

K.Jayanthi vs / on 12 January, 2004

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2024

Pronounced on: 18.11.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Original Petition No.224 of 2017

K.Jayanthi.

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/versus/

1. J.Mallika,
2. J.Dinesh Kumar,
3. J.Pavithra.

... Re

PRAAYER: Original Petition has been filed under Section 232 and 276 Indian Succession Act (Act XXXIX of 1925) & Order XXV Rule 5 of the Original Side Rules for the Grant of Letters of Administration with Will annexed may be granted to her as the daughter/legatee beneficiary under the Will of the deceased having effect limited to the State of Tamil Nadu.

For Petitioner : Mr.A.Swaminathan

For Respondents : Mr.V.Devendhiran

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<https://www.mhc.tn.gov.in/judis>

O.P.No.

ORDER

The petition is filed under Section 232 and 276 of Indian Succession Act, 1925 and Order XXV Rule 5 of Original Side Rules for grant of Letters of Administration in the matter of the Last Will of Late M.Kandasamy, S/o.Masilamani.

2. The testator an ordinary resident at No:64, Razack Garden Street, Arumbakkam, Chennai, had inherited 1/3rd share from his wife Bakkiyammal, who died intestate leaving behind her husband M.Kandaswamy, a daughter by name Jayanthi (the petitioner herein) and a son by name Jayaraman (deceased).

3. Earlier, dispute between the above mentioned legal heirs of Bakkiyammal blown into a suit for partition initiated by M.Kandaswamy and Jayanthi against the legal heirs of the deceased Jayaraman, who are the respondents in this petition. The said partition suit in O.S.No.9731 of 1996 was allowed and a preliminary decree was passed on 31.01.1997 ascertaining 2/3rd share to M.Kandaswamy and <https://www.mhc.tn.gov.in/judis> Jayanthi together and 1/3rd share to the respondents herein being the legal heirs of the deceased Jayaraman, son of Bakkiyammal. The appeal in A.S.No.71of 1998 filed by the respondents herein got dismissed on 09.02.2009 confirming the apportionment of the property in the ratio of 1/3rd each to the husband, daughter and the legal heirs of the predeceased son. The Final Decree proceedings is pending.

4. Pending A.S.No.71of 1998, M.Kandasamy had executed a Will in favour of his daughter Jayanthi (the petitioner herein) on 12.01.2004 bequeathing his undivided 1/3rd share. The said Will was registered at SRO, Anna Nagar, Chennai, on the same day as document No:6 of 2004. R.Mohan and K.Arulmani are the attesting witnesses to the said Will. Later, Kandasamy died on 11.05.2014.

5. For grant of Letters of Administration based on the Will of M.Kandaswamy, the present petition is filed, claiming that, on the death of M.Kandaswamy, the succession to his 1/3rd share in the property of his wife Bakkiyammal opened. The petitioner being the daughter and the respondents being the wife and grand children of the predeceased son <https://www.mhc.tn.gov.in/judis> Jayaraman are the next of kin, as per the Hindu Law. In view of the Will executed by Kandaswamy, the petitioner being the sole beneficiary to succeed the estate of Kandaswamy, she is entitled for the relief prayed.

6. After notice to the respondents and paper publication inviting objections if any for grant of Letters of Administration in favour of the petitioner, the respondents have entered appearance through their Counsel. Though they have not filed any caveat or objection in a form of counter, participated in the trial and cross examined the petitioner side witnesses.

7. To prove the due execution of the Will of Kandasamy, the petitioner and two attesting witnesses were examined. Ex.P-1 to Ex.P-9 were marked. The witnesses were cross examined at length to discredit their veracity and genuineness of the due execution of the Will.

8. Heard the Learned counsels representing the petitioner <https://www.mhc.tn.gov.in/judis> and the respondents.

9. To prove the case, the petitioner has mounted the witness box and examined herself as PW-1. The following 7 exhibits are marked in support of the case.

Exhibits

Ex.P.1

Documents

Computer generated death certificate of M.Kandaswa

M.Kandaswamy registered as Doc.No.6 of 2004 before the SRO, Anna Nagar.

Ex.P.3 Photocopy of the Advocate Commissioner Report in I.A.No.2843 of 1998 in O.S.No.9731 of 1996 dated 04.04.2014.

Ex.P.4 Affidavit of assets showing the net value of the estate as Rs.23,00,000/-

Ex.P.5 Original Legal Heir ship Certificate of M.Kandaswamy Ex.P.6 Copy of paper publication effected in one issue of English daily "Trinity Mirror" dated 12.12.2018.

Ex.P.7 Copy of paper publication effected in one issue of Tamil daily "Makkal Kural" dated 20.12.2018.

10. The petitioner had been extensively cross examined by the learned counsel for the respondents. In the cross examination, the petitioner has admitted that the premises bearing No. 64, Razack Garden Street, Arumbakkam, Chennai, was constructed by availing loan by <https://www.mhc.tn.gov.in/judis> mortgaging the said property and she also admits that after the demise of her brother, the loan was repaid by her brother's wife (i.e.) the first defendant. The witness has asserted that her father was residing at No.64 A, Razack Garden, Arumbakkam. When the witness been confronted the address shown as that of the petitioner's father in the Will, she has explained that it is the office address of her father, where he was working as security. She has denied the suggestion that she had induced her father to execute the Will to get more share in the property.

