



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(TESTAMENTARY AND INTESTATE JURISDICTION)

FRIDAY, THE 29TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TOS No. 23 of 2015
(O.P.No.55 of 2013)

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

And

In the matter of the Last Will and
Testament of R.Subramanian-
Deceased.

S.Loganathan
S/o.Late.Mr.R.Subramanian,
No.38, Palayakaran Street,
Kodambakkam,
Chennai 600 024.

...Petitioner/Plaintiff

Vs.

(*) 1.Mr.Sekar, (Deceased)
S/o.Late.Mr.R.Subramanian,
No.84, Pallavan Street,
Thiruverkkadu, Chennai 600 077.

2.Mr.Kumar
S/o.Late.Mr.R.Subramanian,
No.10, Bakthavachalam Street,
Minjur, Ponneri Taulk,
Thiruvallur 601 203.

3.S.Rani,
D/o.Late.Mr.R.Subramanian,
No.38, Palayakaran Street,
Kodambakkam,



Chennai 600 024.

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4.Mr.S.Rajendran,
S/o.Late.Mr.R.Subramanian,
No.38, Palayakaran Street,
Kodambakkam,
Chennai 600 024.

5.Mr.S.Deenan
S/o.S.Sekar,
No.38, Palayakaran Street,
Kodambakkam,
Chennai 600 024.

6.K.Saravanan
S/o.S.Kumar,
No.38, Palayakaran Street,
Kodambakkam,
Chennai 600 024.

7.G.Geetha
D/o.Mrs.Kotteeswari,
No.5, Vakil Street, 4th Cross Street,
Ranipet 632 401.

8.S.Selvaraj
Grandson of Late R.Subramanian,
No.5, Vakil Street, 4th Cross Street,
Ranipet 632 401.

9.R.Mohan (minor)

10.R.Sathish (minor)
Minors Represented by thier father and Natural Guardian, S.Rajendran,
D9 & D10 residing at
No.38, Palayakaran Street,
Kodambakkam,
Chennai 600 024.

(*) 11. Mrs. Datchayani



(*) 12.Mrs.Jayalakshmi

(*) 13.Mrs.Jayashree

(*) 14.Mrs.Jayanthi

(*) 15.Mrs.Vijayalakshmi

(*) All 11 to 15 residing at
No.84, Pallavan Street,
Thiru Verkkadu, Chennai 600 077.

(*) (D1(Mr.Sekar) died D5 is
recognized as legal heir of D1, D11 to D15
impleaded as legal heirs of D1 as directed by this Court.)

Testamentary Original Suit praying that this Hon'ble Court be pleased
to grant Letters of Administration of the Will annexed to the petitioner as
the son and the legatee/beneficiary named under the Will of the said
deceased having effect limited through out the State of Tamil Nadu.

This Testamentary Original Suit coming on this day before this Court
for hearing in the presence of Mr.C.Umashankar, Advocate for the plaintiff
herein and Mrs.D.Uma Devi, Advocate for the defendants 3 to 10 herein
and upon reading the petition filed herein, and the other exhibits therein
referred to and upon perusing the evidence adduced therein, this Court is of
the view that the defendants have not produced any contra evidence in order
to substantiate their case and contentions and the plaintiff has proved the

Will and the attesting witnesses also in favour of the plaintiff, and



it is ordered as follows :-

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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 plaintiff herein, having complied with the rules of this Court in this behalf, Letters of Administration of the property and credit of R.Subramanian, deceased annexed with the Will 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 Mr.S.Loganathan, the plaintiff herein.

2. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 29th DAY OF APRIL, 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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16.06.2022

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T.O.S No. 23 of 2015
(O.P.No. 55 of 2013)

ORDER

DATED : 29.04.2022

THE HON'BLE MRS. JUSTICE
V.BHAVANI SUBBAROYAN

FOR APPROVAL: 22.06.2022

APPROVED ON : 23.06.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.O.S.No.23 of 2015

S.Loganathan

...Plaintiff

Vs.

