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T.O.S.No.16 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :	19.10.2022
Pronounced On:	110222

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

T.O.S.No.16 of 2006

J.Balamurugan

...Plaintiff

Vs.

1.Renukadevi

2.Ramanathan

...Defendants

PRAYER: This is a petition filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration. As per order of this Court dated 14.03.2006 in Application No.319 of 2006. Letters of Administration granted on 21.06.2000 in O.P.No.865 of 1999 is revoked and the Original Petition has been converted into Testamentary Original Suit No.16 of 2006.

For Plaintiff: M/s.S.P.Arthi for

M/s.John Selvaraj

For Defendants : Mr.V.Balasubramanian



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JUDGMENT

This suit is filed to grant of letters of administration with Will annexed having effect throughout the State of Tamil Nadu in favour of the plaintiff.

2.The case of the plaintiff is that the deceased V.R.Govindraj was a bachelor and he adopted the plaintiff as his son. He executed his last will and testament on 04.04.1997, in the presence of witnesses at Chennai. Later he died on 22.12.1998. Plaintiff had performed all the funeral functions and Kariyam to the deceased. Plaintiff is the beneficiary under the Will, the adopted son of deceased V.R.Govindraj. Deceased V.R.Govindraj purchased the property with his own money and executed the Will in respect of the property in favour of the plaintiff. Therefore, this suit is filed for the aforesaid relief.

3.The case of the first defendant is that the claim of the plaintiff that he is adopted son of deceased V.R.Govindraj is not true. Deceased V.R.Govindraj is the paternal uncle of the first defendant. The claim of



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the plaintiff that deceased V.R.Govindraj had executed the Will in favour of the plaintiff is not true and it is imaginary claim and self made story in order to deprive the defendants from securing their legitimate right in the properties left by their paternal uncle V.R.Govindraj. Plaintiff was in occupation of the premises of deceased V.R.Govindraj as a tenant. Taking advantage of this fact, this Will was created. The signature found in the Will is not the signature of the deceased V.R.Govindraj. Deceased V.R.Govindraj had close attachment with his brother's family, namely defendant's family. There is absolutely no reason for the deceased V.R.Govindraj to execute the Will in favour of plaintiff. Thus, this suit has to be dismissed with exemplary costs of defendants. Written statement of the first defendant is adopted by the second defendant.

4.On the basis of the above pleadings, the following issues were framed for trial:-

i)Whether the Will dated 04.04.1997 was executed by the testator V.R.Govindraj in a sound and disposing state of mind in the presence of two or more attesting witnesses and is it a valid and genuine document?



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ii)Whether the plaintiff is entitled for the grant of letters of administration as prayed for?

iii)To what relief, if any the plaintiff is entitled to?

5.P.W.1 and P.W.2 were examined on the side of the plaintiffs and D.W.1 was examined on the side of the defendants. Exhibits P1 and P2 were marked on the side of the plaintiffs and Exhibits D1 to D24 were marked on the side of the defendants.

6.Issue Nos.1 – 3:-

The learned counsel for the plaintiff submitted that the plaintiff was adopted by the deceased V.R.Govindraj and was taking care of all the requirements of the deceased V.R.Govindraj, namely his food, medical and other requirements. Therefore, the deceased V.R.Govindraj adopted the plaintiff as his son and executed a Will in respect of one of his properties in favour of the plaintiff. The Will was executed in favour of plaintiff in the presence of two attesting witnesses. Plaintiff had examined one of the attesting witnesses to prove the Will and the



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attesting witness had given cogent and convincing evidence with regard to the execution of the Will by deceased V.R.Govindraj. Plaintiff had complied with legal requirements for the proof of Will as per Sections 68 and 69 of Indian Evidence Act and therefore prays for grant of Letters of Administration in favour of the plaintiff as prayed in the plaint.

