



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(TESTAMENTARY AND INTESTATE JURISDICTION)

TUESDAY, THE 22ND DAY OF MARCH 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TOS No. 69 of 2013
(O.P.No.571 of 2008)

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

In the matter of the certified copy of
Last Will and Testament of
R.Loganathan - Deceased.

L.Mohanamurthy,
S/o.R.Loganathan,
No.28/40, Sivan Koil Street,
Koyambedu, Chennai 107.

... Petitioner/Plaintiff

-Vs-

G.Kalaivani,
W/o.S.Gunalan,
No.269, Chinna Vazhudalambedu Village,
Thervazhi Post, Gummidipoondi Taluk.

... Caveator/Defendant

Testamentary Original Suit praying that this Hon'ble Court be pleased
to grant letters of administration with the Certified copy Will annexed may
be granted to him as the son/legatee under the said Will of the said deceased
testator R.Loganathan having effect limited to the state of Tamil Nadu.

This Testamentary Original Suit coming on this day before this Court
for hearing in the presence of Mr.N.A.Nissar Ahmed & Mr.I.Kowser Nissar
Advocates for the plaintiff herein and the defendant herein not appearing in
person or by advocate and the said defendant herein having been set exparte



and upon reading the plaint/petition filed herein, and the other exhibits therein referred hereto and upon perusing the evidence adduced therein and, **it is ordered 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 plaintiff herein, having complied with the rules of this Court in this behalf Letters of Administration of the property and credit of R.Loganathan, deceased annexed with the Will dated 04.05.1995 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 L.Mohanamurthy the plaintiff herein.

2. That the plaintiff herein, be and is 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 22nd 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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T.O.S No. 69 of 2013
(O.P.No. 571 of 2008)

ORDER

DATED : 22.03.2022

THE HON'BLE MRS. JUSTICE
V.BHAVANI SUBBAROYAN

FOR APPROVAL: 05.04.2022

APPROVED ON : 05.04.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2022

CORAM

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

T.O.S.No. 69 of 2013

L.Mohanamurthy

..Plaintiff

-Vs-

G.Kalaivani

..Defendant

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

For Plaintiff : Mr.N.A.Nissar Ahmed &
Mr.I.Kowser Nissar

For Defendant : Set ex-parte on 16.04.2013

J U D G M E N T

The plaintiff has originally filed a petition in O.P.No. 571 of 2008, for grant of Letters of Administration. Since caveat has been filed in Caveat No.3223 of 2012 on 17.12.2012, Registry was directed to verify and convert the said O.P. Into T.O.S., on 13.12.2013. Thereafter, the said petition was converted as a suit and was renumbered as T.O.S.No. 69 of 2013.

2. The case of the plaintiff as stated in the Original Petition is as



One R.Loganathan, who is the father of the plaintiff and defendant had died on 16.10.2002 at No.28/40, Sivan Koil Street, Koyambedu, Chennai – 107, where he was then ordinarily resided and had possessed the property within the state of Tamilnadu along with his brother K.R.Angamuthu bearing Door No.184, comprised in S.No.141/7, Koyambedu village, measuring an extent of 1840 sq.ft., and all that land and building bearing new door no.28, Old Door No.40, Sivan koil Street, Koyambedu Village, measuring an extent of 6876 sq. ft., under a registered sale deed dated 29.03.1972 bearing Doc.No.948/72. The certified copy of last Will and Testament of the said Loganathan was duly executed by him at Chennai on 04.05.1995 in the presence of witnesses. The testator had bequeathed the subject property to the plaintiff, who is his son. Further, the testator had stated that the property would devolve with full powers of alienation to the plaintiff and in the property bearing door no.184, koyambedu village, the available extent after land acquisition is only an extent of about 900 sq.ft., out of about 1840 sq.ft.,

(ii) The plaintiff further states that inspite of diligent search, the original Will is not traceable and the certified copy of the above said Will, which is his father's last Will in respect of the aforesaid property is filed.



The said Will dated 14.05.1995 had been registered on the file of SRO, Anna Nagar as Doc.No.65/95. The said Will was executed at Chennai on 04.05.1995 and the testator had appended his signature as well as his left thumb impression in the presence of two witnesses, namely, Andalammal, who is the mother of the plaintiff and defendant and wife of the testator and one Palani. Under the said Will, none has been appointed as executor and the plaintiff is intending to secure letters of administration in respect of the aforesaid property arising under the subject Will. The plaintiff is not able to procure the affidavits of the attesting witnesses, as he is not aware of the 1st attesting witness namely, Palani and as the 2nd attesting witness, who is none other than the mother of the plaintiff has joined hands with the defendant, who is the sister of the plaintiff and has suppressed the Will and filed a suit for partition before this Court. The plaintiff is not able to procure the affidavits of any of the attesting witnesses.

