff in his plaint are, in brief:**

The petitioner is the brother of the deceased L.Chitra, who is the testatrix had executed a Will dated 17.03.2010. The respondent is the husband of the deceased L. Chitra; though he is the legal heir of the deceased, he is not the beneficiary under the Will. The testatrix has appointed the petitioner as executor of the Will and he is also the beneficiary. The attesting witnesses have filed their affidavits. The petitioner undertakes to duly administer the properties and credits of the deceased in accordance with her Will, by first paying her debts and thereafter distributing the legacies bequeathed therein, to the extent that the assets will permit. The petitioner further undertakes to make a full and true inventory of the said properties and credits and to file the same before this Court within six months from the date of the grant of probate with the Will annexed, and to render a true and correct account thereof within one year from the said date. Hence, this petition has been filed seeking the grant of probate, subject to the usual conditions.

3.The written statement submitted by the defendant is, in brief:

The deceased L.Chitra who was the defendant's maternal uncle's



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daughter. She was employed under the defendant, and thereafter she became a director and the managing director of the company founded by him. She was looking after the day-to-day affairs of the company. Later, when the defendant's two daughters attained majority, they were also included as directors in the company. However, they did not involve in the affairs of the company. Taking advantage of this situation, the deceased L.Chitra was in the habit of getting signatures on the blank certificates, papers, receipts, etc., from the other directors and used them as and when needed according to her convenience. When the company had sustained huge losses, the defendant came to know about the mismanagement of L. Chitra.

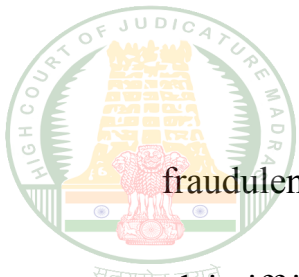
3.1. The defendant was married to one Saroja, and his two daughters were born through his wife, Saroja. The deceased L. Chitra was unmarried, and she had three brothers and a sister. It is false to state that the deceased, who was the wife of the defendant, and the defendant and the plaintiff are the only legal heirs of the deceased L.Chitra. The deceased L.Chitra is not entitled to make a Will in respect of a property which is not in existence. Deposit certificates were manipulated in her name, and that too in a company where she was acting as



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managing director. By using such manipulated deposit certificates, the sister of the deceased, T. Thilaga, had lodged a complaint in the Economic Offences Wing by claiming a sum of Rs.3 lakhs. Without knowing the fraudulent activities of the deceased, the defendant and other directors had borrowed money from third parties and settled those claims.

3.2. The deceased had also claimed certain money by showing deposit certificates in her name, but the same was refused. She lodged a complaint against the defendant and other directors before the Economic Offences Wing. The deceased has chosen to include such manipulated certificates in the Will which is illegal and which had been obtained by her not by actually making any deposit of money but by making fraudulent entries in the accounts and other registers of the company. In this regard, Chitra had already issued a letter to the Secretary on 20.02.2010 and that was properly replied to by her on 02.03.2010. She was also issued with a legal notice on 10.03.2010 with the very same allegations. The deceased had given a complaint before the Tamil Nadu State Women Commission, making false allegations against the defendant, and the same was dismissed by the Commission after due enquiry. The Will itself is a



fraudulent claim created for the purpose of an illegal claim, and hence, the plaintiff is not entitled to get probate as prayed.

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4. On the basis of the above pleadings this Court has framed the following issues:

“(i).Whether the Will executed by late L.Chitra is genuine and valid in law? and had appointed the person of L.Shankar as executor?

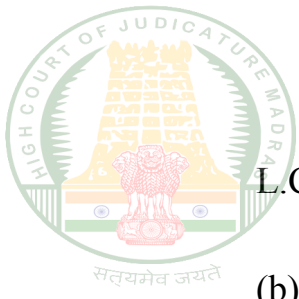
(ii).Whether the said Will is based on any right vested with her? and the alleged fixed deposit certificates were manipulated, fabricated and created by the Testator without depositing any money by misusing her Managing Director status of M/s.West Mambalam Suga Permanent Fund Limited?

(iii).Whether the plaintiff is entitled for grant of probate on the Will dated 17.03.2010?

(iv).To what relief the parties is entitled? ”

5. However this Court re frames the issue as the testamentary court cannot go into the title in respect of the subject matter of the Will as under:

“(a) Whether the Will dated 17.03.2010 executed by late

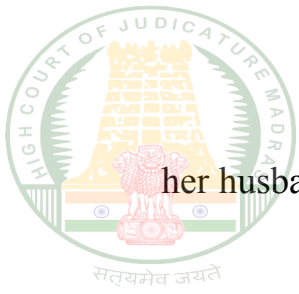


L.Chitra is genuine and valid in the Law?

(b) Whether the plaintiff is entitled to probate as prayed?"

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6.The learned counsel for the plaintiff submitted that so far as the Will is concerned, the defendant does not deny its execution, genuineness or validity, but his contention is only with regard to the entitlement of the testator in respect of the subject matter of the Will and that cannot be decided by the testamentary court. Despite the defendant having made averments in his written statement, he did not get into the box and examine himself as a witness. However, at the repeated instances of the plaintiff, he was examined through video conference, and during that time, the defendant was not able to understand the questions, and he could not give appropriate answers to the questions, and hence, his evidence was closed as it does not serve any purpose. The attesting witness, Panchatcharam, has been examined as PW.1, and he has stated clearly about the execution of the Will and thus the plaintiff has proved the genuineness of the Will. The testatrix had been married to the respondent, but she does not have any issues out of her marriage. Hence she did not have any legal heirs except



her husband who is the respondent herein.

