



WEB COPY



O.P. No.606 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.08.2026

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

O.P.No.606 of 2024

S.Pattabiraman
S/o Srinivasan,
No.85/81, Thirupathi Nagar,
4th main road, Kolathur,
Chennai 600 099

..Petitioner

Vs..

1. M.Prabhakaran, S/o Munusamy
2. M.Vijayakumar (a) M.Viji
S/o Munusamy
3. S. Saradha, W/o Srinivasan
4. Saraswathi, D/o Srinivasan
5. Pushpa, D/o Srinivasan

6. Prema, D/o Srinivasan

... Respondents

PRAYER: Original Petition filed under Sections 232 and 276 of Indian Succession Act XXXIX of 1925 read with Order XXV Rule 5 of the Original Side Rules, praying to grant the Letters of Administration with the Will annexed to the petitioner as the beneficiary under the Will of the said deceased having effect throughout the State of Tamil Nadu and pass such further orders.



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For Petitioner : M/s.H.Surendar

For Respondents : M/s.R.Raja Rajeswari,
for RR 1 & 2

No Appearance for RR 3, 4 & 5

Mr.K.Arunprasad for R-6

ORDER

This petition is filed under Sections 232 and 276 of the Indian Succession Act, 1925, read with Order XXV Rule 5 of the Madras High Court Original Side Rules, seeking Letters of Administration with the Will annexed in respect of the registered Will dated 22.10.1991 executed by Vellai Maistry, registered as Document No.82/Bk-3/1991 on the file of the Sub-Registrar, Royapuram. The testator died on 18.01.2021.

2. The petitioner is his grandson through his son, Srinivasan. Under the Will, the petitioner was bequeathed Schedule-B property measuring 1,498 sq.ft., consisting of a cement-roofed house in the front and a tiled-roof house at the rear, bearing Door No.93, Buchammal Street, New Washermenpet.

3. The testator Late.Vellai Maistry had two children, Srinivasan and Nalaini. Srinivasan survived the testator but died on 02.05.2023; his widow



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and children are petitioner and respondents 3 to 6. Nalaini died on 30.04.2021, and her sons are respondents 1 and 2. The testator had executed two registered Wills in close succession: the Will dated 22.10.1991, which is the subject matter of the present petition, bequeathing Schedule-B property in favour of the petitioner, and another Will dated 24.10.1991, registered as Document No.84/Bk-3/1991, bequeathing a different property in favour of respondents 1 and 2. The latter Will was the subject matter of O.P.No.605 of 2024, in which Letters of Administration have already been granted on 05.08.2025. Since the two Wills relate to distinct properties and operate on separate bequests, there is no inconsistency between them.

4. In the present petition, respondents 1, 2, 3 and 6 were personally served on 23.11.2024. Service on respondents 4 and 5 was initially unsuccessful. By order dated 11.03.2025, substituted service was permitted and, on 08.04.2025, publication was directed and effected on 25.03.2025. General Publication was duly effected in 'Makkal Kural' dated 10.06.2025 and 'Trinity Mirror' dated 17.06.2025 and marked as Exs.P7 and P8 respectively. No respondent lodged a caveat, and the Registry has also endorsed that no caveat is pending.



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5. The petitioner was examined as P.W.1 on 25.07.2025, and Exs. P1 to P9 were marked. Learned counsel appearing for respondents 1 and 2 endorsed “No cross” and raised no objection. Since both attesting witnesses to the Will were deceased, this Court, by order dated 13.08.2025, permitted proof of the Will through a competent third party. Thereafter, by order dated 29.10.2025 in A.No.4727 of 2025, leave was granted to examine G. Durai, son of the first attesting witness, K.R. Govindasamy. He was examined as P.W.2 on 12.12.2025, and Ex.P10 was marked.

6. P.W.2 deposed that he was well acquainted with the signatures of his father, K.R. Govindasamy, and of the testator, Vellai Maistry, who was both his father's close friend and a relative. He identified the testator's signature in Ex.P1, as well as the signature of his father, who appeared as the first attesting witness. His evidence remained unchallenged. Neither P.W.1 nor P.W.2 was cross-examined, and no rebuttal evidence was adduced. The requirements of Section 69 of the Indian Evidence Act, 1872, namely proof of the handwriting of at least one attesting witness and of the signature of the executant, therefore stand satisfied. The execution and attestation of Ex.P1 consequently stand proved.



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7. After completion of evidence, the 6th respondent, Prema, filed a counter affidavit on 28.01.2026 opposing the grant on the ground that the petitioner had executed a registered Settlement Deed dated 09.04.2012 and thereby parted with a substantial portion of the property. The petitioner filed a Rejoinder on 20.02.2026 disputing the extent allegedly conveyed and referring to certain family arrangements.

8. Under Order XXV Rule 51 of the Original Side Rules, a person intending to oppose the grant of Probate or Letters of Administration is required to lodge a caveat in the Registry, and Rule 52 requires an affidavit in support thereof. Upon a caveat supported by the requisite affidavit, the original petition becomes contentious and is converted into a Testamentary Original Suit. In the present case, notwithstanding due service of citation, no caveat was lodged by the 6th respondent or by any other respondent. The counter affidavit filed by the 6th respondent only after the closure of evidence, without seeking leave to enter a caveat, cannot by itself convert the proceeding into a contentious testamentary cause or displace the evidence already recorded.

9. The principal objection is founded upon the Settlement Deed dated



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09.04.2012. According to the 6th respondent, the petitioner conveyed away the greater part of the property and therefore lacks standing to seek the grant.

The petitioner admits execution of a settlement deed but contends that it related only to 374 sq.ft. of the Schedule-B property.

10. In any event, the present testamentary proceeding is concerned with proof of the Will and the right to represent the estate thereunder. It is not the appropriate proceeding for adjudicating disputed questions concerning the legal effect of an unproved inter vivos instrument upon title to the property.

11. Ex.P1 has been proved in accordance with law; citation has been duly effected; no caveat has been lodged; and there is no legally sustainable objection on the evidence on record to the grant sought for.

12. Accordingly, O.P.No.606 of 2024 is allowed. Letters of Administration with the Will dated 22.10.1991 annexed shall be issued to the petitioner in respect of the estate covered by the petition, to have effect throughout the State of Tamil Nadu. The petitioner shall duly administer the properties and credits of the deceased, execute the requisite security bond for a sum of Rs.25,000/- in favour of the Assistant Registrar (Original Side-II), High Court, Madras, and file the inventory of assets and statement of



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accounts within six months and one year respectively. The petitioner is further directed to render true and correct accounts once every year.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



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DR.A.D.MARIA CLETE, J.

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Dated:
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