



T.O.S.No.15 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

T.O.S.No.15 of 2013

in

(O.P.No.357 of 2008)

K. Manjula

..Plaintiff/Petitioner in
O.P.No.357 of 2008)

..Vs..

1. P.K. Rajasekaran
2. P.K.Kalyanaraman

.. Defendants/Caveators

Prayer:

This suit has been filed under Sections 232, and 276 of the Indian Succession Act XXXIX of 1925 for grant of Letters of Administration with the copy of Will annexed and under order XXVI, Rule 5 of OS Rules. Against this petition, a Caveat was filed by the Caveators. As per order of the Court dated 03.04.2012 in O.P.No.357 of 2008, the Original Petition No.357 of 2008 has been converted into Testamentary Original Suit TOS.No.15 of 2013.

For Plaintiff(s) : Mr.R. Rajaramani

For Defendant(s) : Mr. A.V.Arun &
Mr.R.Vinoth Kumar – D2
D1- set exparte



T.O.S.No.15 of 2013

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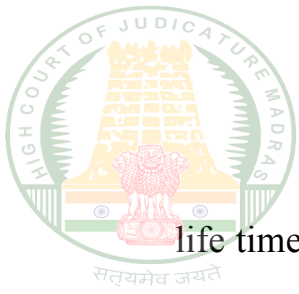
J U D G M E N T

Originally, OP.No.357 of 2008 has been filed praying for grant of Letters of Administration in respect of Last Will executed by deceased P.A.Krishnamurthy in favour of his daughter/Legatee under the Will of the deceased. On filing caveat, OP.357 of 2008 was converted into TOS.No.15 of 2013 by order of the Court dated 03.04.2012.

2.The case of the Plaintiff, as set out, in TOS is as follows:

a).The plaintiff-K.Manjula is the daughter of deceased P.A.Krishnamurthy. The said Krishnamurthy died on 06.03.2007 at Old No.35/2, New No.16, M.I.G.Flats, 12th Avenue, Ashok Nagar, Chennai-83 leaving behind his sons, the defendants 1 and 2 herein and one Balusamy and his daughter, the plaintiff herein as his legal heirs. The wife of deceased P.A.Krishnamurthy pre-deceased to him.

b)While the deceased P.A.Krishnamurthy was alive, he executed his Last Will and Testament on 03.11.1994 in the presence of two witnesses bequeathing the property described in the schedule of the Will in favour of his daughter, the plaintiff herein for her life time absolutely and during her



T.O.S.No.15 of 2013

life time, the property will not be alienated and in case, after her demise, the property will devolve absolutely on plaintiff's daughter Ms.C.Janani. The testator's father and mother pre-deceased him and the petitioner has impleaded all the next kin or other persons interested as party/respondents and there is no other next of kin or other persons interested to be impeaded. Since, no executor was appointed in the Will, the plaintiff in O.P.No.357 of 2008 filed for grant of Letters of Administration under the Will.

3. The averments of the written statement filed by the 2nd defendant is as follows:

a) The defendants are the sons of deceased P.A.Krishnamurthy. The defendant's father had no intention at any point of time to bequeath the property in favour of the plaintiff. If really their father had intention to execute such a Will to bequeath his property in favour of plaintiff, he would have consulted his sons since there was always a good relationship between the father and sons.

(b) The plaintiff was already given a property in Periyar Nagar and the property bequeathed under the alleged Will was intended to be given only to the 2nd defendant and he has ample evidence to prove the case. The plaintiff took advantage of 2nd defendant's absence, immediately after the death of

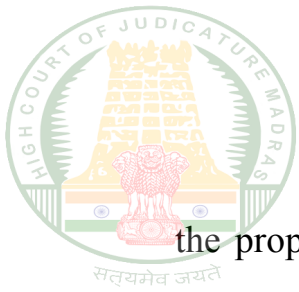


T.O.S.No.15 of 2013

their father, managed to take away the keys of the property and let it out to third party and thereafter, now she claims that the property belongs to her by virtue of alleged Will.