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7. The learned counsel for the defendant submitted that the assets involved in the Will do not exist, and hence the probate cannot be granted as requested by the plaintiff. The testator has two elder brothers and two elder sisters, but the said fact has been suppressed in the petition also. They have not given any consent affidavit also. The respondent had never married the testatrix, and it is a falsehood to state so. No document has been produced to show that the testatrix is the wife of the defendant. The plaintiff has not produced any document to show that the deceased had been married to the defendant. Hence, the probate cannot be granted to the assets which are not in existence.

Discussion:

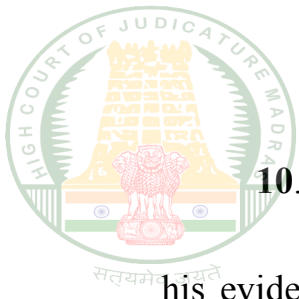
8. The testatrix is the sister of the plaintiff. According to the plaintiff, she was married to the defendant, but the defendant has stated that he has been paying Rs. 5000/- per month out of sympathy to the testatrix because of the fact that she was his maternal uncle's daughter of the defendant. The plaintiff has also not produced any document except her own declaration made in the Will



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that she is married to the defendant. Even though the defendant has denied his relationship with the deceased, he was continuously paying a sum of Rs. 5,000/- per month to the deceased, which was claimed by the plaintiff as maintenance paid by the defendant in his capacity as her husband. Neither the plaintiff has produced any document to show that the defendant is legally wedded to her nor the defendant has produced any document to show that the money, i.e., Rs.5000/- per month, paid by him to the deceased was not towards her maintenance in his capacity as husband but only out of sympathetic grounds. Both the parties have not examined any independent witnesses either in order to prove or disprove the relationship of the deceased Chitra with the defendant.

9. The objection of the defendant to grant probate in favour of the plaintiff is twofold: one, he has claimed that he is not the husband of the deceased, and hence the plaintiff ought to have filed the petitions by impleading all the legal heirs who are the siblings of the deceased, and two, the assets involved in the Will itself do not exist, and hence the Will is invalid and not enforceable. Except for the above two contentions, the defendant has not raised any contention as to the execution of the Will or its genuineness.



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10. The attesor of the Will was examined as PW.1, and he has stated in his evidence as to his presence at the time when the Will was executed. The attesting witness who was examined as PW.1 has stated about the fact that how the Will was executed by Chitra in his presence and that he has affixed his signature as one of the attesting witnesses. The cross-examination of PW.1 has not brought out any doubt about the evidence of PW.1. So far as the Will is concerned, the Will has been executed by the deceased in terms of Section 63 of the Indian Succession Act, and it has also been proved as per Section 68 of the Indian Evidence Act.

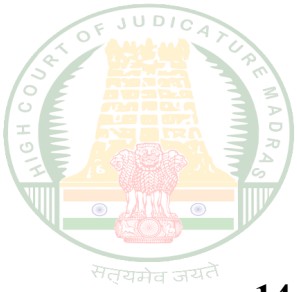
11. If the defendant claims that he is not the husband of the deceased, he can claim that he is only an unnecessary party. But he has stated that other legal heirs' names, especially one of the siblings by the name of Thilaga, who was in existence at the time when the Will was executed by the deceased, ought to have been impleaded as a party to these proceedings. The plaintiff also has accepted the relationship of Thilagam with the deceased and that she was also one of the sisters. But he has not chosen to implead her as a party; probably she did not object to the proceedings initiated by the plaintiff. Neither the said Thilaga had



executed a consent affidavit at the time when the application had been filed.

WEB COPY 12. The contention of the plaintiff is that the deceased Chitra was married to the defendant, and they did not have any issues, so the only legal heir of the deceased Chitra is the defendant. If the defendant is not the husband and the legal heir of the deceased Chitra, and the said Thilaga was also the legal heir along with the defendant of the deceased Chitra, then it is for the said Thilaga to come forward and challenge the probate at any future point in time. So the defendant, who had denied the very allegation that he is the husband of the deceased Chitra, cannot stand in a way granting probate to the detriment of any of the alleged surviving legal heirs of the deceased Chitra.

13. So far as the plaintiffs' claim as to the genuineness of the deposit certificate is concerned, it can only give a cause of action to the defendant to file a separate suit and would have given a separate cause of action to the defendant to file a separate suit to claim that those deposit certificates are not valid and they are fraudulent. Until Chitra was alive, the defendant had not taken any steps to file a suit to declare those deposit certificates issued in the name of the company are false certificates and did not have any money value at all.



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14. In fact, the defendant is said to be one of the directors of the company, and hence he would be interested in any of the deposit certificates issued in the name of the company, and if he denies its genuineness, then it is for him or for any of the directors of the company to file a suit to declare the deposit certificates in the name of the deceased in respect of the 1st defendant company as null and void. The defendant was a cancer patient; he could not answer the questions put to him during the examination through video conference. Even then, no other witness has been examined to disprove the contention of the plaintiff or to prove the contention of the defendant.

15. Neither the defendant nor any of the directors has filed any such suit even after the original petition filed seeking for the relief of probate. So far as the binding nature of the assets, namely the deposit certificates of the defendant's company, is concerned, the defendant ought to have taken separate proceedings, and those matters of entitlement cannot be dealt with by the testamentary court. As the plaintiff could establish the genuineness of the Will in Ex. P1; the petitioner is entitled to the probate as prayed.



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In the result, this Testamentary Original Suit is **decreed** and the Registry is directed to grant probate in favour of the plaintiff.

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jrs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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