



T.O.S.No..1 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.04.2025

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

T.O.S.No.1 of 2021
(O.P.No.755 of 2014)

1. Tmt. N. Pushpa
2. T.N. Harikrishnan .. Plaintiffs
.. Vs..

1. Selvi R.Vimala
2. Selvi R.Booma
3. A.Meeran
4. S.Haroon
5. A.Peer Mohamed
(R3 to R5 impleaded as per the
Order passed in Appl.No.1330 of
2011, dated 18.06.2021)
6. T.R.Murali,
7. T.R. Balaji
8. T.R. Giri
9. R. Vijaya
10.Tmt. R. Usha
11. S. Hemamalini
12. S. Pavithra .. Defendants

PRAYER: O.P.755 of 2014 has been filed under sections 232 and 276 of the Indian Successions Act, XXXIX of 1925 for the grant of Letters of Administration. Against this petition, a Caveat was filed by the Caveators. As



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per order of the Court dated 26.08.2019 in Appln.No.5042 of 2017, Letters of Administration granted on 18.04.2016 in O.P.No.755 of 2014 and on filing caveat, the order granting Letters of Administration was revoked and O.P.No.755 of 2014 has been converted into Testamentary Original Suit i.e., T.O.S.No.1 of 2021.

For Plaintiff(s) : Mr.S. Balasubramanian

For Defendant(s) : Mr. V.Srikanth for D1, D2 and D6 to D10
Mr.G.Balasubramanian for D3 to D5
D11 and D12 - NA

J U D G M E N T

Testamentary Original Suit is filed for grant of Letters of Administration with the Will dated 22.08.2002 to the 1st petitioner as brother's wife and 2nd petitioner as a nephew/legatee under the Will of the deceased Mr.T.D.Ranganathan.

2.The case of the Plaintiffs, as set out, in TOS is as follows:

a) The deceased Testator ie.Mr.T.D.Ranganathan, executed his Last Will and Testament on 22.08.2002 at Chennai in the presence of witnesses. Mr.T.D.Ranganathan died at Chennai on 28.05.2006 leaving behind his wife, his sons 1. T.R.Srinivasan, 2.T.R.Murali, 3. T.R.Balaji and 4. T.R.Giri. They



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are also aware of the Will and all of them are witnesses to the above Will and they have no claim whatsoever to the Willed property. The parents of the deceased pre-deceased him and the wife of the deceased died on 25.02.2010.

b)The petitioners are the legal heirs of the deceased Narasimhan who is the beneficiary under the Will. Narasimhan died on 05.12.2006. There is no executor named in the Will. The petitioners are the only beneficiary/legatees under the said Will, unless letters of administration is issued to the Will, they could not claim any right on the basis of the Will. The 1st petitioner is able to identify the signature of the testator. The 2nd attester of the Will also died. Since the necessity arises to dispose of the property, the delay is caused and may be condoned. The value and amounts of assets that are likely to come into the hands of petitioners hand does not exceed in the aggregate the sum of Rs.3,00,000/- and the net amount of the said assets after deducting all items which the plaintiffs by law allowed to deduct is only of the value of Rs.3,00,000/-. The petitioners undertake to duly administer the property and credits of the said T.D.Ranganathan deceased in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the Will extended and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of letters of administration with the Will annexed to the petitioner .



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c)The plaintiffs have not made any application to any District or delegate or to any other High Court for probate or Letters of Administration with or without Will on his property and credits. The petitioners have impleaded all next of kin or other persons interested as party respondent all the heir and next of the deceased are arranged as respondents in this petition. Hence, this suit.

