



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

WEDNESDAY, THE 02ND DAY OF MARCH 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

T.O.S.No.22 of 2009

In the matter of the Indian Succession
Act XXXIX of 1925, and
In the matter of Last Will and
Testament of Rangachari - deceased.

1. R.Balu Achari,
residing at No.17/42, Munuswamy Street,
Shri Venkatesh Nagar, Virugmabakkam,
Chennai - 600 092.

2. R.Kubendran
residing at New No.68, (Old No.45),
Sundramoorthi Vinayagar Koil Street,
Triplicane,
Chennai - 600 005.

...Petitioners/Plaintiffs

-Vs-

Somu Achari
residing at No.44, SMV Koil Street,
Triplicane, Chennai - 600 005.

..Caveator/Defendant

Testamentary Original Suit praying that this Hon'ble Court be pleased
to grant letters of administration with the will annexed to the petitioners as
they are the sons/legatees and next of kin under the will of the said deceased



having effect throughout the state of TamilNadu limited to the properties mentioned in the affidavit of assests.

This Testamentary Original Suit coming on this day before this court for hearing in the presence of M/s. Menon & Goklaney Associates and M/s. Lakshmi Manickam, advocates for the Plaintiffs herein and the defendant herein not appearing in person or by advocate and the said defendant herein having been set exparte on 04.03.2021 and upon reading the plaint filed herein and the other exhibits therein referred hereto and upon perusing the evidence adduced therein, this Court is of the view that the plaintiffs have proved their case and entitled to the grant of Letters of Administration and **it is ordered and decreed as follows:-**

That upon executing a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) in favour of Assistant Registrar (O.S.II), High Court, Madras, the plaintiffs herein, having complied with the rules of this Court in this behalf, Letters of Administration of the property and credit of Rangachari - deceased annexed with the Will dated 10.05.1979 of the said deceased to have effect limited to the state of Tamil Nadu, do issue herein out of and under the seal of this Court and the same be granted to 1) R.Balu Achari and 2) R.Kubendran, the plaintiffs herein.



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2) That the plaintiffs herein be and are hereby further directed to render true and correct accounts once in a year.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 02ND DAY OF MARCH 2022.

Sd/-

JOINT REGISTRAR (O.S.)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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06.04.2022

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T.O.S.No.22 of 2009

DECREE

DATED : 02.03.2022

THE HON'BLE MRS.JUSTICE
V.BHAVANI SUBBAROYAN

FOR APPROVAL : 06.04.2022

APPROVED ON : 07.04.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.03.2022

CORAM

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

T.O.S.No. 22 of 2009

1. R.Balu Achari
2. R.Kubendran

..Plaintiffs

-Vs-

Somu Achari

..Defendant

This Suit has been filed under Sections 232, 255 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration.

For Plaintiffs : M/s Menon & Goklaney Associates &
Lakshmi Manickam

For Defendant : **Set ex-parte on 04.03.2021**

J U D G M E N T

The plaintiffs have originally filed a petition in O.P.No. 290 of 2004,

for grant of Letters of Administration. Since caveat has been filed on

<https://hcservices.ecourts.gov.in/hcservices/>

21.07.2007, Registry was directed to verify and convert the said O.P. into



T.O.S., on 27.07.2009. Thereafter, the said petition was converted as a suit and was renumbered as T.O.S.No. 22 of 2009.

2. The case of the plaintiffs as stated in the Original Petition is as follows:

(i) The defendant is one of the son of Rangachari born through the first wife, viz., Navaneethammal [other legal heirs are, Indirani, expired in the year 1986, Dilli Achari and Chandru Achari]. After the demise of Navaneethammal in the year 1940, the said Rangachari married Savithri Ammal. The plaintiffs, as well as one Lalitha and one Subramani are the sons and daughter of Rangachari born through the second wife, viz., Savithri Ammal. The said Rangachari expired on 14.04.1986 at No.44, S.M.V. Koil Street, Triplicane, Chennai – 600 005, where he was ordinarily then resided and he had possessed the properties within the state of Tamilnadu. The last Will and Testament of late Rangachari was duly executed by him on 10.05.1979 and was registered as Document No.11 of 1979 in the office of the Sub Registrar, Triplicane, Chennai in the presence of the witnesses.

(ii) By the said Will, the deceased Rangachari appointed Savithri Ammal, as sole executrix and she died on 24.09.1995 without having proved the Will. Further, the Will has been signed by two witnesses,



namely, M.Chandran and C.Sekar and both of the witnesses had expired, hence the third party affidavit has been filed to prove the signature of the testator, as no one is available to prove the signature of the attesting witnesses.