7.In response, the learned counsel for the defendants 1 and 2 submitted that defendants are the brother's children of the deceased V.R.Govindraj. Deceased V.R.Govindraj died as a bachelor and therefore the defendants are the natural legal heirs to him as per Hindu Succession Act. Taking advantage of his proximity with deceased V.R.Govindraj, plaintiff had created this Will and fabricated the story that he was adopted by the deceased V.R.Govindraj. There is absolutely no evidence produced with regard to the adoption claimed by the plaintiff. Though the plaintiff knew that defendants are the brother's children of the deceased V.R.Govindraj, he filed this Original Petition without showing anyone as respondent and got the Letters of Administration granted in his favour. On coming to know this, defendants filed application for



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revoking the probate granted in favour of the plaintiff and this Court has passed an order in application No.319 of 2006 on 14.03.2006 revoking the Letters of Administration granted in favour of the plaintiff. Only thereafter, the defendants were impleaded as parties.

8.He further submitted that plaintiff fabricated a legal heir certificate as if he is the legal heir of the deceased V.R.Govindraj, executed a settlement in favour of his wife in respect of the property of the deceased V.R.Govindraj and his wife, in turn, sold the property during the pendency of the proceedings. Criminal case had been registered against the plaintiff in this regard and Writ Petition has also filed and both the cases are pending. The reply received from the Tahsildar under the Right to Information Act shows that plaintiff was not granted any legal heir certificate, which the plaintiff claim that it was issued to him, by the Authorities. The impugned Will was prepared with the help of known persons to the plaintiff. There are material contradictions in the evidence of P.W.1 and P.W.2 with regard to the manner in which the Will was executed. Deceased V.R.Govindraj was



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about 85 years at the time of the alleged execution of the Will. He was not in the best of his physical and mental health. The Will must have been either fabricated by forging the signature of the testator or the testator was unduly influenced to execute the Will without knowing its contents. Therefore, the learned counsel appearing for the defendants prayed for the dismissal of this suit.

9.In reply, the learned counsel for the plaintiff submitted that, of course, there is no evidence produced with regard to adoption. However, the contents of the Will show that plaintiff was taking care of the deceased V.R.Govindraj and it probablizes the case of the plaintiff that plaintiff was the adopted son of deceased V.R.Govindraj. The issue as to whether plaintiff was the adopted son of deceased V.R.Govindraj is not an issue involved in this case. The issue is whether the Will was executed by the deceased V.R.Govindraj in a sound and disposing state of mind. The fact that the Will was executed by deceased V.R.Govindraj in a sound and conscious mind was proved by the plaintiff as stated above. The defendants claimed that the signature in the Will is not that of the deceased V.R.Govindraj and there is no plea raised with regard to the



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exercise of undue influence. Therefore, it is not open to the learned counsel for the defendants to advance an argument that the Will was executed by exercising undue influence on the deceased V.R.Govindraj, by the plaintiff.

10.This Court perused the pleadings, oral and documentary evidence produced in this case and paid attention to the submissions made by the learned counsel appearing for both the sides.

11.As rightly claimed by the defendants, the plaintiff is not a relative to the deceased V.R.Govindraj and he is a stranger. Though it is claimed by the plaintiff in the plaint that the deceased V.R.Govindraj had adopted him as his adopted son, there is no evidence, either oral or documentary is produced in this case to show that plaintiff was adopted by the deceased V.R.Govindraj. It is true that there is a recital in the Will that the deceased V.R.Govindraj claimed the plaintiff as his adopted son and he was providing the deceased with food, dress and medical treatment and therefore, the Will was executed in his favour. The Will is produced as Ex.P1. The date of Will is 04.04.1997. The Death Certificate



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of deceased V.R.Govindraj is produced as Ex.P2 and his date of death was 22.12.1998. The reason for execution of the Will, that we can gather from his Will is that, “the deceased was aged about 85 years and he was not well and he expects anything may happen to him at any time. He is a bachelor and there is no legal heir to him. Plaintiff Balamurugan was his adopted son and he was taking all his care like food, dress, medical requirement etc., and was showing affection. In order to provide a support he executed the Will in respect of his property mentioned in the Will in favour of the plaintiff”. We can gather from this recitals in this Will that the deceased V.R.Govindraj had primarily executed the Will for the reason that plaintiff was his adopted son and he was taking all his aforesaid requirements and showing love and affection towards him. In the said circumstances, apart from providing the execution of the Will as per law, the plaintiff is also equally expected to prove the claim of adoption and that he was taking care of the deceased V.R.Govindraj.