(c) The alleged Will dated executed by their deceased father is a forged one created by the plaintiff with an intention to grab the property from legitimate persons taking advantage of the absence of the male members in the City of Chennai. The deceased P.A.Krishnamurthy never used Tamil as his language of communication, as such the Will said to have been drafted by him is a fabricated one. The property was not purchased by the father of the plaintiff alone and it was purchased out of the joint exertion of the 3rd defendant and the plaintiff and other brothers cannot deny the legitimate share of this defendant in the property.

(d) The 1st defendant filed a suit in O.S.No.1267 of 2008 before the XII Assistant City Civil Judge, Chennai for partition of the properties, which also includes the property claimed in the Will and the same is pending at the second appeal stage. The family had two properties, one in the name of the mother and other in the name of the father. The plaintiff and the 1st defendant have taken half share in the property stood in the name of the mother and the other brother Mr.P.K.Balusamy had executed a release deed long back after taking money value towards his share. It was the desire of the parents to give



T.O.S.No.15 of 2013

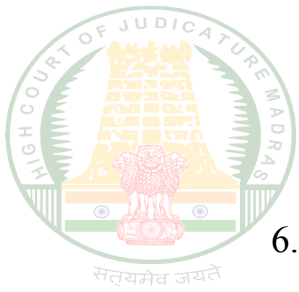
the property at Ashok Nagar only to this defendant and not to anyone else.

The deceased father, in his last letter wished him to come back to Chennai to join him in his last letter and when that being so, there was no need to exclude him and execute Will in favour of his daughter who was already given due share. The Will produced by the plaintiff is not genuine and hence the suit is liable to be dismissed.

4. Based on the above said pleadings in TOS, this court on 06.10.2016 the following issues were framed for consideration.

1. *Whether the Will dated 03.11.1994 is genuine?*
2. *Whether the Will is executed under undue influence?*
3. *Whether the plaintiff is entitled for issuance of Letters of Administration?*
4. *To what other reliefs, the plaintiff is entitled to?*

5. On the side of the Plaintiff, Ex.P1 to Ex.P13 were marked and PW.1 was examined. On the side of the Defendants, Ex.D1 to Ex.D9 were marked and DW.1 and DW2 were examined. As the 1st defendant did not enter appearance, he was set exparte by this Court on 30.09.2024.



6. Heard both sides and perused the material available on record.

WEB ~~CONF~~ Issue No.1 and 2:

7. The learned counsel for the Plaintiff submitted that the plaintiff came to know about the existence of the Will dated 03.11.1994 executed by her father, only after the death of her father in the year 2007 and she did not know anything about the execution and registration of the Will and she did not participate in the execution of the Will, therefore, she has right, title and interest from the Will over the property.

8.It has been further submitted that the defendants did not specifically deny the due execution of the Will or the mental capacity of the father while executing the Will. Since both the attestors of the Will were no more, to prove the Will, PW1-the plaintiff and PW2 who identified the one of the attesting signature in the Will, were examined extensively in compliance of Section 69 of Indian Evidence Act. There is no proof or evidence to establish that the Will is surrounded by suspicious circumstances. The evidence of DW2 clearly admits that the Testator knows Tamil. The evidence of DW2 categorically admits that his father never stated that the plaintiff has pressurised him to bequeath the proeprty in her favour, thus it is clear that the plaintiff has no role played in the execution of the Will.



T.O.S.No.15 of 2013

WEB COPY 9. The learned counsel for the 2nd defendant submitted that PW2 is an employee of the Autolec Industries Limited, where the husband of the plaintiff was working as a Manager, which demonstrates that this witness is an interested and brought up witness. The entire evidence of PW2 is a cooked one and fully tutored one by the plaintiff and her husband to support the false stand taken by the plaintiff. The evidence of PW2 is unreliable and interest, as such, there is no compliance under section 69 of the Evidence Act. The alleged signature of witness to the Will was not proved. Ex.P.6 and Ex.D3 would demonstrate the cordial relation prevailed between the 2nd defendant and the Testator and hence, there is nothing for the Testator to exclude his son/2nd defendant from getting any share in the proeptries. Further, when there is no extra care taken by the plaintiff towards her father other than the normal one, there is no other special reason, whatsoever for the testator to exclude all the three sons and doing everything to her daughter/plaintiff.

