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TOS.No.37 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on: 16.07.2024

Pronounced on: 09.08.2024

CORAM :

**THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**TOS.No.37 of 2019**  
**(OP.No.480 of 2019)**

1.S.Munusamy  
2.S.Mohan  
3.S.Kothandan  
4.S.Ganesan  
5.S.Kanthan  
6.S.Ashok

...Plaintiffs

Vs.

V.Tamil Selvi @ Tamilarasi

... Caveator/Defendant

**PRAYER:** Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925, Letters of Administration with the Will annexed, may be granted to the petitioners as Sons/beneficiaries/legacies under the Will of the deceased having effect throughout the State of Tamil Nadu and limited assets mentioned in the affidavit assets.

For Plaintiffs

: Mr.S.Santhoshkumar  
for Mr.R.Azhaguraman

For Defendant

: Mr.R.Krishnamurthy  
for Mr.SVS.Ilamvazhuthi



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## **JUDGMENT**

The present Testamentary Original Suit has been filed seeking grant of Letters of Administration with the Will of late, Shenbagavalli Ammal dated 19.08.2008, annexed.

2.In view of the caveat filed by the sole defendant, the Original Petition No.480 of 2019 was converted as the present Testamentary Original Suit.

3.The case of the plaintiffs is that late, Shenbagavalli Ammal died on 01.01.2009, leaving behind a registered Will dated 19.08.2008, registered as Document No.115 of 2008 on the file of the Sub-Registrar Office, Anna Nagar. It is the further case of the plaintiffs that the said Shenbagavalli Ammal left behind her, her legal heirs, namely the plaintiffs and the defendant. It is also the case of the plaintiffs that the original Will was misplaced and found only while clearing old things and hence, the Original Petition could not be filed within three years from the date of demise of the testatrix, Shenbagavalli Ammal. However, it is the



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specific case of the plaintiffs that the Will was duly executed in accordance with law and hence, the plaintiffs are entitled to grant of Letters of Administration as prayed for.

4.The sole defendant has filed a written statement stating that the defendant has been living in the property which is the subject matter of the Will and the Will has been brought about under threat and coercion, taking advantage of the old age of her mother. It is further contended that the property which has been bequeathed under the Will is Government land and therefore, the Will is invalid in the eye of law. According to the defendant, the Will is filed after a lapse of ten years with a malafide intention to grab the property from the defendant. It is also contended that the plaintiffs have earlier filed a petition in Original Petition Diary No.19665 of 2018 before this Court and suppressing the same, the subsequent Original Petition, which stands converted as the above Testamentary Original Suit was filed. The defendant has also referred to civil suits filed before the City Civil Court which also throw light on the ulterior motive of the plaintiffs to somehow or other take over the subject property.



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WEB COPY 5. On 29.11.2021, the following two issues were framed for consideration:

*“(i) Whether the Will dated 19.08.2008 of Shenbagavalli Ammal is genuine?*

*(ii) Whether the plaintiff/propounder is entitled to Letters of Administration with Will attached?”*

6. On the side of the plaintiffs, the 4<sup>th</sup> plaintiff, S. Ganesan deposed as P.W.1 and through him, Ex.P1 to P4 were marked and one, D. Santhosh, one of the attesting witness was examined as P.W.2 and through him, Ex.P5 and P6 were marked. On the side of the defendant, the defendant examined herself as D.W.1 and Ex.D1 to D12 were marked.

7. I have heard Mr. S. Santhoshkumar, for Mr. R. Azhaguraman, learned counsel for the plaintiffs and Mr. R. Krishnamurthy, for Mr. SVS. Ilamvazhuthi, learned counsel for the defendant.



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8. Admittedly, the plaintiffs are the sons of late, Shenbagavalli

Ammal, the testatrix and the defendant is the daughter of the testatrix.

9. The registered Will dated 19.08.2008 has been marked as Ex.P1.

The testatrix has affixed her left thumb impression in all the pages of Ex.P1, Will and also at the time of registration of the Will before the Sub-Registrar's Office at Anna Nagar. Two witnesses have attested the execution of the Will, namely Mr.D.Santhosh and Mr.N.Ramesh. The very same attesting witnesses have identified the left thumb impression affixed by the testatrix before the Sub-Registrar at the time of registration of the Will.

10. Before going into the aspects regarding the proof of execution and attestation of the Will, the stand taken by the defendant challenging the Will should be kept in mind. Firstly, the defendant's mother was threatened and coerced in executing Ex.P1 Will and secondly, the property being Government land, the Will was invalid.