12.As stated already there is absolutely no oral and documentary evidence produced by the plaintiff to prove his claim of adoption by



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deceased V.R.Govindraj. The reading of his evidence shows that he did not know whether deceased V.R.Govindraj informed his father that he was going to adopt him. He did not know the mode of adoption and did not know whether his mother had consented for adoption. The adoption was not registered. It is his further evidence that deceased V.R.Govindraj did not execute any deed for adoption and register the same before the Sub-Registrar and the adoption was not made by following the rituals under Hindu Law and Customs. He plainly admitted that he had not given any proof to Tahsildar to show that he was the adopted son of deceased V.R.Govindraj when applied for issuance of legal heir certificate. When he was asked whether he knew that if he had been adopted by the testator, there was no necessity to execute the Will, he answered that he did not know this. He also stated that it is true that if the testator had intended to execute the Will he would have included all his properties in the Will. He admitted that testator is not his blood relative and the fact that the defendants are the blood relatives of deceased V.R.Govindraj. It is also his evidence that he has not produced any document before this Court to show that he was the adopted son of



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the deceased V.R.Govindraj. He stated that he did not know whether deceased V.R.Govindraj had written in the Will that he had taken the plaintiff on adoption lawfully. It is clear from the admitted evidence of P.W.1/plaintiff that he has not produced any evidence to show that he was the adopted son of deceased V.R.Govindraj.

13.It is also seen from the recitals in the Will that except the claim that plaintiff is the adopted son of deceased V.R.Govindraj, no details regarding adoption was mentioned in the Will. It is also seen from the admission of the plaintiff that he has not stated that he got the property as the adopted son of deceased V.R.Govindraj and in his capacity as adopted son settled the property in favour of his wife. Thus the claim made by the plaintiff that he was the adopted son of deceased V.R.Govindraj is not proved and therefore it has to be necessarily held that his claim of adoption is not proved and therefore it is not true.

14.With regard to the proof of Will, plaintiff had examined himself



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as P.W.1 and one of the testators K.Ramachandran as P.W.2. P.W.2 stated about the execution of Will by the deceased V.R.Govindraj in a healthy, conscious and in a good state of mind, during the course of his chief-examination. When he was cross examined by defendants, he stated that as a postman he used to travel by bus and deliver the post to individual addressees on foot. He did not know the distance between Villivakkam and his house. Plaintiff Balamurugan was present on the date of execution of the Will at the Registrar's Office. Deceased V.R.Govindraj might have been aged between 55 and 70. He did not enter the house of deceased V.R.Govindraj and talk with him. He did not know the date of his death. Will was prepared at the office of the Sub-Registrar, Villivakkam and he did not remember the date of execution of the Will. He appeared before the Court at the request of the plaintiff Balamurugan. The other witness Raju is no more.

15.From the evidence of P.W.2, it is clear that he is not correct about the age of deceased V.R.Govindraj at the time of execution of Will and he is not so close to deceased V.R.Govindraj to get into his house and



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strike a conversation. Most importantly, it is clear from his evidence that plaintiff Balamurugan was present at the Sub-Registrar office at the time of execution of the Will.

