

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.02.2018

PRONOUNCED ON: 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

TOS.No.68 of 2013

A.Selvaraj

Plaintiff

Vs

1. M.Dhanakoti
2. M.Veeraghavan

Defendants

Prayer:- This Testamentary Original Suit is filed under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration with the Will annexed.

For Plaintiff : Mr.C.Ramesh

For Defendants : Set Exparte

JUDGEMENT

Originally, OP.No.311 of 2012 had been filed by the Plaintiff, A.Selvaraj, against five Respondents, namely, M. Dhanakodi, M.Veeraraghavan, M.Sushila, M.Datchayani and M. Amuthavalli, seeking Letters of Administration with the Will annexed with respect to the Will produced by the Petitioner, dated 05.12.1995, said to have been executed by Narayanaswamy Naikar.

2. Since the Respondents 1 and 2 had filed a caveat dated

11.06.2012 and 27.07.2012, the OP.No.311 of 2012 was converted into

TOS.No.68 of 2013. Thus, the Respondents 1 and 2 were impleaded as the Defendants in the TOS.

3. The case of the Plaintiff is as follows:-

a. The Petitioner is the brother's son of the Testator, Narayanasamy Naikar, who died on 11.01.1996 at No.3, Thiruvalluvar Salai, Teynampet, Chennai-18, where he was ordinarily residing at and possessed of property within the City of Chennai, leaving behind him the Respondents as his legal heirs. The Testator had only one son by name Mari Naiker, who died on 3.11.2012, leaving behind the 1st Respondent, who is his wife and the Respondents 2 to 5, his children, as his legal heirs. The Testator had executed a Will dated 5.12.1995 in the presence of the witnesses whose names appear at the foot thereof. In the said Will, there is no executor appointed by the Testator. The amount of assets, which is likely to come to the hands of the Plaintiff does not exceed in the aggregate the sum of Rs.20,00,000/-/- and the net amount of the said assets after deducting all items which the Plaintiff is by law allowed to deduct is only of the value of Rs.19,99,000/-.

b. The Petitioner undertakes to duly administer the property and credits of the deceased Testator in any way concerning his Will by paying first 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 before this Court within six months from the date of grant of Letters of Administration with the Will annexed and also render a true account of the said property and credits within one years from the said date. No application has been made to any Court, seeking similar relief.

c. The original Will dated 5.12.1995 was kept in safe custody of the father of the Petitioner, Arumuga Naiker and prior to his death, the Will was handed over to the Petitioner. In the second week of April 2012, the Will was traced and the delay caused filing the petition is neither wilful nor wanton. Since the Petitioner's demand for his half share bequeathed to him under the Will was not complied with by the Respondents, this petition has been filed, seeking Letters of Administration in his favour.

4. The Defendants entered appearance through a counsel. However, on several occasions, there was no representation on behalf of the Defendants. Thereafter, the Defendants had filed a written statement, which was returned for certain compliance and the written statement was not re-presented in time. The Defendants had filed an application to condone the delay in re-presenting the written statement. The Master imposed conditions for payment of costs for taking the written statement on file. Since the Defendants did not comply with the said conditional order, the said application was dismissed and the matter was posted before this Court.

5. After several hearings, finally, this Court had passed the following order on 04.01.2018:-

“O.P.No.311 of 2012 has been filed seeking for grant of Letters of Administration with respect to the Will dated 05.12.1995 said to have been executed by Narayanaswamy Naikar. The petitioner A.Selvaraj has filed the Original Petition against the 5 respondents namely, M. Dhanakodi, M.Veeraraghavan, M.Sushila, M.Datchayani and M. Amuthavalli.

2. The respondents M.Dhanakoti and M.Veeraraghavan who are the first and second respondents alone objected to grant of Letters of Administration and on their objection, O.P.No.311 of 2012 was converted into T.O.S.No.68 of 2013. Subsequently,

the said defendants filed the written statement. The written statement was verified only by the first defendant M.Dhanakoti. The second defendant namely M.Veeraraghavan filed an adoption memo.

3. The written statement was returned. There was a delay in representation. To condone the delay, the defendants had filed an application No.5166 of 2014 before the learned Master. The learned Master had passed an conditional order on 17.11.2014 stating that the application shall be allowed on payment of cost of Rs.500/-. Time was granted till 01.12.2014. The matter was again hearing before the Master on 01.12.2014 and at 3.15 p.m, since there was no representation and the conditional order was not complied, the petition was dismissed.

4. This effectively means that the written statement cannot be taken into consideration. This further implies that the plaintiff has to let in evidence and the matter is to be treated as uncontested. However, there is an obligation on the plaintiff to establish the genuineness of the will and also the fact that the will was attested in manner known to law and also that the testator was of sound and disposing of state of mind.

5. The following issues are framed for consideration:-

- i) Whether the Will dated 05.12.1995 propounded by the plaintiff is true and genuine?
- ii) Whether the testator was of sound and disposing state of mind?
- iii) Whether the Will had been attested in manner known to law?
- iv) Whether the plaintiff is entitled to grant of letters of administration with will annexed?
- v) To what other relief, is the plaintiff entitled to?

6. The witness for the plaintiff to appear before the Additional Master No.II for recording of evidence on 24.01.2018. After recording of evidence the matter is to be posted before this Court."

6. As per the said order dated, 04.01.2018, before the Additional

Master II, the Plaintiff was examined as PW.1 and one of the attesting

witnesses to the Will, dated 5.12.1995, Syed Khasim was examined as PW.2. Ex.P1 to Ex.P4 were marked.

7. Ex.P1 is the original death certificate of the Testator. Ex.P2 is the paper publication effected in Makkal Kural on 4.1.2013. Ex.P3 is the paper publication effected in News Today, on 19.01.2013. Ex.P4 is the original Will dated 5.12.1995. In the evidence, PW.2 had deposed that he was one of the attesting witnesses to the Will dated 5.12.1995 executed by the deceased Testator.

8. It is seen that in spite of sufficient opportunities granted to the Defendants, they did not comply with conditional order of the Master for condoning the delay in re-presenting the written statement, which was returned for certain compliance. Consequently, it was observed by this Court that the written statement cannot be taken into consideration and ordered the matter to be treated as uncontested. However, the Plaintiff was directed to lead evidence to prove the Will in a manner known to law. Accordingly, as stated above, evidence was let in on the side of the Plaintiff.

9. It is seen that the Defendants are not interested in prosecuting the case, by complying with the conditional order for taking the written statement on file. Consequently, the Defendants had been exparte. On the other hand, as stated above, the Plaintiff had let in oral and documentary evidence to substantiate the suit claim. Therefore, this Court finds no other option except to go by the evidence of the Plaintiff. Consequently, I hold all the issues in favour of the Plaintiff.

C.V.KARTHIKEYAN, J.

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10. In the result, this TOS is decreed as prayed for. Issue Letters of Administration in favour of the Plaintiff. The Plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The Plaintiff is 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 is further directed to render true and correct accounts once in a year.

09.03.2018

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To:

1. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
TOS.No.68 of 2013