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11.In this backdrop, I have tested the evidence adduced by the witnesses. P.W.1, in lieu of chief examination, has filed his proof affidavit and he has marked the original Will and the Death Certificate of the testatrix. He has also marked the legal heirship certificate of the testatrix (Ex.P3) and Death Certificate of the father, Mr.Chellam (Ex.P4). The relationship between the parties is not in dispute and the defendant does not dispute the factum of the demise or the date of death of the testatrix. Therefore, the question which remains to be considered and answered is as to whether Ex.P1 Will was duly executed and attested in the manner known to law and as to whether it is the true and genuine Will, voluntarily executed by the testatrix.

12.The first attesting witness, D.Santhosh who was examined as P.W.2, in his proof affidavit, has stated that on 19.08.2008, he was present along with other attesting witness Mr.N.Ramesh and the testatrix, Shenbagavalli Ammal at the office of the Sub-Registrar, Anna Nagar where the Will was executed by Shenbagavalli Ammal by affixing her left thumb impression. He has further stated that the testatrix affixed her left thumb impression in the presence of the two attesting witnesses and



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while he and the other attesting witness attested the Will, it was in the presence of the testatrix. He has further stated that the testatrix was in a sound and disposing state of mind and memory at the time of execution of Ex.P1 Will.

13.In his cross-examination, he has stated that he was present when the testatrix affixed her left thumb impression in the Will. He has denied the suggestion that he along with the testatrix, in order to claim right over the Will mentioned property, created the Will. He has also denied that the testatrix had no right over the Will mentioned property and that he has given false evidence.

14.The defendant, in her proof affidavit, has reiterated the written statement averments and allegations, especially with regard to the subject property being sarkar poromboke and the testatrix having no right to execute the Will. She has further stated that at the time of death of her mother, she was residing along with her family members in the suit schedule property and after the death of her mother, the plaintiffs forcibly attempted to grab the suit property and she has also obtained a decree in



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her favour on 01.02.2012. She has also stated that she has moved writ Court for obtaining patta and only because of the pending legal proceedings, the Tahsildar did not issue patta. Her second attempt to obtain patta by way of W.P.No.9926 of 2016 was successful and “தேராய பட்டா” was issued in her name. She has also stated that she has measured the house site and put up boundary stones and the plaintiffs are trying to give trouble to her by encroaching the Will property for which she also gave a police complaint on 30.03.2018. The TOS proceedings have been filed by misusing the Will forcibly obtained from her mother. The certified copies of the judgment and decree passed by the City Civil Court are exhibited as Exs.D1, D9 and D10 documents on her side. The “தேராய பட்டா” was also marked as Ex.D2; the order issued by the TNSCB for constructing the House in favour of the defendant was marked as Ex.D3; the certified copy of the earlier Original Petition No.19665 of 2018 was marked as Ex.D4; the certified copy of the return copy of the O.P.D.No.19665 of 2018 was marked as Ex.D8 and the photocopy of the Aadhaar Card and Family Card were marked as Ex.D5 and D6.



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15. Interestingly, in the proof affidavit in paragraph No.12, the defendant has stated as follows:

*“12.I further state that the plaintiffs have written the said Will in the year 2008 and forcibly with a threat obtained signature from my mother, K.Shenbagavalli Ammal and registered on 19.08.2008. Subsequently, my mother K.Shenbagavalli died on 01.01.2009. However, after lapsing 10 years, the plaintiffs approached this Hon'ble Court by filing O.P.No.480 of 2019 with a malafide intention to grab the property from me and now the same has been converted as T.O.S.No.37 of 2019.”*

16. Even in the written statement, the very same version was pleaded in the written statement as well. Admittedly, the testatrix has not signed Ex.P1 Will, but only affixed her left thumb impression. Therefore, the main defence put up by the defendant falls to the ground.

17. In her cross-examination, the defendant admits that the subject property was owned by her maternal grandmother, Palayammal, who had given it to her three daughters and that the suit property was allotted to her mother by Palayammal in an oral partition. This admission of the



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defendant falsifies the plea in the written statement that the property is

Government property and therefore, her mother had no right to execute

Ex.P1 Will. She has also stated that her mother permitted her to reside in

the property but there is no document to evidence the same. She has also

admitted that she has filed O.S.No.6231 of 2008 before the XVIII City

Civil Court, Chennai, against her mother, testatrix. She further admits

that she had a problem with her mother in the year 2008.

