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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM:

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

TOS.No.22 of 2014
in
(OP.No.159 of 2014)

1.Mr.B.Raja (deceased)
2.Arokiyamary,
3.Pappa,
4.Sagayamary

... Plaintiffs

..Vs...

1. Mrs. S. Periyamayagi
2. Mrs. Arockiam @ Arockia Mary
3. Ms. Pappammal,
4. Mrs.Mery

... 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 04.07.2014 in O.P.No.159 of 2014, the Original Petition has been converted into Testamentary Original Suit No.22 of 2014.



For Plaintiff : Mr. T.N. Murali Moghan

For Defendants : Mr.T.S. Baskaran
(for Mr.R.Muthukumar)

JUDGMENT

The Testamentary Original Suit is filed for issuance of letters of Administration with the will annexed to be granted to him as the grandson/beneficiary of the deceased having effect throughout the State of Tamilnadu.

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

a) The Testatrix Mrs. Lurthumari got marriage with Mr.Susainathan and out of their wedlock two sons and two daughters were born. They are (1) Balu, (2) Doss, (3) Pappa and (4) S.Periyanayagi. The above said Papa died at the age of 8 years long back and Doss also died unmarried long back. The petitioner is the grandson of Testatrix through her son Mr.Balu. The petitioner's father looked after the Testatrix initially and after demise of petitioner's father Mr.Balu on 11.4.1988, the mother of the petitioner namely Mrs.Arockiam @ Mrs.Arockia Mary looked after the



Testatrix till her death. The husband of the Testatrix namely Mr.Susainathan predeceased her long back and parents of the Testatrix also predeceased her long back.

b) Mrs.Lurthumari, the Testatrix of the WILL died at her age of 75 years at No.127, Kottai Street, M.G.R. Nagar, Kottaikuppam, Pazhaverkadu, Ponneri Taluk, Tiruvallur District on 14.3.2002, where she ordinarily resided and within the State of Tamil Nadu and within the jurisdiction of this Hon'ble High Court. The petitioner herein and his family members performed the last rites and ceremonies at their cost to the Testatrix.

c). The Testatrix was the absolute owner of the land and building situates at Old No.34, New No.65, New Amarajipuram, (As per Corporation property Tax Assessment Amaravathy Puram), Kasimedu, Royapuram, Chennai-600 013, which is morefully described in the Schedule of Property hereunder lying within the territorial jurisdiction of this Hon'ble Court and within the limit of Corporation of Chennai.



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d).During her lifetime, the Testatrix executed a registered Will with respect to her above said property bequeathing above said property in favour of the petitioner. The writing hereunto annexed now shown to the petitioner and marked with a Letter-A, is the Last Will and Testament of late Mrs. Lurthumari, it was truly executed by her at Ponneri on 21.11.1994 and registered before the Sub-Registrar's Office at Ponneri as Document No.68/1994 on the same day in the presence of the witnesses (1) Mr.S.Joseph, and (2) Mr.M.Selvam, whose names appear at the foot of the Will and in the document before the Sub- Registrar's Office, Ponneri. at the time of execution of Will, the petitioner was aged about 13 years and he had no knowledge about the execution of Will. The petitioner's mother Mrs. Arockiam @ Arockia Mary being an illiterate lady also not aware the value of Will and not disclosed the same to the petitioner. Only during the month of June 2013, when cleaning the house to dispose unwanted things, the petitioner found the Will and files this petition as early as possible. Hence, there is a delay in filing this petition and delay is neither willful nor wanton. The Testatrix of the Will did not appoint any Executor for the Will.



e). The value of the assets which are likely to come to the petitioner hand does not exceed in the aggregate the sum of Rs.3,00,000/- and the net amount of the said assets after deducting all items which the petitioner is by law allowed to deduct is only of the value of Rs.2,80,000/-. No application has been made to any District Court or Delegate or to any other Court for Probate of the Will of the said deceased Mrs. Lurthumari or Letters of Administration with or without the Will annexed of her property and credits.

f). The petitioner hereby undertakes to duly administer the property and credits of the said deceased Mrs.Lurthumari and in any way concerning her Will by paying first her debts and then the legacies herein bequeathed so far, as the assets will extend and 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 Petitioner 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. Thus, he prays to allow this suit for the above stated reliefs.