(iii) Also, the plaintiffs submits that there is no application made to any district court or delegate or to any other High Court for Probate of any Will of the said deceased or letters of administration with or without the Will. Hence the plaintiffs prays to grant the relief as mentioned in the present suit.

3. According to the learned counsel for the plaintiffs, the Will was executed by Rangachari, father of the plaintiffs as well as defendant. Even according to the learned counsel, provisions are also made to the Will and the defendant remained ex-parte and the Will is also proved by submitting necessary documents.

4. Further, the learned counsel for the plaintiffs contends that the plaintiffs undertakes to duly administer the property and credits of the said Rangachari deceased in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the assets will



extend and to make a full and true inventory thereof and exhibit the same before this Court within six months from the date of grant of letters of administration. Therefore, the learned counsel for plaintiffs has sought for grant of letters of administration in respect of the Will executed by Rangachari.

5. Heard the submissions of the learned counsel for the plaintiffs and perused the documents available on record.

6. The Original Petition has been filed in the year 2004. Subsequent to that, after converting the said petition into the T.O.S., in the year 2009, notice has been ordered and the same has been served on the sole defendant on 09.10.2020. Despite repeated adjournments, the sole defendant has not filed written statement. Hence the defendant was set exparte on 04.03.2021 and the plaintiffs were directed to adduce Ex-parte evidence.

7. Accordingly, 1st plaintiff, namely, Balu Achari adduced evidence in his favour and on behalf of 2nd plaintiff as P.W.1 on 24.02.2022. He filed a proof affidavit and he had stated in the proof affidavit that himself and the 2nd plaintiff are entitled for grant of letters of Administration and 7 documents, viz., Exhibits Ex.P.1 to Ex.P.7 were marked to prove the claim.



Among the documents filed by the plaintiffs, which were marked as Ex.P.1 to P.7, Ex.P.1 is the last Original Will, Ex.P.2 is the original death certificate of Mr.Rangachari, who died on 14.04.1986. Ex.P.3 is the Original death certificate of late Savithriammal and Ex.P.4 to Ex.P.7 are the consent affidavits of the other legal heirs stating no objection to grant Letters of Administration to the plaintiffs.

8. On a careful consideration of the oral and documentary evidence, it is clear that the plaintiffs are the sons born to Rangachari and Savithriammal. Further, the other legal heirs born to Rangachari and Savithriammal, viz., R.Lalitha and R.Subramani and the other legal heirs born to Rangachari and Navaneethammal, viz., R.Dilli Achari and R.Chandru Achari had given their consent affidavits to grant letters of administration to the plaintiffs, which is evident through Ex.P4 to Ex.P7. Moreover, one legal heir, namely, Indira, born to Rangachari and Navaneethammal died in the year 1986 and the other legal heir, viz., defendant remained Exparte. Further, Ex.P.1, which is the original Will has also been marked.

9. In view of the above stated position and considering the fact that the evidence of P.W.1 and documents filed on behalf of the plaintiffs remain



unchallenged and taking note of the fact that there is no rebuttable evidence against the case of the plaintiffs and that the consent affidavits have also been filed by the other legal heirs, except the defendant, who remained exparte and one Indirani, who expired in the year 1986, this Court is of the view that the plaintiffs have proved their case and entitled to the grant of Letters of Administration.

10. Accordingly, the Testamentary Original Suit is ordered and a direction is issued for the grant of Letters of Administration to the plaintiffs, as the contesting witnesses, two persons, viz., M.Chandran and C.Sekar are no more and as no one is available to prove the signature of the testator, third party affidavit has been filed to prove the said signature of the testator. Moreover, the Will executed by the deceased Rangachari having effect throughout the State of Tamil Nadu.

11. The plaintiffs are also directed to execute a Security bond for a sum of Rs.25,000/- in favour of the Assistant Registrar (O.S.II) High Court, Madras. The plaintiffs are further directed to render true and correct accounts once in a year.

Sd/-V.B.S.J.



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Exhibits produced on the side of the plaintiffs:

S.No	Exhibits	Description
01	P-1	Original Will of late Rangachari
02	P-2	Original Death Certificate of late Rangachari
03	P-3	Original Death Certificate of late Savithriammal
04	P-4	Consent affidavit of Dilli Achari
05	P-5	Consent affidavit of Chandru Achari
06	P-6	Consent affidavit of Subramani Achari
07	P-7	Consent affidavit of Lalitha

Witness examined on the side of the plaintiffs:

P.W.1. - Mr.R.Balu Achari

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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