18.To a question as to whether she knew about the Will of her mother, she has stated that she does not know and when a specific question was put to her as to whether her statement in paragraph Nos.6 and 12 that the Will was executed by the mother under the threat of plaintiffs on her old age is right or wrong, she has stated that she did not say so. To a further question put to her as to who is the owner of the land, she has stated that her mother is the owner. She has also stated that she has not filed any documents, including any sanction granted by the Corporation of Chennai for having put up construction of the house. To a specific question put to her that a share was also given her in the Will Ex.P1, she has stated that she is not aware about the same. She has



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disowned her proof affidavit, especially the allegations with regard to the plaintiffs' threatening the mother to execute Ex.P1 Will.

19. On a perusal of the Will, I find that the mother has given equal shares to all her children, including the defendant and it is not as if the defendant has been disinherited from any share in the property of her mother. From the evidence of P.W.2, due execution and attestation of the Ex.P1 Will has been proved to the satisfaction of the Court and it is in accordance with Section 63(c) of the Indian Succession Act. There is absolutely no dent made in cross-examination of P.W.2, especially in the light of the allegations that the Will was brought about under threat and coercion. Once the initial onus is established by the propounder by examining atleast one of the attesting witnesses and the requirements of Section 68 of the Indian Evidence Act r/w Section 63(c) of the Indian Succession Act have been duly complied with/satisfied, then in the absence of any suspicious circumstances surrounding due execution of the Will, the burden stands shifted to the caveator who alleges threat and coercion.



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20. Curiously, the defendant states that the mother has signed the Will whereas the mother has only affixed her left thumb impression. She does not even depose stating that she has seen Ex.P1 Will. She is not even in a position to say whether the defendant is a beneficiary under the Ex.P1 Will. Therefore, it is a clear case of speculation by a caveator who intends to take advantage of being in physical possession of the subject property, to deny and deprive the legitimate rights of her siblings, namely the plaintiffs who are also equally benefited under Ex.P1 Will. Excepting for the allegation that the Will was brought about by the plaintiffs under threat, taking advantage of the old age of the mother, there is no other allegation challenging the execution of the Will. There is absolutely no evidence forthcoming on the side of the defendant to establish that the Will was brought about threat and coercion as alleged.

21. I have also found that the defendant does not even know the Will has been executed by her mother, by affixing her left thumb impression. Further, it is a registered Will and the attesting witness, P.W.2 has also given clear and cogent evidence with regard to due execution and attestation of Ex.P1 Will.



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22.The learned counsel for the plaintiffs would place reliance on the decision of this Court in the case of *State of Tamil Nadu, represented by the Collector, Virudhunagar at Kamarajar District Vs. Madasami and Others* reported in *2011 SCC Online Mad 2108 : (2012) 2 CTC 315*, and *Dharmapura Adhinam Mutt Vs. Raghavan and Another* reported in *2012 (1) CTC 280*, where this Court held that persons occupying a Gramanatham land and put up construction, then the house site and also character of property would change and the Government has no say in the said rights accrued to such persons who occupied Gramanatham land. However, in view of the categorical admissions of P.W.1 as discussed above, there is no necessity to refer these decisions.

23.The learned counsel for the defendant placed reliance on the decision of the Hon'ble Supreme Court in *Suresh Lataruji Ramteke Vs. Sau.Sumanbai Pandurang Petkar and Others* reported in *AIR 2023 SC 4794*, where the Hon'ble Supreme Court held that on the facts of the said case, the attesting witnesses examined had not fulfilled the mandate of



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Section 63(c) of the Indian Succession Act and in such circumstances

held that the Will was not proved as mandated under the law. The facts of the said case were on an entirely different footing. In the instant case, the defendant, without even perusing the Will, has chosen to file her written statement and proof affidavit as if the Will was signed, contrary to the fact that the mother had only affixed her left thumb impression and the allegations of threat and coercion have also not been proved and established by adducing satisfactory evidence. Therefore, I do not find the said decision of the Hon'ble Supreme Court applying to the facts of the present case.

24. The Will having been duly proved through attesting witness, P.W.2 and the onus of proof being shifted to the defendant, there being no suspicious circumstances shown by the defendant, the defendant thereafter has miserably failed to discharge the burden of proving the allegation of threat and coercion. Therefore, it is a clear case where the defendant wants to defeat the last wishes of her mother, giving the property equally to all her children, merely because the defendant is in possession of the property. Her possession is also not shown to be legal



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and the defendant has not been able to file a single piece of evidence to show that she was permitted to occupy the subject property by her mother. In fact, the defendant has even gone to the extent of filing a suit against her mother before the City Civil Court which clearly establishes that the defendant is alone trying to grab the property and not the plaintiffs as she alleges.