1.Mr.Sekar
2.Mr.Kumar
3.S.Rani
4.Mr.S.Rajendran
5.Mr.S.Deenan
6.K.Saravanan
7.G.Geetha
8.S.Selvaraj
9.R.Mohan (minor)
10.R.Sathish (minor)
11.Mrs.Datchayani
12.Mrs.Jayalakshmi
13.Mrs.Jayashree
14.Mrs.Jayanthi
15.Mrs.Vijayalakshmi

...Defendants

*(D1(Mr.Sekar) died D5 is recognized as legal heir of D1, D11 to D15
impleaded as legal heirs of D1 directed by this Court.)*

Prayer: Petition filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration. Against this petition a Caveat was filed on the 7th day of January 2014 by the Caveators above named. The supporting affidavit was filed on 7th day of January 2014. As per order of Court dated 15.06.2015 in O.P.No.55 of 2013 the



Original Petition is directed to be converted into Testamentary Original Suit.

For Plaintiff : Mr.C.Umashankar

For Defendants : Mrs.D.Uma Devi for D3 to D10

J U D G M E N T

This petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for the grant of Letters of Administration. Against this petition a Caveat was filed on the 7th day of January 2014 by the Caveators above named. The supporting affidavit was filed on 7th day of January 2014. As per order of Court dated 15.06.2015 in O.P.No.55 of 2013 the Original Petition is directed to be converted into Testamentary Original Suit.

2.The plaintiff submitted that R.Subramanian son of late Rajabadar Thambirar died on 22.08.2008 at the time of death, he left property in Madras within the jurisdiction of this Court. The writing hereto annexed and marked as "A" is his last Will and Testament, the said Will was duly executed at Chennai on 30.10.2006 registered at S.R.O. Kodambakkam in Document No.98 of 2006. In the said Will deceased did not appoint any executor and that the petitioner is one of the beneficiary who is the son of the deceased. The attesting witnesses had sworned to an affidavit. The plaintiff hereby undertakes to duly administer the property and credits of the



said late R.Subramanian 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 in this Court within 6 months from the date of grant of Letters of Administration with the Will annexed to the petition and also to render to this Court a true account of the said property and credits within one year from the said date.

3.The plaintiff further submitted that the amount of assets likely to come to the petitioner's hand does not exceed in the aggregate a sum of Rs.7,26,000/- and the net amount of the said assets after deducting all items which the petitioner is by law allowed to deduct is only to the value of Rs.7,26,000/- which is the petitioner's share in the entire property.

4.According to the plaintiff, the deceased R.Subramanian leaving behind the following persons surviving him as his next of kin as his legal heirs:

<i>S.No.</i>	<i>Name</i>	<i>Relationship</i>
1	Mrs.S.Chokkammal	Wife of late R.Subramanian
2	Mr.Sekar	Son of late R.Subramanian
3	Mr.Kumar	Son of late R.Subramanian
4	Mrs.S.Rani	Daughter of late R.Subramanian
5	Mr.S.Rajendran	Son of late R.Subramanian
6	Mr.S.Loganathan	Son of late R.Subramanian



S.No.	Name	Relationship
	(petitioner)	
7	S.Deenan	Son of Mr.S.Sekar and grandson of late R.Subramanian
8	K.Saravanan	Son of Mr.S.Sekar and grandson of late R.Subramanian
9	G.Geetha	Daughter of late Mrs.Koteeswari and grand daughter of late R.Subramanian
10	S.Selvaraj	Son of late Mrs.Koteeswari and grandson of late R.Subramanian
11	R.Mohan (Minor)	Minor represented by his father and natural guardian Mr.S.Rajendran
12	R.Sathish (Minor)	Minor represented by his father and natural guardian Mr.S.Rajendran

5.The plaintiff submitted that Mrs.Koteeswari and her husband who are daughter and son-in-law had predeceased of R.Subramanian (deceased). Their legal heirs are added as respondents 9 and 10. The parents of the deceased, R.Subramanian were died long ago.

6.The plaintiff further submitted that he has impleaded all next of kin, legal heirs of the deceased as party/respondents. There are no other next of kin or legal heirs to be impleaded as party/respondent.

7.According to the plaintiff, he prayed for grant of Letters of



Administration with the Will annexed to him as he is the son and the legatee /beneficiary named under the Will of the said deceased having effect limited throughout the State of Tamil Nadu.