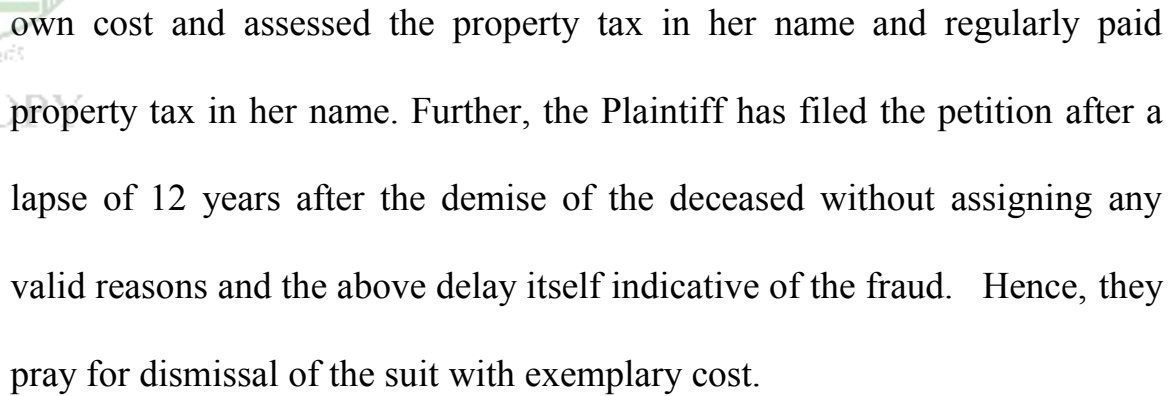
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3. In the written statement, the 1st defendant had stated as

follows:

a) The 1st defendant deny the Will dated 21.11.1994 registered as Document No.68 of 1994 executed by her deceased mother Lurthumari and the alleged Will is a forgery and created document. From the year 1993 onward her mother was bedridden and she was suffered by mouth cancer, hence she was not in good health, not in sane and sound mind and disposition, and also not in the position to execute any Will and the left hand thumb impression of the Testatrix in the alleged Will is not identical with her mother Lurthumari left hand thumb impression.

b). Lurthumari had not executed any Will during her life time as alleged by the Plaintiff and the same is forgery document created by him. Lurthumari was an illiterate and she had not executed any Will. She was not an absolute owner of the schedule mentioned property. The 1st Defendant is in the absolute possession and enjoyment of the property. The suit schedule property originally belonging to Collector of chennai and 40 years back, she occupied the suit schedule property and put up the superstructure on her



4. On the pleadings of the parties and hearing the learned counsel appearing for both sides, the following issues were framed for determination:-

1. “Whether the Will dated 21.11.1994 said to have been executed by late Lurthumary is true and valid?

2. Whether the Testator was in sound and disposing state of mind on the date of execution of the Will?

3. *To what other reliefs the parties are entitled?*

5. On the side of the Plaintiff, Ex.P1 to Ex.P15 were marked and PW.1 to P.W.4 were examined. On the side of the Defendants, Ex.D1 was marked and DW.1 and D.W.2 were examined.

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



WEB COPY Issue Nos.1 to 3:

7. The learned counsel for the plaintiff submits that the Testatrix was the absolute owner of the land and building situated at Old No.34, New No.65, New Amarajipuram, (As per Corporation property Tax Assessment Amaravathy Puram), Kasimedu, Royapuram, Chennai-600 013. During her lifetime with the sound disposing state of mind, the Testatrix executed a registered Will with respect to her above said property bequeathing above said property in favour of the petitioner in the presence of the witnesses (1) Mr.S.Joseph, and (2) Mr.M.Selvam, whose names appear at the foot of the Will.

8.It has been further submitted that in order to prove the Will dated 21.11.1991 executed by the Testatrix, the 1st attesting witness ie. S.Joseph was examined since other witnesses were said to have been died. The thumb impression of the testatrix on the Will has been proved by one of the attesting witness PW2 in his Proof Affidavit. Hence, he prays to grant letter of Administration in favour of the plaintiff.



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9. The learned counsel for the 1st defendant submits that Lurthumari being the mother of the 1st defendant had not executed any Will during her life time as alleged by the Plaintiff and the same is forgery document created by him. Lurthumari was an illiterate and she had not executed any Will. She was not an absolute owner of the schedule mentioned property.

10. It has been further submitted that the 1st Defendant is in the absolute possession and enjoyment of the property. The suit schedule property originally belonging to Collector of Chennai and 40 years back, she occupied the suit schedule property and put up the superstructure on her own cost and assessed the property tax in her name and regularly paid property tax in her name. Further, the Plaintiff has filed the petition after a lapse of 12 years after the demise of the deceased without assigning any valid reasons and the above delay itself indicative of the fraud. Hence, the suit is liable to be dismissed with exemplary cost.



