

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(TESTAMENTARY AND INTESTATE JURISDICTION)

FRIDAY, THE 16TH DAY OF OCTOBER 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

A. No.3083 of 2014  
in  
O.P.No.9 of 1999

In the matter of the Indian  
Succession Act, XXXIX of  
1925  
and  
In the matter of Last Will and  
Testament of L.Munusamy-Deceased.

S.JAYACHANDRAN  
ODL NO.2, VARADHAPURAM KOIL STREET,  
KOTTUR,  
CHENNAI-600 085

..PETITIONER

-VS-

1.S.PREMAVATHY,  
W/O. P.SATHYAMOORTHY

2. S.ROBERT,  
S/O. P.SATHYAMOORTHY

3. S.KUMAR ALIAS THIRUKUMAR,  
S/O. P.SATHYAMOORTHY

4. S.DIVAKAR,  
S/O. P.SATHYAMOORTHY

5. S.PADMANABHAN,  
S/O. P.SATHYAMOORTHY

6. LEELAVATHY ALIAS LEELASRI,  
S/O.P.SATHYAMOORTHY

RESPONDENTS SL.NOS.1 TO 6 ARE  
RESIDING AT NO.26,  
EAST NAMASIVAYAPURAM,  
CHOO LAIMEDU, CHENNAI-600 094.

..RESPONDENTS

A.No.3083 of 2014:

1. MRS. RANI @ RANIAMMAL(DECEASED)  
W/O.LATE RAJAGOPAL

2. MR. K. BAROSE  
S/O. K. KARUNAKARAN & LATE MRS LILLY

3. MR. K. SURESH  
S/O K. KARUNAKARAN & LATE MRS LILLY

4. MRS. K. SUMITHA  
D/O. K. KARUNAKARAN & LATE MRS LILLY

5. MRS. P. VIOLET  
D/O. LATE RAJAGOPAL W/O PARAMASIVAM

6. MRS. S. AGNUS  
D/O. LATE RAJAGOPAL W/O MR. SELVARAJ

7. MRS R. MALATHY  
D/O. LATE RAJAGOPAL W/O MR. RAMANATHAN

8. MRS. P. SHYMALA DEVI  
W/O LATE PREMANAND

9. MS. P.SWAPNA  
D/O. LATE PREMANAND

10. MR. P. BHARATH  
S/O. LATE PREMANAND

11. MR. M. PARTHIBAN  
S/O. MAYANATHAN

12 MR M RAJESH BABU  
S/O MAYANATHAN

13 MRS. S. SUJATHA,  
D/O.MAYANATHAN,

14. MR. MAYANATHAN  
H/O.MRS.CHRISTIANA,

SL.NOS.1 TO 14,  
ARE RESIDING AT  
OLD NO.14, NEW NO.5,  
VARADARAJAPURAM,  
1ST STREET,  
KOTTURPURAM,  
CHENNAI- 600 085

..APPLICANTS

-Vs-

1. S.JAYACHANDRAN (DECEASED)  
OLD NO.2, VARADHAPURAM KOIL STREET,  
KOTTUR, CHENNAI-600 085. ..RESPONDENT/PETITIONER

2. S.PREMAVATHY(DECEASED)  
W/O.P.SATHYAMOORTHY

3. S.ROBERT,  
S/O. P.SATHYAMOORTHY

4. S.KUMAR ALIAS THIRUKUMAR,  
S/O. P.SATHYAMOORTHY

5. S.DIVAKAR (DECEASED)  
S/O. P.SATHYAMOORTHY

6. S.PADMANABHAN,  
S/O. P.SATHYAMOORTHY

7. LEELAVATHY ALIAS LEELASRI,  
S/O.P.SATHYAMOORTHY

RESPONDENTS SL.NOs. 2 TO 7  
ARE RESIDING AT NO.26,  
EAST NAMASIVAYAPURAM,  
CHOO LAIMEDU, CHENNAI-600 094

..RESPONDENTS/RESPONDENTS

8. GEETHA

D/o.Late S.Jayachandran  
No.30 & 31, Koushik Avenue,  
Extension-II, Rajkilpakkam,  
Sembakkam Town, Panchayat,  
Tambaram Taluk,  
Kanchipuram District,  
Pincode-600073

