

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2017

DELIVERED ON : 28.03.2017

CORAM

THE HON`BLE MR.JUSTICE T.RAVINDRAN

T.O.S.No.30 of 2011

in

(O.P.No.680 of 2010)

S.Ravi

..

Plaintiff

Vs.

1.S.Kannan

2.S.Booma

..

Defendants

Original Petition No.678 of 2009 was filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration. Against this petition a Caveat was filed on 26th day of November, 2010 by the Caveator. The supporting affidavit was filed on 26th day of November 2010. As per order of Court dated 02.02.2011 in O.P.No.680 of 2010, the original petition is directed to be converted into Testamentary Original Suit No.30 of 2011.

For Plaintiff : Mr.M.Balasubramanian

For defendants : Mr.T.P.Kathiravan

J U D G M E N T

The averments contained in the petition/plaint are briefly stated as follows:

The Original Petition has been laid by the petitioner/plaintiff in the matter of the Last Will and Testament of S.Sriraman, the deceased under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 and under Order XXV Rule 5 of O.S.Rules, for the grant of Letters of Administration.

2. The deceased S.Sriraman died on 24.07.2006 at Vijaya Hospital, Vadapalani, Chennai-600 026 and he was ordinarily residing at Door No.12/9, 7th street, Dr.Subbarayan Nagar, Kodambakkam, Chennai-24 and possessed of the property within the state of Madras. The writing annexed hereunto and marked with Letter 'A' is the Last Will and Testament of the deceased S.Sriraman and was duly executed by him at Chennai on 22.07.2006, in the presence of the witnesses, whose names appear at the foot thereof. The petitioner and the first respondent /first Defendant are the sons and the Second Respondent is the daughter of the Testator. The wife and the parents of the Testator had predeceased him and the present parties in the

proceedings are the legal representatives of the deceased Testator. The First Respondent/Defendant is the executor, according to the tenor of the Will. However, the executor is not interested in carrying out the terms of the Will. The amount of the Assets, which are likely to come into the petitioner's hands, does not exceed in the aggregate the sum of Rs.8,00,000/- and the net amount, after deduction, is of the value of Rs.7,94,000/-. No application has been made in any Court for the probate of any Will of the deceased above mentioned or for the grant of Letters of Administration with or without the Will annexed of his property and credits. The Petitioner/Plaintiff undertakes to duly administer the property and credits of the deceased and 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 in this Court within six months from the date of grant of Letter of Administration and also to render true account of the said property and credits within one year from the said date. Hence, the Petitioner/Plaintiff prays that the Letters of Administration with the Will annexed be granted to him as one of the Sons/legatees under the Will having effect limited to the state of Tamil Nadu.

3. In the matter of the Last Will and the Testament of the deceased S.Sriraman, O.P.No.680/2010 having been laid by the petitioner at the first instance for the grant of Letters of Administration and as regards the said Petition, a Caveat having been filed with a supporting affidavit, the original petition in 680 of 2010 has been ordered to be converted into a Testamentary Original Suit and accordingly, TOS No.30/2011 has come to be registered.

4. The averments contained in the written statement filed by the Caveator/defendant are briefly stated as follows:

The Caveator / defendant is represented by his General Power of Attorney Mr.K.Narayanan by a Deed of General Power of Attorney dated 16.11.2009. The defendant does not admit the allegations that though he is appointed as executant of the Will, he is not interested in carrying out the terms of the Will. The defendant was not permitted to enter into the property mentioned in the Will, after the death of the Testator for the obvious reason that the plaintiff wanted to settle the Will property to their adopted child as they had no children born to them and as per the terms of the Will, the property shall come to the hands of the defendant's children, if no children born to the plaintiff and his wife. The plaintiff has not properly valued the property

comprised in the Will as per the Government guideline value. The defendant is ready to carry out the terms of the Will as executor appointed by the Testator and the Plaintiff is not entitled to administer the property except the defendant. Hence, the Court may probate the Will of the deceased dated 22.07.2006 and permit the defendant to carry out the Will as executor and pass such further or other orders as the court may deem fit and proper.

5. On the basis of the above pleadings, the following issues were framed for determination:

"1. Whether the Will dated 22.07.2006 was executed by the testator Mr.S.Sriraman in the presence of attesting witnesses in a sound and disposing state of mind and if so, is it true and genuine document.

2. Whether the plaintiff is entitled for letters of administration.

3. To what relief the plaintiff is entitled to."

6. In support of the plaintiff's case, PWs1 to P3 were examined and Exs.P1 to P7 were marked. On the side of the defendant, DW1 has been examined and Exs.D1 to D3 were marked.

7. Issue Nos.1 &2.

The O.P.No.680/2010 has been preferred by the Petitioner/Plaintiff in the matter of the last Will and the testament of the deceased S.Sriraman dated 24.07.2006, which has been marked as Ex.P1. In the above mentioned original petition, the caveat having been laid, the same had been ordered to be converted into Testamentary Original Suit No.30/2011.

8. As regards the relationship of the Plaintiff and the Defendant is concerned, there is no dispute. The plaintiff and the defendant are the Sons and the 2nd respondent S.Bhooma is the daughter of the testator S.Sriraman. It is admitted that the deceased S.Sriraman died on 24.07.2006 at Vijaya Hospital, Vadapalani Chennai. The copy of the death certificate has been marked as Ex.P2. To show that the parties hereunto are the legal representatives, the legal heirship certificate has been marked as Ex.P3.