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11. On perusal of the records, it is seen that the alleged Will was said to have been executed on 21.11.1994 and the Testatrix died on 14.03.2002. According to the evidence of P.W.1, the said Will was found after one year of the death of Testatrix. ie. In the year 2003. However, the Plaintiff has stated in the plaint and proof affidavit that during the month of June 2013, he found the Will during cleaning the house and disposing unwanted things. It is contrary to his statement comparing with his pleadings. Further, the plaintiff has filed the O.P in the year 2014 even though the Will was said to have found in the year 2003. The proper reasons for filing of the O.P. belatedly have not been explained by the plaintiff to convince the Court.

12. In the evidence of P.W.1, on the question of attesting witnesses, he has stated the name of 2nd Attesting Witness as Selvaraj while the name of the 2nd attesting witness in the Will is shown as Selvam. It is contrary comparing with the said Will. Further, while one of the attesting witness Antony Raj put his left thumb impression in the alleged Will, the



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plaintiff has not whispered anything about him in the plaint and in his proof affidavit. Further, in the evidence of P.W.2, who is one of the attesting witnesses states that Selvam and Anthony put their signatures at Registrar office while the said Anthony raj put his left thump impression in the Will and on another question, P.W.2 answered that Selvam signed and Anthony put his thump impression. It creates suspicion. Further, P.W2 has not whispered as to whether the contents of the Will have been read out and explained to the Testatrix or not as she was an illiterate.

13. On perusal of the Will, it is seen that none of attesting witnesses have mentioned their father name and address while putting their signature in the Will. Further, even though it is seen in the Will that the Document was prepared by one A. Janakiraman, Advocate Ponneri, where there is no mention about Enrollment and address of the said Advocate. In the plaint also, the plaintiff and P.W.2 have not whispered anything about the Advocate who has prepared the said Will. Hence, it creates suspicion. Thus, the plaintiff is bound to clear the aforesaid suspicious circumstances in the execution of the Will. However, the plaintiff failed to prove the same



by way of oral and documentary evidence. Accordingly, Issue No.1 is answered against the plaintiff. Since the Issue No.1 is answered against the plaintiff, the plaintiff is not entitled to any relief as prayed in the suit. Accordingly, Issue No.2 is answered. While the Issue No.1 and 3 are answered against the plaintiff, Issue No.2 does not arise.

14. In the result, the TOS is dismissed. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Lbm

List of Witnesses Examined on the side of the Plaintiff:-

P.W.1- Mr.B.Raja
P.W.2- Mr.S.Joseph
P.W.3- Mr.S. Suresh
P.W.4- Mr.R. Shivasankar

List of Witnesses Examined on the side of the Defendants:-

D.W.1-S. Periyannayagi
D.W.2-N. Govindaraj

List of Exhibits Marked on the side of the Plaintiff:-

Sl.No.	Exhibits	Description of documents
1.	Ex.P1	The original Death certificate of Mr.Balu dated 11.04.1988.



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<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
2.	Ex.P2	The original Will executed by Testator in favour of plaintiff in document No.68/1994 dated 21.11.1994. [in Safe Custody]
3.	Ex.P3	The original Death certificate of Lurthumary dated 14.03.2002.
4.	Ex.P4	The original legal heir certificate of Balu dated 24.08.2004.
5.	Ex.P5	The original affidavit of attesting witness of S.Joseph dated 30.10.2013.
6.	Ex.P6	The original consent affidavit of 2nd defendant dated 30.10.2013.
7.	Ex.P7	The original consent affidavit of 3rd defendant dated 30.10.2013.
8.	Ex.P8	The original consent affidavit of 4th defendant dated 30.10.2013.
9.	Ex.P9	The original affidavit of petitioner/form of valuation of estate dated 30.10.2013.
10.	Ex.P10	The Receipt for Property Tax of suit property dated 10.02.1980.
11.	Ex.P11	The office copy of legal notice issued by plaintiff dated 03.03.2015.
12.	Ex.P12	The Reply notice issued by 1 st defendant dated 16.03.2015.
13.	Ex.P13	The photocopy of Aadhar card of S.Joseph.(Original produced compared, verified and returned to the counsel.)
14.	Ex.P14	The computerized receipt from 1993 along with the covering letter dated 12.04.2022.
15.	Ex.P15 (Series)	Burial certificate of Lurdu Merry, Property tax demand card and tax receipt. Which were given to us by the party at that time of changing the name in EB connection, and order of name change.

List of Exhibits Marked on the side of the Defendants:-

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.D1	The attested copy of Town survey extract for RS.No.3619.



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A.A.NAKKIRAN,J.

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