16.P.W.1 while giving evidence on Will, stated that he knew the defendant's from his childhood and deceased V.R.Govindraj is paternal uncle of the defendants. P.W.1 admitted that deceased V.R.Govindraj had other properties, apart from the property dealt in the Will, but those properties had not been mentioned in the Will. He admitted that deceased V.R.Govindraj was aged about 85 years at the time of his death and he died at Door No.23, 8th street, Rajamangalam, Villivakkam, Chennai. He did not know the time of his death. He had seen him at about 11.a.m. on 21st and thereafter he went to Arni. He returned from Arni in the evening of 22nd and found that his body was not there. He had not done the last rites to the deceased V.R.Govindraj. He admitted that he was present at the time of writing the Will, but did not know who wrote the Will. The particulars for typing the Will were furnished by witness Raju and not by himself. This part of his evidence clearly shows that he was present at



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the time of execution of Will and that particulars for typing the Will were furnished by Raju and not by the deceased V.R.Govindraj. The fact that the particulars for typing the Will were not given by deceased V.R.Govindraj but by the witness Raju is enough to hold that this Will was not executed by the deceased V.R.Govindraj.

17.It is his evidence that on 22.12.1998, he had not lit the funeral pyre to the deceased V.R.Govindraj, but afterwards he performed the last rites. He claimed that he has other documents containing the signature of deceased V.R.Govindraj and he produced those documents. But he has not produced any of those documents. He admitted that the deceased met his medical expenses and other personal expenses out of his own money and he did not give any money to the deceased. The overall impression from the evidence of P.W.1, we get, is that the deceased was not relying P.W.1 for any monetary assistance for his food or medical expenses. He was only assisting the deceased by cooking his food. He practically participated in the execution of Will. Most importantly the particulars for typing the Will were not given by the deceased V.R.Govindraj, but other



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attesting witness Raju gave the particulars. Therefore, the claim of the defendants that plaintiff is not the adopted son of deceased V.R.Govindraj and deceased V.R.Govindraj had no reason to execute the Will in favour of plaintiff has force in it.

18.In support of this contention, the defendants claimed that plaintiff had surreptitiously filed the Original Petition for probating this Will without showing the defendants as a parties. Only after coming to know about the grant of Letters of Administration, and on the application filed by the defendants, the Letters of Administration granted in favour of the plaintiff was cancelled and the case is being contesting by the defendants. It is seen that P.W.1 admitted that he knew the defendants from his childhood and they are the blood relatives of the deceased V.R.Govindraj and he is not a blood relative to the deceased V.R.Govindraj. He also admitted that he had not shown the defendants as respondents in the petition filed in O.P.No.865 of 1999. He admitted that he had not informed the defendants about the execution of Will by deceased V.R.Govindraj and that he was going to file Original Petition for



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probating the Will of deceased V.R.Govindraj. It shows that despite knowing that the defendants are the blood relatives of the deceased V.R.Govindraj, he filed O.P.No.865 of 1999 for the grant of Letters of Administration without impleading the defendants as respondents in the Original Petition. It shows his dishonest and devious mind to get the Letters of Administration behind the back of defendants. It strengthens the suspicion with regard to the genuineness of the Will.

19.It is pertinent to refer to the documents produced on the side of the defendants. D1 is the copy of the settlement deed executed by the plaintiff in favour of his wife in respect of the property at Korattur Village, Vanasakthi Nagar. This property was not covered under the Will. If the adoption claimed by the plaintiff is true what is the need for deceased V.R.Govindraj to execute the Will ? and that too, for only one of his properties. Ex.D3 is the copy of the legal heir Certificate alleged to have been issued in favour of the plaintiff by the Tahsildar. When defendants sought information about this legal heir Certificate under Right to Information Act through Ex.D18, Tahsildar sent a reply through