11. The attestators to the Will K.Arulmani and R.Mohan were examined as PW-2 and PW-3. Ex.P8-Affidavit of the attesting witness Arulmani was marked through PW-2 and Ex.P9-Affidavit of the attesting witness R.Mohan was marked through PW-3. The attesters PW- 2 and PW-3 have deposed about the execution of the Will (Ex.P2) by M.Kandasamy and their presence, while he signed in the Will. In the cross examination, PW-2 to the suggestion is that the signatures were already obtained and the Will was brought to the Sub Registrar Office for registration and only at Sub Registrar Office, he signed. PW-2 admitted the suggestion and further he had deposed that he do not know, when <https://www.mhc.tn.gov.in/judis> M.Kandasamy (testator) signed the Will. PW-3 R.Mohan, who is the maternal uncle of the petitioner is one of the attesting witness and he had deposed about the execution of the Will in his presence and registration. He also admits that he do not know, when Kandasamy put his signature in the Will. These admissions of the attesting witnesses been pointed out by the learned counsel appearing for the respondents and would submit that the Will is not proved in the manner known to law and the condition imposed under Section 68 of the Indian Evidence Act and 67 of Bharatiya Sakshya Adhiniyam, 2023, is not complied.

12. In response, the learned counsel appearing for the petitioner submitted that the attesting witnesses have clearly stated that they went to the Sub Registrar Office and signed the Will. They have identified the signatures. Being the registered Will, the signature of the testator been identified by the attesting witnesses. The evidence given by the witnesses in Tamil translated in English has

not been conveyed correct answer. Hence, cannot be misinterpreted. The learned counsel further submitted that the recital of the Will would clearly show that the testator had executed the Will in good sound and disposing state of mind <https://www.mhc.tn.gov.in/judis> and being aware of the pendency of the litigation and fear of prolong delay in disposal of the litigation, this Court had taken note of the fact that the suit been decreed conferring 1/3rd share to the testator in the suit property and he wants to bequeath the said share in favour of his daughter. He has excluded the legal heir of the predeceased son for the obvious reasons.

13. Considering the rival submissions, this Court finds that the property mentioned in the Will of M.Kandasamy(testator) is the property which stood in the name of the wife Bakkiyammal. Earlier in the suit for partition, M. Kandasamy has pleaded that the property was purchased from his income in the name of his wife and constructed from and out of his income. The father and daughter were residing in one portion of the ground floor and the family of the pre-deceased son the respondents were residing in the another portion of the first floor. The remaining portions were let out to the tenants and at that juncture, the suit filed seeking 2/3rd share collectively by M.Kandasamy and his daughter Jayanthi, which came to be allowed by the City Civil Court, Chennai and confirmed by the High Court. While so, the testator <https://www.mhc.tn.gov.in/judis> M.Kandasamy as a holder of 1/3rd share had thought fit to bequeath his share in favour of his daughter. The contention of the respondents that improvement to the property was made by the predeceased son of M.Kandasamy and for that reason claiming exclusive right in the property of the testator and also the respondents herein were directed to pay 2/3 rd share of Kandasamy and Jayanthi, from out of the rental income collected from the tenants.

14. So, in the said circumstances, Will has been executed by Kandasamy in favour of his daughter Jayanthi excluding the legal heirs of the pre deceased son. The Will has been duly registered and spoken by the attesting witnesses. Being the registered Will and the execution been spoken by the attesting witnesses, minor lapse in the cross examination done after 18 years of the execution of the document cannot be fatal to the petitioner's claim. The genuineness of the Will having been proved by due execution of the registration, this Court holds that the petitioner is entitled for Letters of Administration in respect of the Will executed by the testator M.Kandasamy on 12.01.2004, which is marked as Ex.P2. <https://www.mhc.tn.gov.in/judis> In fine,

(i) This Original Petition is allowed and Letters of Administration to be issued in accordance with Rules. Such Letters of Administration shall have effect throughout the State of Tamil Nadu.

(ii) The petitioner is directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in the name of the Assistant Registrar (Original Side-II) of this Court.

(iii) The petitioner is further directed to file an inventory of assets and statement of accounts within a period of six months and one year respectively.

Index : Yes/No.
Internet : Yes/No.
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Petitioner's witness:

P.W.1 – Mrs.K.Jayanthi
P.W.2 – Mr.K.Arulmani
P.W.3 – Mr.R.Mohan

<https://www.mhc.tn.gov.in/judis>

Documents marked:

Exhibits

Documents

Ex.P.1 Computer generated death certificate of M.Kandaswamy
Ex.P.2 Original registered Will dated 12.01.2004 executed

M.Kandaswamy registered as Doc.No.6 of 2004 before the SRO, Anna Nagar.

Ex.P.3 Photocopy of the Advocate Commissioner Report in I.A.No.2843 of 1998 in O.S.No.9731 of 1996 dated 04.04.2014.

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Ex.P.7 Copy of paper publication effected in one issue of Tamil daily “Makkal Kural” dated 20.12.2018.

Ex.P8 Affidavit of the Attesting witness K.Arulmani Ex.P9 Affidavit of the attesting witness R.Mohan 18.11.2024 ari <https://www.mhc.tn.gov.in/judis> Dr.G.JAYACHANDRAN,J.

ari delivery order made in 18.11.2024 <https://www.mhc.tn.gov.in/judis>