10. It has been further submitted that in Ex.P.10-Will, the recitals are very much abnormal and very strange and in the alleged Will, the names of three sons were not mentioned and though, at a later stage, the names of the



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three sons were given, no reason was assigned as to why all the three sons were totally excluded in the same. Further, it is evident from Ex.D.W1 that the entire diary and correspondences were written only in English and it is highly impossible for such a person to write only in tamil, that too in pure Tamil, in which, he was not acquainted. Hence, the suit is liable to be dismissed.

11. On a perusal of the records, it is seen that the Testator, ie.Mr. P.A. Krishnamurthy said to have executed the Will dated 03.11.1994 vide Ex.P10, and died on 06.03.2007 vide Ex.P3. There is no dispute in the relationship between the plaintiff and the defendants herein who are the legal heirs of the Testator. Based on the original Will, the Plaintiff filed O.P. No.357 of 2008 having impleaded the legalheirs of the Testators as parties in the proceedings. Only the 2nd defendant is contesting the suit while others are not interested to sue and set exparte.

12. In the deposition of P.W1, it is seen that the Original Will was found in the Locker of Indian Bank maintained by the Testator. It is also came to know through the 1st defendant herein who found xerox copy of the Will in the House during the process of cleaning the house along with the plaintiff,



T.O.S.No.15 of 2013

after the death of the Testator. Even though the aforesaid averments have been denied by the D.W2, in his proof affidavit, however, in his cross examination, he deposed that he does not know anything personally about the aforesaid facts. In similar manner, D.W1 has admitted by deposing that few days after the death of his father, his brother told him that his father executed a Will in favour of Manjula and showed the xerox copy of the same.

13.It is seen from the records that both the Attesting Witnesses ie. (i) M. Balasubramaniam and (ii) K.S. Venkatasubramanian of the said Will have signed in the alleged Will. Since the 1st attesting witness was reported as died before filing the O.P., the 2nd attesting witness by name K.S. Venkatasubramanian has filed the affidavit during the filing of the aforesaid O.P stating that at the time of execution of the Will, the Testator was sound and disposing mind and memory and understanding vide Ex.P13 and after filing O.P. he was reported as died during the pendency of the suit. Under such circumstances, his friend and office colleague namely Mr.S. Muralikrishnan was examined as P.W2 to prove the signature of the 2nd attesting witness on the alleged Will. Despite P.W2 identified the signature of the 2nd attesting witness in his proof affidavit, however, it is very necessary to identify the signature of the Testator on the Will -Ex.P10 to ensure whether



T.O.S.No.15 of 2013

the Will was drafted by him.

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13. Under such circumstances, despite the 1st defendant was set-exparte in the suit, he has filed the proof affidavit and he was cross examined as D.W2. In his cross examination, while showing Ex.P10, he has deposed stating as “the signature found in Ex.P10 is that of my father”. Further, he has stated as “All the signatures in all pages found in Ex.P10 is that of my father”. Further, even though D.W2 has deposed that his father used to communicate to others only in English, and he would not have written any letter in Tamil, in the Ex.D9- Pocket Diary of the Testator shows that the Testator would know and write Tamil also since he has written some Tamil words therein.

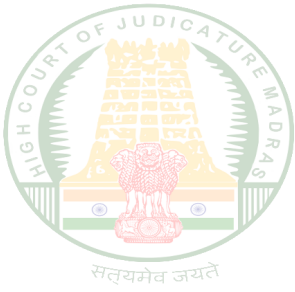
14. In the similar manner, in the cross examination of D.W.1, he has also admitted that the signature in Ex.P10 is of his father. Despite he stoutly denied that the Testator is not acquainted with Tamil, Ex.D9 Pocket Diary of the Testator filed on the side of the defendant, there were Tamil words written by the Testator which indicates that he knew Tamil too. Further, D.W1 and D.W2 have not raised any suspicious ground of mental and health capacity of the Testator and raised only on the main ground that he always communicate only in English not in Tamil. It cannot be a ground to disprove the Will while