(iii) Also, the plaintiff 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 plaintiff prays to grant the relief as mentioned in the present suit.



3. According to the learned counsel for the plaintiff, the Will was executed by R.Loganathan father of the plaintiff 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 plaintiff contends that the plaintiff undertakes to duly administer the property and credits of the said R.Loganathan 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 plaintiff has sought for grant of letters of administration in respect of the Will executed by R.Loganathan.

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

6. The Original Petition has been filed in the year 2008.

Subsequent to that, after converting the said petition into the T.O.S., in the year 2013, notice has been ordered and the same has been served on the sole



defendant on 18.02.2020. Despite repeated adjournments, the sole defendant has not filed written statement. Hence the defendant was set exparte on 21.04.2021 and the plaintiff was directed to adduce Ex-parte evidence. Thereafter, an application in A.No.3898 of 2021 has been taken out by the plaintiff seeking permission to receive certain necessary documents, as additional documents and to mark them as Ex.A.7 to Ex.A.9 to prove the signature of one of the attestor, viz., Andalammal and to show that the said attestor to the Will is no more and same was allowed by this Court on 29.10.2021.

7. Accordingly, on behalf of the plaintiff, his wife, namely, Shantha adduced evidence as P.W.1 on 21.04.2021 and 14.12.2021 respectively. She filed a proof affidavit and she had stated in the proof affidavit that she is entitled for grant of letters of Administration and 10 documents, viz., Exhibits Ex.P.1 to Ex.P.10 were marked to prove the claim. Among the documents filed by the plaintiff, which were marked as Ex.P.1 to P.10, Ex.P.1 is the last Original Will dated 04.05.1995, Ex.P.2 is the original death certificate of Mr.Loganathan, who died on 16.10.2002, Ex.P.3 is the Original Legal Heir certificate of Mr.Loganathan, Ex.P.6 is the letter of authorisation dated 21.04.2021 issued by the plaintiff in favour of wife, Shantha to depose on his behalf, as he is suffering from speech



impairity, Ex.P.7 is the original death certificate of Andalammal, who is the wife of Loganathan and mother of the plaintiff and defendant and Ex.P.4 and P.5 are the legal and reply notice issued and received by the plaintiff respectively.

8. On a careful consideration of the oral and documentary evidence, it is clear that the plaintiff and defendant are children of R.Loganathan and Andalammal, further, the said R.Loganathan died on 16.10.2002 and the said Andalammal died on 29.02.2012. To evidence such facts, Ex.P.2, Ex.P.3 and Ex.P.7 were marked and Ex.P.3 is the legal heir certificate. Further, Ex.P.1, which is the original Will dated 04.05.1995 has also been marked.

9. In view of the above stated position and considering the evidence of P.W.1 and documents filed on behalf of the plaintiff remain unchallenged and taking note of the fact that there is no rebuttable evidence against the case of the plaintiff, this Court is of the view that the plaintiff has proved his case and entitled to the grant of Letters of Administration. Accordingly, the Testamentary Original Suit is ordered and a direction is issued for the grant of Letters of Administration to the plaintiff, as the contesting witnesses, two persons, viz., one Palani could not be found and another person, viz., Andalammal, who is the mother of the defendant and plaintiff as well, is no more and to prove the signature of the said



Andalammal, Ex.P.8 and Ex.P.10 were marked, [which are original partition deed attested by the said L.Andalammal and two lease agreements, Ex.P.10], hence it is proved in accordance with law. Moreover, the Will executed by the deceased R.Loganathan having effect throughout the State of Tamil Nadu.

10. The plaintiff is 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 plaintiff is further directed to render true and correct accounts once in a year.

Sd./- V.B.S.J
22.03.2022

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	14.05.1995	Last original Will registered as Doc.No.65/95 by SRO, Annanagar
2.	P-2	16.10.2002	Original Death Certificate of Mr.Loganathan
3.	P-3	22.11.2022	Original Legal Heir Certificate of Mr.Loganathan
4.	P-4	03.05.2007	Office Copy of the legal notice issued by the plaintiff
5.	P-5	23.05.2007	Office copy of reply notice
6.	P-6	21.04.2021	Letter of authorisation issued by the plaintiff in favour of his wife,



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S.No.	Exhibits	Date	Description
			Shantha to depose on his behalf
7	P-7	29.02.2012	Original Death Certificate of L.Andalammal
8	P-8	16.10.2002	Original Partition Deed attested by Andalammal
9	P-9	22.02.2003	Original affidavit and letter of indemnity executed by Andalammal
10	P-10	22.05.2001	Original two lease Agreements executed by R.Loganathan

Witness examined on the side of the plaintiff:

P.W.1. - Mrs.Shantha

Sd./- V.B.S.J
22.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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