9. The first defendant, in his written statement, has not disputed the execution of the Will Ex.P1 by the deceased S.Sriraman. To prove the authenticity and genuineness of the Will Ex.P1, as per law, one of the attestors to the said Will viz., Vijayalakshmi has been examined as

PW2. PW2, in her evidence, has deposed clearly that the Will had been executed by the deceased S.Sriraman in a sound and disposing state of mind in her presence and in the presence of the other witness and they had directly witnessed the execution of Ex.P1 Will by the deceased and the deceased has also witnessed their attestation of the Will and nothing has been pointed out to discredit her testimony. As adverted supra, the defendant has also not disputed the genuineness of Ex.P1 Will. Therefore, it could be seen that the plaintiff has established that the Will dated 22.07.2006 was executed by the testator S.Sriraman in the presence of the attesting witnesses in a sound and disposing state of mind and that, it is a true and genuine document.

10. As per Ex.P1 Will, it is found that the defendant has been named as Executor of the Will. However, it is the case of the plaintiff that the defendant had not taken any steps to execute the Will and therefore, he being the beneficiary under the Will has come forward with the present lis for the grant of letters of administration of the property of the testator described in the Will. In this connection, the plaintiff has tendered evidence as PW1, wherein, he has clearly stated that till date, the defendant had not taken any steps to execute the Will of the deceased.

11. It is the case of the defendant that on account of the plaintiff preventing him from entering into the property of the deceased, he was unable to execute the Will. Further, according to him, he is ready to administer the property of the deceased as per the terms of the Will and therefore, according to the defendant, he should be granted the Letters of Administration. However, as regards the contention that he had been prevented by the plaintiff and his wife from entering into the property of the deceased and thereby, prevented from carrying out the duties as executor of the Will of the deceased, as such, is not borne out by any acceptable and convincing evidence.

12. In this connection, the power of attorney agent of the first defendant examined as DW1 has admitted that the first defendant is employed permanently at Muscat and therefore, it could be seen that when the first defendant is permanently employed at Muscat, his case that he has been prevented by the plaintiff and his wife from entering into the property of the deceased as such cannot be accepted. It is not the case of the first defendant that he is not aware of the terms of the Will. It could therefore be seen that he is aware that he has been nominated as the executor of the Will. In such view of the matter, immediately on the death of the deceased, he should have taken

adequate steps as per law to probate the Will of the deceased and seek the letters of Administration of the property of the deceased as per law. On the other hand, the first defendant having failed to discharge his duties as the executor of the Will of the deceased, it could be seen that other son namely the plaintiff has come forward with the present lis seeking the Letters of Administration. As regards the property of the deceased, as per the terms of Ex.P1 Will, it is found that the plaintiff and his wife are the beneficiaries of the property left by the deceased. They have been given the right to enjoy the property of the deceased without any alienation or encumbrance powers. Further, it is seen that the property should ultimately to be enjoyed by their children absolutely. It is also further found that only in the absence of any son or daughters being born to the plaintiff and his wife, the property of the deceased shall devolve upon the legal heirs of the defendant. Accordingly, it is the case of the plaintiff that inasmuch as the plaintiff had been given the benefit in respect of the property of the deceased, the defendant had not taken any endeavors to probate the Will and discharge his duties as executor of the Will of the deceased.

13. If really, as claimed by the first defendant, he had been prevented from entering into the property of the deceased or perform his duties as the executor of the Will of the deceased, as rightly argued, the defendant would have taken proper and legal steps to carryout his obligations adumbrated under the Will. On the other hand, he would only state that since he had been prevented by the plaintiff and his wife from entering the property, he was unable to carry out the works entrusted to him under the Will. But when the said case of the defendant is not buttressed by any acceptable evidence, it could be seen that only with an ulterior motive, the defendant had not taken any steps to probate the Will and discharge his functions as executor of the Will. Left with no alternative, it is found that the plaintiff being the beneficiary under the Will has taken steps by way of the present lis to probate the Will and sought the permission of the Court to administer the property of the deceased in terms of the Will Ex.P1. When it is found that the first defendant has failed and not cared to discharge his functions as the executor of the Will and when his case for such failure on his part is also not established with acceptable proof, I hold that the plaintiff is entitled to seek the letters of administration of the property of the deceased, he being the beneficiary under the Will. I therefore hold that the plaintiff is entitled

to seek and obtain the letters of administration of the property of the deceased comprised in Will Ex.P1 as sought for.

14. In the light of the above discussions, issue Nos 1 and 2 are answered in favour of the plaintiff.

15. Issue No.3

The suit is decreed as prayed for and accordingly, the plaintiff is granted the letters of administration of the property comprised in the Will marked as Ex.P1 as one of the legatees in the said Will having effect limited to the state of Tamil Nadu. The Registry is directed to comply with other formalities for the grant of letter of administration. No costs.

28.03.2017

Index: Yes/no
Internet: Yes/no
sli/sms

T.RAVINDRAN,J.

sms

**Pre-delivery judgment made in
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in
(O.P.No.680 of 2010)**

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