9. THANESH

S/o.Late S.Jayachandran,  
No.30 & 31, Koushik Avenue,  
Extension-II, Rajkilpakkam,  
Sembakkam Town, Panchayat,  
Tambaram Taluk,  
Kanchipuram District,  
Pincode-600073

10. GANESH

S/o.Late S.Jayachandran,  
No.30 & 31, Koushik Avenue,  
Extension-II, Rajkilpakkam,  
Sembakkam Town, Panchayat,  
Tambaram Taluk,  
Kanchipuram District,  
Pincode-600073

11. RAJESH

S/o.Late S.Jayachandran,  
No.30 & 31, Koushik Avenue,  
Extension-II, Rajkilpakkam,  
Sembakkam Town, Panchayat,  
Tambaram Taluk,  
Kanchipuram District,  
Pincode-600073

(Respondents 8 to 11 are brought on record as LR's of the deceased 1st Respondent as per Ord.dated 12.07.2018 in A.Nos.4651 to 4656/2018)

12. D.SANGEETHA  
W/o.Late Divakar,

13. D.HARSHINI  
D/o.Late Divakar,  
Minor Rep.by mother and natural guardian,  
D.Sangeetha,

Respondents 12 and 13 are residing at  
No.26, East Namasivayapuram,  
Choolaimedu,  
Chennai- 600094.

(Respts 12 and 13 are brought on record as LR's of the deceased 5th Respondent as per Order dated 12.07.2018 in A.No.4651 to 4656/2018 and Respts 3,4,6,7 and 13 are already brought on record as legal representatives of the deceased 2nd Respt in A.No.3083 of 2014 and same was recorded as per order dated 07.08.2019.)

..PROPOSED RESPONDENTS

This application praying that this Hon'ble Court be pleased to revoke the probate granted by this Hon'ble Court dated 22/02/2002 in OP No.9 of 1999 in the Last WILL and Testament of L.MUNUSAMY.

This application coming on this day before this court for hearing the court made the following order:-

This application is filed by the applicants to revoke the probate granted by this Court dated 22.02.2002 in O.P.No.9 of 1999 with regard to

the Last Will and Testament of L.Munusamy.

2. The facts, in brief, which are necessary for disposing of the above application are as follows:

The deceased 1st respondent viz., S.Jayachandran had filed O.P.No.9 of 1999, seeking probate of the Will of late L.Munusamy. In the said application, the wife and children of late Sathyamurthy has been arrayed as the respondents, who are the respondents 2 to 7 in the application under consideration. The 1st respondent had contended that the deceased L.Munusamy had executed a last Will dated 24.04.1986 in the presence of two witnesses whose signatures appear in the foot of the instruments and under the said Will, he had been appointed as an Executor. The said S.Jayachandran would submit that the probate proceedings have been filed after a period of three years, since there was no proper advise. Under the Will L.Munusamy bequeathed the property of Sathyamoorthy. The 2<sup>nd</sup> respondent is the wife and respondents 2 to 7 are sons and daughter of the said Sathyamoorthy. The legatee died on 04.01.1996, leaving behind the respondents as his legal heirs. He, therefore, sought for the grant of probate. The respondents in the Original Petition had given their consent and ultimately the probate was granted by orders of this Court dated 22.02.2002.

3. The applicants herein have come forward with the present application *inter alia* contending that L.Munusamy was the father of

Rajagopal, who, in turn, is the husband of the first applicant and through the wedlock, the applicants 5,6,7 and the deceased/2nd respondent viz., Premavathy, Lilly, the mother of the applicants 2 to 4 and Christiana, the wife of the 14th applicant and mother of the applicants 11 to 13 herein, were born. Christiana also had a son viz., Premanand, who died on 22.10.2010 and the applicants 8 to 10 are the legal heirs of the said Premanand.

4. The case of the applicants is that L.Munusamy and his wife Chinnammal had only one son viz., Rajagopal. Chinnammal died on 19.03.1987. Even prior to the death of his mother, Rajagopal died on 13.10.1972, leaving behind his surviving daughters. The elder daughter Lilly had died on 02.10.2008 and the applicants 2 to 4 and one K.Karunakaran are the legal representatives of the said Lilly. Likewise, Christiana died on 28.06.1981, leaving behind her surviving son viz., Premananth and applicants 11 to 14. Premananth died on 22.10.2010 and applicants 8 to 10 are his legal heirs.