8.Application Nos.10035 and 10037 of 2018 have been filed by the first defendant to reopen the cross examination which was closed on 29.10.2018 by the 1st Additional Master Court for the applicant/defendants 1,3 to 5, 7 to 10 in the above suit, this Court by its order dated 25.02.2019 had allowed these applications.

9.Adoption Memo was filed by the defendants 2 to 10 wherein it has been stated that the first defendant filed the Written Statement in the above T.O.S.No.23 of 2015 and the same was adopted by the defendants 2 to 10.

10.Application No.2533 of 2020 has been filed to reopen the defendants side evidence in the cross examination which was closed on 31.01.2020 in the 1st Master Court for the applicant/defendants 1, 3 to 5, 7 to 10 in the above suit, this Court by its order dated 20.11.2020 dismissed the application for default.

11.Application No.2534 of 2020 has been filed to submit the



additional documents pertaining to the defendants for the applicant/defendants 1, 3 to 5, 7 to 10 in the above suit, this Court by its order dated 20.11.2020 allowed the application.

12.Application No.701 of 2021 has been filed to recognize 6th defendant and bring on record the legal heirs of late Mr.S.Sekar viz., 1.Mrs.Datchayani, 2.Mrs.Jayalakshmi, 3.Mrs.Jayanthi, 4.Mrs.Jayashree and 5.Mrs.Vijayalakshmi legal heirs/legal representatives of the 1st defendant as defendants 11 to 15 in the TOS, this Court by its order dated 03.02.2021 allowed the application.

13.A Written Statement has been filed by the first defendant on behalf of other defendants also. The first defendant denies all the averments set out in the plaint by stating that the same are false and baseless except for those admitted herein below and the same is not maintainable in both law and facts. Moreover the averments are only surmises and conjectures and thus the plaintiff is put to strict proof of the same.

14.The first defendant submitted that out of the wedlock between late R.Subramanian and Chokkammal, the following persons were born to them, they are 1.Mr.S.Sekar, 2.Mr.S.Kumar, 3.Mr.S.Rajendran, 4.late Mrs.S.Koteeswari, 5.Mrs.S.Rani and 6.Mr.Loganathan (plaintiff). The suit



schedule property was bought out from the earning of late R.Subramanian and Chokkammal and their first son Mr.S.Sekar (D1) vide Sale Deed dated 16.03.1961 registered as Document No.772 of 1961 in the office of SRO, T.Nagar. Thereafter from the earning of late R.Subramanian and Chokkammal and their first son Mr.S.Sekar (D1), the building now standing on the above said property was constructed. Even though S.Sekar (D1) was a minor during at the time of purchase of the said property, he was selling flowers and the money earned by him was also utilized for purchase of the above said property and to construct the building thereon.

15.The first defendant further submitted that while late R.Subramanian was alive, he was repeatedly saying to his sons and daughters that after his demise the above suit schedule property has to be shared equally among all the legal heirs of him. While he was on death bed, he had called all sons and daughters and expressed his last wish that the suit schedule property has to be shared equally between all the legal heirs as his last wish and further demands for a partition of the property, as the plaintiff are in occupation of larger area in the above said property, the plaintiff given various reason and avoided partition, received the rent appropriated to plaintiff himself and refused to allow other co-owners from using the property. This kind of attitude proves the plaintiff intending to retain and



usurp the major portion of the property and deprive the other co-owners.

Even though D3 to D6, D9 and D10 living at the said property, it is lesser area compared to the area occupied by the plaintiff who occupied 50% of the property while all the defendants are equally entitled for the equal share from the said property.

16. According to the first defendant, in the year 2006 at the time of execution of Will, their father was not in a sound condition both in physically and mentally. He was physically very weak, paralyzed and he has lost his memory power completely. In such a condition, there was no chance to execute such Will dated 30.10.2006 and bequest major portion of the property in favour of the plaintiff, whereas all the defendants and plaintiff are the legal heirs. There was no dispute between the defendants and their father late R. Subramanian.

17. The first defendant submitted that their father never wrote any Will and bequeathed such major portion of the property as mentioned in the Will dated 30.10.2006 in favour of the plaintiff within the knowledge of the defendants. The Will itself a false and fabricated one according to the whim and fancy of the plaintiff.