3. The averment of written statement filed by the defendants 1 and 2 are as follows:

a) These defendants are daughters of Late T.D.Ranganathan. They are the co-owners of the property situate at Door No.6, Old Door No.20, Mohammed Abdullah Sahib, 2nd Street, Chepauk, Triplicane, Chennai-5. The property pertaining to the Will was purchased by their father late T.D.Ranganathan and his younger brother T.D.Narashiman through a registered sale deed dated 24.06.1970. These defendants, being unmarried, unemployed and have no source of income and during the life time of their father, were completely dependent on him and after his death, they were being taken care of by their brothers/defendants 6,7 and 8 and they have been living in joint family with their paternal uncle T.D.Narashiman. T.D.Narashiman died in the same year 2006. After the marriage of defendant's brothers, the



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defendants 1 and 2 and their brothers all moved out of the said property and they are residing under the care of their brothers. As the plaintiffs have not come forward for amicable partition, they took legal action against the plaintiffs and on obtaining encumbrance certificate for the said property, it came to know that the plaintiffs have surreptitiously alienated the said property to some third parties through three different sale deeds dated 21.04.2017. The plaintiffs have no right to deal with the share of the defendants in the said property which they inherited from their deceased father, as such, the sale is not binding on the defendants.

b) At the instance of the defendants, Letters of Administration granted vide order dated 18.04.2016 in the above O.P.No.755 of 2014 was revoked by order dated 26.08.2019 made in A.No.5042 of 2017 as the same has been obtained fraudulently. Their father T.D.Ranganathan would never have executed the alleged unregistered Will dated 22.08.2002 propounded by the plaintiffs. A major derision as allegedly claimed by the plaintiff of writing a Will, that too, depriving these defendants, who are unmarried and unemployed from inheritance would never have been done by their father without registering the same. The non registration of the alleged Will which was executed in non judicial stamp paper is clearly a fabrication, unnatural and raises suspicion about the genuineness of the Will. Thus the alleged Will

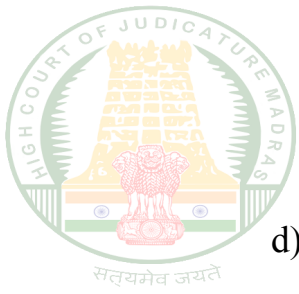


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dated 22.08.2022 introduced by the plaintiffs is a fabricated one and not true

and genuine.

c) The Will does not state about all the legal heirs of Testator and no reasons had been given for exclusion of legal heirs of alleged Testator from inheriting his property. In the first page of Will, there is over writing in hand as 'four' after scoring out the typed text of three which clearly exposes the fabrication. After the death of first son of Testator on 04.07.2013, OP.No.755 of 2014 has been filed during August 2014 and in the circumstances, the alleged Will could have been fabricated during the period between July 2013 and August 2014, at which point of time, there were three sons surviving late T.D.Ranganathan. Thereafter, overwriting was made in the alleged fabricated Will to make it as four sons, which clearly demonstrates that the Will was created after the death of the father of the defendants. There was an interpolation to include letter 'T' in the initials before the names of four brothers of these defendants in para 3, page 3 of the alleged Will and such interpolation has not been initialled by the executor. The Will does not contain the particulars of the drafting person. The date mentioned in the Will at 1st and 5th page is in a different ink and hand writing and in different pen/ink which creates suspicion.

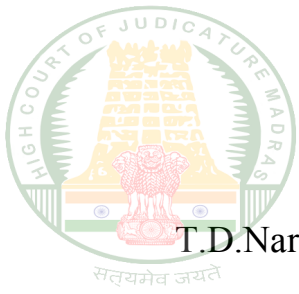


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d) Though the brother of the Testator T.D.Narasimhan, the alleged beneficiary of Will was alive till 05.12.2006, six months after the death of alleged Testator, no steps were taken by T.D.Narasimhan to obtain Letters of Administration until his death and the plaintiffs have not given any acceptable reasons for the same. The delay of 8 years to file the petition to prove the Will raises suspicion over the existence of the alleged Will. Their father was very affectionate towards all his eight children who are defendants 1,2,6 to 10 and 11 and 12 who are his daughter in law and grand daughter of his deceased first son and he would never leave in lurch of his two unmarried and unemployed daughters to the mercy of his other children by depriving them from inheriting his self acquired property. After obtaining Letters of Administration, immediately the plaintiffs have sold the said property to third parties which is not binding on the defendants and other legal heirs of the deceased T.D.Ranganathan. Hence, the suit is liable to be dismissed.

