



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

FRIDAY, THE 29TH DAY OF OCTOBER 2021

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

T.O.S.No.16 of 2002

In the matter of the Indian
Succession Act XXXIX of 1925,
and

In the matter of the Last Will and
Testament of Dr.T.Ganapathy-
(Deceased) dated 09.05.96.

G.Sivaprakash

...Petitioner/Plaintiff

Vs.

G.Thilak Thiyagarajan

..Caveator/Defendant

Testamentary Original Suit praying that this Hon'ble Court pleased to
that he may be allowed to prove the will in common form and that probate
thereof, to have effect throughout the whole of State of Tamil Nadu may be
granted to him.

This Testamentary Original Suit coming on this day before this court
for hearing in the presence of Mr.G.Rajagopalan, Senior Counsel for
M/s.G.R.Associates, Advocates for the plaintiff herein and the defendant
herein not appearing in person or by advocate and upon reading the petition



evidence adduced therein, it is ordered and decreed as follows :-

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That the plaintiff herein, on complying with the rules of this court in this behalf, probate of the late Will and Testament of the said Dr.T.Ganapathy (deceased) dated 09.05.1996 with a copy of the said will annexed thereto to have effect throughout the State of Tamil Nadu do issue herein, out of and under the seal this court and the same be granted to G.Sivaprakash, the plaintiff herein.

2) That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
29th DAY OF OCTOBER 2021.

Sd/-
JOINT REGISTRAR (O.S)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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03.12.2021

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T.O.S.No.16 of 2002

ORDER :-

DATED :29.10.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 27.12.2021

APPROVED ON: 28.12.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

T.O.S. No.16 of 2002

G.Sivaprakash

... Plaintiff

Vs.

G.Thilak Thiyagarajan

... Defendant

Prayer : Complaint filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Probate.

For Plaintiff : Mr.G.Rajagopalan, Senior Counsel
for M/s.G.R.Associates

For Defendant : No appearance

J U D G M E N T

The plaintiff seeks Probate in respect of the Will dated 09.05.1996 executed by his father Late Dr. T.Ganapathy, who died on 03.06.1996 leaving behind three sons and a daughter. His wife had predeceased him.

2. According to the plaintiff, the testator Late Dr.T.Ganapathy, was in sound disposing state of mind when he executed the Will on 09.05.1996 and it was attested by two attesting witnesses of whom, one was his very close



associate Dr.T.Kamalsheriff. The other was also a Doctor who was a family friend, who happened to be a classmate of the first respondent Dr.Udesh Ganapathy, son of Late Dr.T.Ganapathy. It is also claimed that the Will refers to another Will dated 22.02.1995, in and by which, the testator had bequeathed his house property at Tambaram in favour of the eldest son, the defendant herein, Mr.G.Thilak Thiyagarajan.

3. The original Petition for grant of Probate was numbered as OP No.174 of 1997 and upon a caveat having been filed by the second respondent namely G.Thilak Thiyagarajan opposing the grant, the same was converted into a Testamentary Original Suit. The defendant filed a written statement disputing the execution of a Will and claiming that he had the copy of the Will which was sent to him along with the notice of the counsel dated 15.07.1996 referred to an expert for his opinion and according to him, the Will is not validly executed by the testator.

4. This Court framed the following issues for trial:

1. Whether the deceased Dr.T.Ganapathy executed the Will dated 09.05.1996 while he was in a sound and disposing state of mind and in the presence of attesting witnesses;

2. Whether the Will dated 09.05.1996 is a genuine, true and valid document;



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3. *Whether the allegations made by the defendant that the above said Will dated 09.05.1996 was obtained by fraud and undue influence are true;*

4. *To what reliefs the parties are entitled to?*

5. At trial, the plaintiff was examined as P.W.1 and the first respondent Dr.Udesh Ganapathy, was examined as P.W.2. The two attesting witnesses were examined as P.W.3 and P.W.4 respectively. Exhibits P1 to P7 were marked on the side of the plaintiff. On the side of the defendant, he was examined as D.W.1 and Exhibits D1 to D16 were marked. Some of those exhibits were marked in cross-examination of P.Ws. 1 & 2.

6. When the Testamentary Original Suit was posted for arguments, the learned counsel for the defendant reported no instruction. Since the entire evidence of the defendant is already on record. I proceed to dispose of the suit on merits, in terms of Explanation to Rule 2 of Order XVII of the Code of Civil Procedure.