18. The first defendant further submitted that at the time while



executing the Will late R.Subramanian was not in sound disposing state of mind and never understood the nature and effect of the dispositions. One of the 1st witnesses was an Advocate and another witness was the plaintiff colleague works along with in mechanic shed. Hence the Will dated 30.10.2006 is a vitiated one and not a genuine document.

19. According to the first defendant, the left thumb impression found in the Will dated 30.10.2006 does not belong to their father late R.Subramanian and the will dated 30.10.2006 was a totally forged one with the intention to grab the property mentioned in the plaint and defeat the legitimate interest and legitimate rights of the defendants over schedule mentioned property.

20. The first defendant submitted that their father's thumb sizes were big and in the Will dated 30.10.2006 affixure by a small thumb and to prove the original signature and thumb impression of their father late R.Subramanian, the defendants furnished the Mortgage Deed dated 19.04.1965 which contains the original signature and thumb impression of their father.

21. The first defendant further submitted that there is no sufficient



reasons mentioned in the Will for the exclusion of the sons of the testatrix which create all the legitimate suspicions about the bonafide of the Will. If the testatrix late R.Subramanian intends to exclude his sons and daughter except the plaintiff, he should have stated proper reasons for the same. There is no evidence on the part of the plaintiff to show that there was love lost between the father and his sons and daughter.

22. According to the first defendant, the disposition is unnatural and unfair excluding other heirs of the testatrix without any reasons, it would vitiate the entire Will. Hence the will is vitiated one even though it was registered one, this Will cannot be enforced legally. The defendants prayed that no relief may be granted to the plaintiff.

23. Heard the learned counsel for the plaintiff and the learned counsel for the defendants and perused the documents placed on record.

24. It is necessary to extract the apportionment made in the Will by the deceased R.Subramanian, which reads as follows:

<i>S.No.</i>	<i>Name</i>	<i>Relationship</i>	<i>Extent (in sq.ft.)</i>	<i>Schedule</i>
1	Loganathan	Son	600	A
2	Deenan	Grandson	200	B



<i>S.No.</i>	<i>Name</i>	<i>Relationship</i>	<i>Extent (in sq.ft.)</i>	<i>Schedule</i>
3	Saravanan	Grandson	200	C
4	Mohan and Sathish (jointly)	Grandsons	225	D

25.On perusal of the documents, it is seen that the two attesting witnesses have signed in the Will viz., Mr.P.Vijay Kumar and Mr.Stanley Joseph. Thereafter, the said Will has been registered.

26.Original Petition No.55 of 2013 has been converted as a Testamentary Original Suit viz., T.O.S.No.23 of 2015. The defendants had raised various contentions that the said Will is not a genuine one and it is a fabricated. No other documents have been produced to show that the father was chronically ill that he was not in a position to execute a Will.

27.On going through the Will, it is found that the same has been registered vide Document No.98 of 2006 on 30.10.2006, marked Ex.P2. The Death Certificate of the Testator was dated 16.09.2008 marked Ex.P1. The said Loganathan/PW1 was cross-examined by the counsel appeared for the Defendants 3 to 10 and in the admission and cross-examination of the said PW1 has admitted that only his mother was aware that the Will was



executed by his father and about the persons who had accompanied while executing the Will. The plaintiff already occupied 600 sq.ft and registration also done in his name. As his father (fell sick) was admitted in Hospital and after one week discharged from the hospital and later he died. The defendants stated that they have no knowledge about the Will and only came to know when they have received the legal notice pertaining to the suit property.

28. On perusal of the evidence of PW1, it is seen that certain documents marked on the side of the plaintiff viz., computer generated copy of the Death Certificate of R. Subramanian issued on 16.09.2008 marked as Ex.P1, registered Will dated 30.10.2006 marked as Ex.P2, original Legal Heir Certificate dated 06.04.2010 marked as Ex.P3, original affidavit of attesting witness P. Vijayakumar dated 31.03.2012 marked as Ex.P4, original affidavit of attesting witness Stanley Joseph dated 31.03.2012 marked as Ex.P5 and Legal notice marked as Ex.P6. During the examination, the plaintiff/PW1 stated that he has received a legal notice from the other defendants regarding partition in the suit property and his mother informed him about the Will and he also gave a reply notice to the defendants.