5. The applicants would contend that during his life time their grandfather would stay with the applicants for sometime and also in the house of the 2nd respondent, who is now no more. She had compelled the said Munusamy to execute the Will on 22.04.1986 in favour of her husband Sathyamurthy. This Will has not been executed with the free consent and

under the said Will, the 1st respondent viz., Jayachandran, was appointed as

an executor. It appears that on the execution of the Will, the deceased/2nd respondent had received all the original documents pertaining to the property and thereafter, they refused to take care of L.Munusamy. After some time, L.Munusamy informed the applicants that respondents 1 and 2 have forced him to write the Will. When L.Munusamy, came to the house of the second respondent and requested to return the Will, she refused. Hence, he cancelled the earlier Will dated 24.04.1986 and had executed a second Will dated 31.08.1988, which is also a registered Will. It was only in the year 1989 during the festival of Bhogi that the applicants came to know about the earlier Will dated 24.04.1986. The 2nd respondent and her husband had come to the suit property and threatened the applicants. The said Munusamy died on 18.11.1990 and it was only the applicants, who had performed the last rites and neither the 2nd respondent nor her husband has attended the funeral ceremony.

6. The applicants would further contend that the 1st respondent, who was very much aware about the execution of the second Will has filed O.P.No.9 of 1999 for grant of probate. This petition was filed only after the demise of Sathyamurthy, the legatee under the first Will, who died on 04.01.1996. The 1st respondent had allowed the original petition to be dismissed for default on 06.03.2020 and the same was later restored and

7. The said S.Jayachandran was very much aware of the fact that the applicants have a caveatable interest in the property. However, for the reasons best known he has not chosen to implead the applicants in the probate proceedings. The applicants would submit that the probate petition in O.P.No.9 of 1999 is a collusive one. Further, the petition is based on the Will which has since been cancelled by the second Will dated 31.08.1988. The applicants would submit that they had come to know about the order in O.P.No.9 of 1999, when the officials from the Tamil Nadu Electricity Board had visited the house for change of name in the month of February 2014. Thereafter, the applicants have collected the details and come forward with the present application. Along with the said affidavit they have also filed documents which includes the second Will of late L.Munusamy.

8. The 7th respondent has filed a counter on behalf of the respondents 3,4,7, 12 and 13, in which, she would deny all the averments were permitted to stay in the property by Premavathy and her husband Sathyamurthy. However, there is no response with reference to the caveatable interest of the applicants. The only argument put forward with reference to the second Will is that it is forged.

9. The counsel have addressed their arguments on the lines of the application and the counter.

10. The learned counsel for the applicant would submit that the very probate proceedings is not maintainable, since it is on the basis of a Will that has been cancelled. On the other hand the counsel for the respondent would deny the execution of the second Will and would state that is a rank forgery and fabricated one.

11. Heard the counsels and perused the papers.

12. There is no quarrel with reference to the relationship of the parties. The respondents have conceded that the applicants are also the grand children and great grand children of L.Munusamy and in the same status as respondents 2 to 7. The applicants have put forward the second Will and a reading of the second Will would show that L.Munusamy has cancelled the earlier Will and has also stated that the documents have been taken away by the deceased/2nd respondent and despite his request she has not bothered and handed over the documents. However, the second Will has to be proved in the manner known to law. The petitioner in the Original Petition has not given any reasons for not including the applicants herein despite the fact that they have caveatable interest. It is also the case of the applicants they have come to know about the probate proceedings only in the month February 2014 when the officials of the Electricity Board have come to visit them. The applicants have immediately filed the application seeking to set aside the probate order.

13. Considering the fact that the applicants, who have caveatable interest, have not been impleaded as respondents in the Original Petition and in the light of their pleading with regard to the second Will, it is imperative that they should also be heard before pronouncing orders in Original Petition No.9 of 1999.

14. In the result, the application is ordered and the probate granted by order dated 22.02.2002 stands revoked. The applicants shall file their counter/caveat on or before 30.11.2020.

Sd/P.T.A.J.  
16.10.2020

//Certified to be a true copy//

Dated this the            day of            2020.

SU/19.11.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.