4. The averments of Written Statement filed by the defendants 6,7 and 8 is as follows:

i. The defendants 6,7 and 8 are brothers of defendants 9 and 10, the 11th and 12 defendants are widow and daughter of their pre-deceased brother T.R.Srinivasan. Their father T.D.Ranganathan and his younger brother

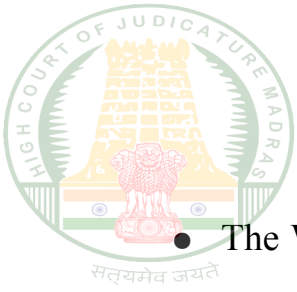


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T.D.Narasimhan have started a Partnership Firm in 1960. For the purpose of business, their father T.D.Ranganathan has signed in the blank papers, letter heads and in stamp papers and the same were in the custody of his younger brother T.D.Narasimhan. They apprehend that such blank signed papers and documents could have been misused by the plaintiffs for fabricating the alleged Will dated 22.08.2002. The execution of the alleged Will gives rise to suspicious circumstances for the following reasons:

- no father would deprive his two dependant daughters who are unmarried and unemployed from inheriting his property
- The alleged Will was projected only in the year 2014, after the death of the alleged testator on 28.05.2006 , after 8 long years and the plaintiffs did not disclose the execution of Will during the life time of his wife Amirdhavalli.
- The 1st plaintiff treated the defendants 1 and 2 like aliens and deprived them of their inheritance of their father's share in the property.
- The plaintiffs have not endeavoured to get evidence of 1st attesting witness to the alleged Will one V.Govindarajulu.
- OP.No.755 of 2014 has been filed without including the legal heirs of alleged Testator and Letters of Administration was obtained behind the back of these defendants



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● The Will did not surface immediately after the death of T.D.Ranganathan or during the life time of their uncle T.D.Narasimhan or upto June 2014 when the plaintiffs and defendants 1 and 2 lived jointly in the said property and their uncle, the alleged legatee would never have acted adverse to their interest. Hence, the Will propounded by the plaintiffs is fabricated, unnatural and shrouded with suspicious circumstances.

5. Based on the above said pleadings in TOS, this court on 09.01.2023 framed the following issue for consideration.

Whether the Will dated 22.08.2002 said to have been executed by T.D.Ranganathan is genuine?

6. On the side of the Plaintiffs, exhibits Ex.P1 to Ex.P14 were marked and witnesses, PW.1 and PW2 were examined. On the side of the Defendants, exhibits Ex.D1 to Ex.D4 were marked and witness DW.1 was examined.

7. Heard both sides and perused the material available on record.



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Issue No.1

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8. The learned counsel for the plaintiffs has submitted that the evidence given by PW1 is clear and cogent and he has produced the Will executed by T.D.Ranganathan in favour of his own brother T.D.Narasimhan. Apart from raising a plea, as if there was a slight correction in page No 3 of the Will, the other facts contained in the Will has not been disputed by the defendants. The Will is attested by two witnesses ie. K.K. Govindaraj and J.Desikan. The evidence of PW1 was not shaken at the time of cross examination. The 8th defendant has himself produced various stamp papers in Ex.D.4 and signatures of the deceased T.D.Ranganathan as compared with signatures of Ex.D.2 are not different. The 8th defendant who was examined as D.W.1 has also confirmed the signature filed in the proof affidavit and that they are same by comparison with signature as found in the Will. Therefore the signature of the deceased T.D. Ranganathan has been proved and that D.W. 1 who is having knowledge about the signature of his father has unwittingly admitted the same.

9. It has been further submitted that since the two attesting witnesses are repoted died, the son of the 2nd attesting witness had been examined as P.W.2 thereby the Will has been proved. Further, D.W1 being a



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signatory in the said Will, has not disputed the signature either in the written statement or cross examination nor signature of his brothers. The admitted signature of D.W. 1 is found in the deposition and even otherwise the same can be compared to the signature found in the Will and significantly right from the date on which he has filed the Vakalath through Counsel. The aforesaid fact will clearly shows that execution of the Will as required under section 63 of the Indian succession Act 1929 read along with provisions of Indian Evidence Act 1872 have been completely satisfied.

10. The learned counsel for the plaintiffs has further submitted that the first and second defendants in the suit have not chosen to enter into witness box and they are seeking to defend themselves through their proxy D.W.1. In the D.W1 cross examination, neither the signature of the Testator nor signature of sons of the Testator were disputed by the defendants as well as the defendants 1 and 2 have not gone into the witness box, it proves that Will Ex.P2 is genuine and valid. Therefore he prays to decree the suit as prayed for in the suit.