25.In fine, the Will having been duly proved by the plaintiffs and the plaintiffs are entitled to grant of Letters of Administration as prayed for.

26.In the result,

(i) The suit is decreed and the plaintiffs shall be entitled to grant of Letters of Administration with the Will dated 19.08.2008 of their mother, Late Shenbagavalli Ammal, annexed.

(ii) The plaintiffs are directed to duly administer the properties and credits of the deceased more fully described in the suit schedule.



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(iii) The plaintiffs 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.

(iv) The plaintiffs are further directed to make a full and true inventory of the property and credits of the deceased testatrix, Shenbagavalli Ammal to be made and the same be exhibited before this Court, within six months from the date of grant of Letters of Administration to him and also to render a true account of the property and credits of the testator, within one year from the date of obtaining the grant.

(v) Considering the relationship between the parties, there shall be no order as to costs.

**09.08.2024**

Index :Yes/No  
Neutral Citation :Yes/No.  
Speaking order/Non-speaking order  
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**Witnesses examined on the side of the plaintiffs:**

P.W.1. - S.Ganesan

P.W.2 - D.Santhosh

**Exhibits produced on the side of the plaintiffs:**

| S.No. | Exhibits | Date       | Description of documents                                          |
|-------|----------|------------|-------------------------------------------------------------------|
| 1.    | P-1      | 19.08.2008 | Original Will executed by Shenbagavalli Ammal.                    |
| 2.    | P-2      | 01.01.2009 | Printout of Death Certificate of Shenbagavalli Ammal.             |
| 3.    | P-3      | 20.04.2009 | Original Legal Heirship Certificate of Shenbagavalli Ammal.       |
| 4.    | P-4      | 05.01.2003 | Printout of the Death Certificate of Chellam.                     |
| 5.    | P-5      | -          | Photocopy of the Aadhaar card (compared with original)            |
| 6.    | P-6      | -          | Photocopy of the Driving License (compared with original)         |
| 7.    | P-7      | -          | First Signature found in Ex.P1 Will as attesting witness is mine. |

**Witnesses examined on the side of the defendant.**

D.W.1 - T.Tamil Selvi

**Documents produced on the side of the defendant:**

| S.No. | Exhibits | Date       | Description of documents          |
|-------|----------|------------|-----------------------------------|
| 1.    | D-1      | 01.02.2012 | Certified copy of the Judgment in |



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|     |      |            |                                                                                                         |
|-----|------|------------|---------------------------------------------------------------------------------------------------------|
|     |      |            | O.S.No.6231 of 2008.                                                                                    |
| 2.  | D-2  | -          | Certified copy of the Patta issued by the Tahsildar in the name of the defendant.                       |
| 3.  | D-3  | 10.07.2017 | Certified copy of the order issued by the TNSCB for constructing the house in favour of the defendant.  |
| 4.  | D-4  | -          | Certified copy of the petition in O.S.No.19665 of 2018.                                                 |
| 5.  | D-5  | -          | Photocopy of the Aadhaar Card of the defendant (compared with original).                                |
| 6.  | D-6  | 20.04.2018 | Photocopy of the Family card of the Munuswamy Velmurugan (compared with original)                       |
| 7.  | D-7  | 20.04.2018 | Certified copy of the proceedings of the Tahsildar letter in favour of the defendant dated 20.04.2018.  |
| 8.  | D-8  | -          | Certified copy of the return remarks in returned petition in O.P.D.No.19665 of 2018.                    |
| 9.  | D-9  | 21.12.2021 | Certified copy of the Judgment in O.S.No.2876 of 2018 passed by XV Assistant City Civil Court, Chennai. |
| 10. | D-10 | 21.12.2021 | Certified copy of the Decree in O.S.No.2876 of 2018 passed by XV Assistant City Civil Court, Chennai.   |
| 11. | D-11 | -          | Original EB cards (2 nos) and original EB receipts (2 nos).                                             |
| 12. | D-12 | -          | Original Property tax card in the name of the defendant.                                                |

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**P.B.BALAJI,J.**

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**Pre-delivery judgment made in**  
**TOS.No.37 of 2019**

**09.08.2024**