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Ex.D19 that plaintiff was not issued any legal heir Certificate in D.Dis.D1/7606/97-98, but only a community certificate was issued in this reference. Thus, it is proved that the legal heir certificate claimed by the plaintiff is not true and genuine document. Ex.D5 is the copy of the sale deed executed by M.Saravanan as a power of agent of plaintiff's wife Aruna in favour of Sivagami in respect of Vanasakthi Nagar property. Ex.D7 and Ex.D8 are the copies of sale deeds of the properties purchased by the deceased V.R.Govindraj. Ex.D9 was the original certificate of service issued in favour of deceased V.R.Govindraj. Ex.D10 is the original tax assessment in respect of Vanasakthi Nagar property and Ex.D11 is the original tax collection and receipt in respect of Rajamangalam property. Ex.D12 is the original family card in favour of deceased V.R.Govindraj. Ex.D13 is the original burial receipt given for deceased V.R.Govindraj. Ex.D14 is the original receipt given by funeral undertaker. Ex.D15 is the food bill given in favour of Ramanathan. These documents show that the original documents and copies of the documents relating to the properties owned by deceased V.R.Govindraj were produced by the defendants; that it was the defendants who



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arranged for burial and funeral of the deceased V.R.Govindraj. Though it is claimed in the plaint that plaintiff had performed his last rites and Kariyams, he candidly admitted that he was not in station on the date of death of deceased V.R.Govindraj and that he did not perform his last rites. P.W.1 has also admitted during the course of his evidence that the defendants and deceased were living together as a family for over a period of time. He also admitted that he has not produced any evidence to show that there is no love last between the defendants and the deceased V.R.Govindraj.

20.Ex.D16 is the copy of the sale deed executed by plaintiff in favour of Jenat in respect of the property at Rajamangalam. Ex.D17 is the copy of the police complaint given against the plaintiff. Ex.D20 is the copy of FIR registered against plaintiff and one Balakrishnan for creating forged Will and selling the property of deceased V.R.Govindraj. Ex.D21 is the reply received from the Tahsildar with regard to the grant of patta in respect of the disputed property. These documents and evidence of P.W.1 and P.W.2 shows that even when the challenge to the grant of



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Letters of Administration was pending, plaintiff had executed a settlement deed in favour of his wife in respect of the property of the deceased V.R.Govindraj claiming himself to be the legal heir of the deceased V.R.Govindraj and she in turn sold the property to Sivagami through her power agent M.Saravanan. He also sold a portion of the Rajamangalam property in favour of Jenat. FIR as referred above was registered on the basis of complaint given by the defendants.

21.We have already found from the reply given by the Tahsildar that the legal heir certificate claimed by the plaintiff was not at all issued by the authority concerned. It was also found that plaintiff has not proved that he was the adopted son of the deceased V.R.Govindraj. It is not known how he was able to get/fabricate a legal heir certificate and alienate the properties. It shows his crooked mind to get the properties of the deceased V.R.Govindraj at any cost by creating documents. The pendency of criminal case is admitted by plaintiff. All these factors combined together and cumulatively taken into consideration, drives this Court to arrive at the only conclusion that plaintiff is not the adopted son



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of deceased V.R.Govindraj and that the deceased V.R.Govindraj had not executed the impugned Will in favour of the plaintiff. Taking advantage of the fact that he was cooking food to the deceased V.R.Govindraj, plaintiff had somehow managed to get this unnatural Will executed either by forging the signature of deceased V.R.Govindraj or by exercising undue influence on him.

22.May be that there is no specific plea taken by the defendants that the Will was executed by exercising undue influence, but when the facts presents themselves that the Will might have been executed exercising undue influence on a deceased V.R.Govindraj and that it is not a genuine Will, the plaintiff's claim for grant of Letters of Administration has to necessarily fail. If the deceased V.R.Govindraj was in sound and disposing state of mind, he would not have executed this unnatural Will in favour of a cook, when he had blood relatives and in fact he was living with them for quite sometime as single family. For all these reasons stated above, this Court finds that the Will dated 04.04.1997 was not executed by deceased V.R.Govindraj in a sound and disposing state of



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mind. This Will is not valid and genuine Will and it is a created Will by the plaintiff with the help of P.W.2 and other testator. Thus, the issue No.1 is answered against the plaintiff. In view of the finding that Will dated 04.04.1997 is not true, valid and genuine Will, this Court finds that plaintiff is not entitled for the relief, of grant of Letters of Administration or any other relief, for that matter. Thus, the issue Nos.2 and 3 are answered against the plaintiff.