T.O.S.No.15 of 2013

the signature of the Testator on the Will-Ex.P10 was accepted by both the D.W1 and D.W2 themselves in their evidence. Even though the suit schedule property mentioned in the Will was said to have given to the 2nd defendant on the desire of his father, he does not have oral and documentary evidence to prove same. Further, the 2nd Defendant has not proved that the Will is surrounded by suspicious circumstance by way of oral and documentary evidence and he has not raised any ground of mental and health issue to the Testator.

15. Having regard to the above observations and also considering the facts and circumstances, it is seen that the plaintiff has proved the said Will dated 03.11.1994 by way of oral and documentary evidence. Hence, the alleged Will is true and genuine and the same was not executed under undue influence. Thus, Issue No.1 and 2 are answered. Since the Issue No.1 and 2 are answered in favour of the plaintiff, she is entitled to grant Letter of Administration as prayed for. Accordingly, Issue Nos.3 and 4 are answered. Hence, The plaintiff in TOS 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, within a period of three (3) months as required under law.



T.O.S.No.15 of 2013

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16. In the result, the TOS is decreed as prayed for.

14.03.2025

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

lbm

List of witnesses examined in TOS :

PW1 - Mrs.K.Manjula

P.W2.- Mr.S. Muralikrishnan

DW1 - Mr. P.K. Kalyanaraman

DW2 - Mr.P.K.Rajasekaran

List of documents marked on the side of the plaintiff:

Ex.P1 is the Original Tamilnadu Housing Board Application Form dated 18.11.1969

Ex.P2 is the Original Release Deed dated 27.07.1972

Ex.P3 is the Original Death Certificate of P.A.Krishnamoorthy

Ex.P4 is the Copy of the death certificate of K.S.Venkatasubramanian with I.D. Driving License.

Ex.P5 is the original property tax demand card in the name of P.A.Krishnamoorthy

Ex.P6 is the Original Last journey letter by P.A.Krishnamoorthy

Ex.P7 is the xerox copy of judgment in O.S.No.1267 of 2008, dated 23.11.2010



T.O.S.No.15 of 2013

Ex.P8 is the xerox copy of the judgment in A.S.No.157 of 2011, dated 08.08.2014

Ex.P9 is the certified copy of sale deed

Ex.P10 is the Original Will

Ex.P11 (6 Nos.) is the Original Lumpsum payment receipts given by TNHB

Ex.P12 is the original monthly installments receipts issued by TNHB

Ex.P.13 is the affidavit of attesting witness

Ex.P.14 is the proof affidavit of P.K.Rajasekaran

List of documents marked on the side of the defendants:

Ex.D.1 is the one courier cover

Ex.D.2 is the copy of proof affidavit and deposition

Ex.D.3 series is the certified copy of letters between plaintiff and defendant

Ex.D.4 series is the copy of letter addressed to Indian Bank, another one was addressed to pension payment Pay Master dt. 7.4.1987 and 13.4.1987

Ex.D.5 is the Copy of letter

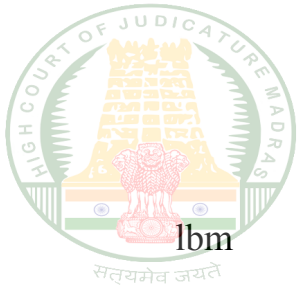
Ex.D.6 is the Copy of notice to admit filed under Or.12, Rule 4 and 5 of Cr.P.C., dated 10.04.2017

Ex.D7 is the original reply notice to notice to admit, dated 21.04.2017

Ex.D.8 is the original conduct certificate issued by Manager Macmillans

Ex.D.9 is the original Pocket Diary of deceased P.A.Krishnamoorthy for the year 1971.

14.03.2025



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T.O.S.No.15 of 2013

A.A. NAKKIRAN, J,

Lbm

T.O.S.No.15 of 2013



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T.O.S.No.15 of 2013

14.03.2025