Issue Nos.1 & 2:

7. These issues relate to the execution of the Will by Late Dr.T.Ganapathy. It is not in dispute that Late Dr.T.Ganapathy, was a professor of Social and Preventive Medicine in Madras Medical College



and was a Doctor of repute. Both the attesting witnesses are qualified Medical Practitioners. The second attesting witness Dr.T,Kamalsheriff, who was examined as P.W.4, is aged about 70 years at the time of his examination and he had worked with Late Dr.T.Ganapathy, during his lifetime. Both the attesting witnesses have spoken about the execution of the Will by Late Dr.T.Ganapathy, in their presence and in sound disposing state of mind. Though both of them have been cross-examined extensively, their evidence with regard to the execution of the Will and the state of mind of the testator has not been discredited in any manner in cross-examination. The cross-examination runs to several pages, but the witnesses have been consistent in their evidence with reference to the execution of the Will by Late Dr.T.Ganapathy, in their presence and their signing the Will in his presence. The statutory requirements of Section 68 of the Evidence Act, have been sufficiently met by the evidence of P.W.3 and P.W.4.

8. P.W.1 and P.W.2 the beneficiaries under the Will have also been cross-examined with reference to various matters which do not have a bearing on the execution of the Will and the state of mind of the testator. I therefore do not think that I should detail on the oral evidence of P.Ws. 1 & 2 which, in my considered opinion, does not have a bearing on the issue that



the above, both issues Nos. 1 & 2 are answered in favour of the plaintiff.

Issue No.3:

9. Though the defendant had claimed that the Will was obtained by fraud and undue influence, I do not see any evidence in support of such plea. The details of fraud or undue influence have not been set out in the written statement. Order VI Rule 4 of the Code of Civil Procedure requires the defendant who pleads fraud to set out the details of fraud. The same has not been done. Apart from the absence of details, the evidence is also wholly insufficient to support the said plea of fraud. Hence Issue No.3 is also answered against the defendant in favour of the plaintiff.

10. In fine, the suit is decreed as prayed for. Probate will be issued to the plaintiff in respect of the Will dated 09.05.1996. No costs.

Sd./-R.S.M.J.

29.10.2021

List of the Witnesses examined on the side of the Plaintiff :

- | | |
|----------|---------------------|
| 1. P.W.1 | G.Sivaprakash |
| 2. P.W.2 | Dr.Udesh Ganapathy |
| 3. P.W.3 | M.K.Rajasubramanian |
| 4. P.W.4 | Dr.T.Kamalsheriff |

List of Exhibits marked on the side of the Plaintiff :

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.P1	Original Will dated 9.5.1996 executed by my father



Sl.No.	Exhibits	Description of documents
		Dr.T.Ganapathy
2	Ex.P2	Original Death Certificate of my father dated 3.6.1996
3	Ex.P3	Legal heir certificate dated 01.08.2012
4	Ex.P4	Original legal notice dated 15.07.1996 issued by the defendants 2 and 3
5	Ex.P5	Office copy of the reply notice dated 18.7.1996
6	Ex.P6	Certified copy of the family arrangement dated 19.11.97
7	Ex.P7	Certified copy of the order dated 2.9.1999 made in A.No.2876/98

List of the Witnesses examined on the side of the Defendant:

D.W.1 G. Thilak Thiyagarajan

List of Exhibits marked on the side of the Defendant:

Sl.No.	Exhibits	Description of documents
1	Ex.D1	The minutes of the Board Meeting Resolution passed by circulation on 11.7.94
2	Ex.D2	Photocopy of the Will certified by the plaintiff's counsel the enclosure
3	Ex.D3	Copy of the letter dated 2.6.97
4	Ex.D4	Copy of the letter dated 14.6.97
5	Ex.D5	Copy of the affidavit and petition and plaint in I.A.No.11478/96 in O.S.No.10452/96
6	Ex.D6	Original letter without date
7	Ex.D7	Certified copy of the affidavit of attesting witness
8	Ex.D8	Certified copy of the affidavit of attesting witness dated 10.1.1997



Sl.No.	Exhibits	Description of documents
9	Ex.D9	Identity card of Dr.T.Ganapathy father of the defendant dated 4.7.1983
10	Ex.D10	Certified copy of the Will dated 24.2.1995 executed in favour of the defendant
11	Ex.D11	Office copy of the rejoinder notice by the defendant's counsel dated 7.10.1996
12	Ex.D12	Original letter dated 10.9.1998 sent by Dr.Udesh Ganapathy to Nagarathina Textiles Pvt Ltd.,
13	Ex.D13	Legal notice dated 19.9.1998
14	Ex.D14	Original letter of intimation dated 16.10.1998
15	Ex.D15	Original letter dated 1.11.2004 sent by defendant to the plaintiff
16	Ex.D16	Certified copy of details of Nagarathina Textiles Pvt Ltd.,

Sd./-R.S.M.J.
29.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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