23.In the result, this Suit is dismissed with the costs of the defendants.

02.11.2022

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List of Witnesses examined on the side of the plaintiff:-

- 1)Balamurugan (PW1)
- 2) K.Ramachandran (P.W.2)

List of Exhibits marked on the side of the plaintiff:-

Exhibits	Dated	Description
Ex.P1	04.04.1997	The registered Will executed by V.R.Govindaraj (copy)



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Ex.P2	24.12.1998	Death certificate of V.R.Govindaraj (Original)
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List of Witnesses examined on the side of the Defendants:-

1)A.Anitha (D.W.1)

List of Exhibits marked on the side of the defendants:-

Exhibits	Dated	Description
Ex.D1	010606	The settlement deed executed by Balamurugan in favour of his wife V.Aruna. (copy)
Ex.D2	092612	The letter written by learned counsel for 2 nd defendant to the learned counsel for plaintiff. (original)
Ex.D3	122298	The legalheirship certificate of Mr.V.R.Govindaraj, who died on 22.12.1998 issued by Tahsildar, Purasawalkam-Perambur Taluk.(original)
Ex.D4	010606	The settlement deed executed by Balamurugan in favour of his wife Mrs.B.Aruna. (certified copy)
Ex.D5	022410	The sale deed executed by Mr.M.Saravanan in favour of Mrs.P.Sivagami (certified copy)
Ex.D6	040715	The authorisation letter given by B.Renuka Devi to authorising officer to depose M/s.Anitha on her behalf before this Court.(original)
Ex.D7	042193	The certified copy of the sale deed registered in favour of V.R.Govindaraj (certified copy)



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Ex.D8	080894	The sale deed registered in favour of V.R.Govindaraj. (certified copy)
Ex.D9	012738	The original certificate of service issued to V.R.Govindaraj issued by Simpson & Co.Ltd.
Ex.D10	032096	The original property tax assessment in respect of Vanasakthi Nagar property.
Ex.D11	012096	The original property tax collection receipt in respect of Rajamangalam property
Ex.D12	-	The original family card for the period 1998 – 2003 in respect of late V.R.Govindaraj.
Ex.D13	122298	The original burial report issued by Corporation of Chennai in respect of V.R.Govindaraj
Ex.D14	122298	The original receipt issued by Desi & Co., Funeral undertakes in favour of the 2 nd defendant.
Ex.D15	123098	The original receipt for food served for the death ceremony of V.R.Govindaraj
Ex.D16	091100	The certified copy of the sale deed registered as Doc.No.3263 of 2000 executed by the plaintiff in favour of one Janet for a portion of the property at Rajamangalam.
Ex.D17	122206	The copy of the police complaint given by the Renukadevi
Ex.D18	072110	The copy of the police complaint given by the Anitha.
Ex.D19	072910	The original reply for Ex.D18 from Tahsildar, Pursawakkam-Perambur



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		Taluk.
Ex.D20	110711	The certified copy of the FIR registered for land grabbing against the plaintiff.
Ex.D21	030813	The original reply received from Tahsildar, Purasawakkam-Perambur Taluk.
Ex.D22	-	The photocopy of the first page of PW2 ration card and the endorsement made in 2011 & 2015.
Ex.D23	110500	The photocopy of the identity card of Ramachandran/P.W.2 issued by Election Commission of India
Ex.D24	050202	The photocopy of the identity card of Ramachandran/P.W.2 issued by Department of post.

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Index:Yes/No

Speaking Order: Yes/No

To

The Section Officer,
VR Section,
High Court of Madras.

G.CHANDRASEKHARAN.J.,



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