29. On perusal of the PW2, it is seen that he is the identifying witness before the Sub-Registrar Office at Kodambakkam. After the Testator affixed his left thumb impression he has signed the Will. He has been requested by the Testator to attest the Will since he is neighbour and long time family friend. He has seen the Testator subscribed the thumb impression in the Will with good state of mind and he is the first attesting witness. During cross-examination by the learned counsel for the defendant, the PW2 stated that he knows him from his childhood. According to the PW2, he never met Mr. Subramaniam after execution of Will. PW2 further stated that he was in the opposite house and he knows him from the childhood and he and his wife along with children were residing with Mr. Subramaniam and Mrs. Chokkammal in the same house. According to the PW2, he and late Subramaniam and another person were accompanied with them and he does not know about the other person and he was not present during execution of Will but he had read the Will in the Registrar Office. PW2 stated that he does not know that Mr. Subramaniam always used to keep his thumb impression for any communication.

30. On perusal of the evidence of DW1, it is seen that copy of the Mortgage Deed dated 19.04.1965 marked as Ex.D1 and the copy of the Sale Deed dated 13.06.1961 marked as Ex.D2. During the examination, DW1



stated that his father admitted in Best Hospital, Kodambakkam only for two days and the doctor advised to take him to home because of coma stage and his father was in coma only for 10 days and his right side was paralyzed. According to the DW1, he has not read the written statement but written statement was prepared on his instruction and he saw the Will written by his father which was a registered one and he does not know about the execution of the Will and later he came to know through Mr.Selvaraj who is his sister's son and the plaintiff showed the Will in the year 2010.

31.On perusal of the evidence of Mr.S.Rajendran/DW2, it is seen that during the examination, DW2 stated that he did not see the Will till date and did not go through the said Will. According to the DW2, he has not filed Written Statement. DW2 stated that he has no knowledge about the said Will dated 30.10.2006 and the shares given to his sons through the said Will was not sufficiently given and his son got 225 sq.ft. and Mr.Kumar's sons Saravanan and Sekar's son Dheenam were given 200 sq.ft. each.

32.This Court has perused all the materials and evidence available on record.

33.In view of the above facts and circumstances of the case and considering the submission made by the learned counsel on either side, this Court is of the view that the defendants have not produced any contra evidence in order to substantiate their case and contentions. The plaintiff



has proved the Will and the attesting witnesses also in favour of the plaintiff and therefore, this Court is of the view that the same may be allowed.

Accordingly, this suit is allowed. There shall be no order as to costs.

34. The plaintiff shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S.-II), High Court, Madras.

Sd./- V.B.S.J
29.04.2022

List of documents marked on the side of the plaintiffs

1. The computer generated copy of the Death Certificate of R. Subramanian issued on 16.09.2008 – Ex.P1.
2. The registered Will dated 30.10.2006 - Ex.P2.
3. The original Legal Heir Certificate dated 06.04.2010 – Ex.P3.
4. The original affidavit of attesting witness P. Vijayakumar dated 31.03.2012 – Ex.P4.
5. The original affidavit of attesting witness Stanley Joseph dated 31.03.2012 – Ex.P5
6. Legal notice – Ex.P6.

List of witnesses examined on the side of the plaintiffs

1. Mr. S. Loganathan - PW1
2. Mr. P. Vijayakumar - PW2

List of documents marked on the side of the defendants

1. Copy of the Mortgage Deed dated 19.04.1965 – Ex.D1
2. Copy of the Sale Deed Document No.772 of 1961 dated 16.03.1961 – Ex.D2.
3. Copy of Partition Deed Document dated 28.11.1999 – Ex.D3.
4. Original Mortgage Deed Document Dated 19.04.1965 No.4 – Ex.D4.
5. Original Partition Deed Document dated 28.11.1999 – Ex.D5.



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List of witnesses examined on the side of the defendants

- 1.Mr.Sekar - DW1
- 2.Mr.S.Rajendran - DW2

Sd./- V.B.S.J
29.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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