11. The learned counsel for the defendants 1, 2 and 6 to 12 has submitted that the alleged unregistered Will Ex.P-2 has been typed in

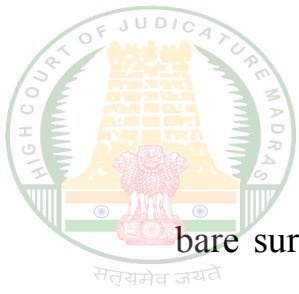


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existing signed blank stamp paper Ex.D-4 series left behind by T.D.

WEB COPY Ranganathan. It clearly shows that specifying the date in page No.5 of the Will at the top, in the already signed paper. The alleged unregistered Will dated 22.08.2002-Ex.A-2 was not made public by the plaintiff, immediately on the death of T.D.Ranganathan 28.05.2006 or thereafter. The Will was not shown to anyone, nor made public until the year 2014. After 8 long years the death of T.D. Ranganathan, O.P. No.755 of 2014 has been filed. The Defendants were residing in the suit property until 2014, and there was no whisper by the Plaintiffs about the existence of any such Will now propounded by the Plaintiffs. Thereby creates suspicion on the very existence of such document. Therefore, the alleged Will is not true and genuine. It is a fabricated document, created at the instance of the Plaintiffs.

12. It has been further submitted that in page No.3 of the Will, there is interpolation in third para where the typewritten "three" has been scored out and written as "four" by hand. It has not been countersigned by the alleged testator. The signed paper of other persons has been used as the last page of the Will, as there is no necessity for six signatures. While defendants 1 & 2 are not keeping good health, unmarried and unemployed and they are solely dependant on their brothers and sisters/Defendants-6 to 12 for their



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bare survival, there is no possibility of bequeathing the suit property to his brother.

13. The learned counsel for the defendants 1, 2 and 6 to 12 has further submitted that even if there are two attesting witness in the alleged unregistered Will Ex.A-2 dated 22.08.2002, Death Certificate of J.Desikan, the 2nd attesting witness alone has been marked as Ex. P-5 and PW2 Mr.D.Sidhar son of late J. Desikan alone deposed in evidence. The reliability of the evidence tendered by PW-2 could be tested without conceding the legal position that the secondary evidence under Section 69 could not be availed without satisfying the mandatory requirement of Section 68. As such, the evidence of PW-2 is of no avail to the plaintiffs' case. The Plaintiff is bound to explain to the Court (a) the endeavor made to procure evidence of at least one attesting witness; and (b) the reasons for not being able to produce such witness. It is only thereafter, could any secondary evidence be tendered. As such, the evidence of Sridhar PW-2 (son of one of the attesting witness) is of no relevance, in the absence of any convincing reasons for the plaintiffs inability to procure the 1st attesting witness K.K.Govindarajulu. Hence, he seeks to dismiss the suit with cost and thus render justice.



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14. On perusal of the records, it is seen that Ex.P2 is said to have

been executed on 22.08.2002 by the Testator to his younger brother ie.T.D.

Narasimhan. The Testator and original beneficiary are reported dead in the year 2006. But, the O.P. No.755 of 2014 has been filed by the legal heirs of original beneficiary in the year 2014 after 8 years of their death.

15. On perusal of the plaint, it is seen that the plaintiffs have only impleaded 4 sons of the Testator even though there are other 4 daughters to the Testator. While being so, the plaintiffs in their plaint, have stated that the petitioner has impleaded all next of kin or other persons interested as party respondent all the heir and next of the deceased are arranged as respondents in this petition. Further, it is averred in the plaint that there is no next of kin or other persons interested to be impleaded. It is seen in the plaint that they have not stated anything about the four daughters of the Testator as legal representative of the Testator. However, after caveat filed by the defendants 1 and 2, the plaintiffs have impleaded all the legal heirs of the Testator. In this regard, the plaintiffs have not whispered anything about why they have not impleaded in the plaint and also not brought about them in the averments. Therefore, it creates suspicion.



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16. In the plaint, in the paragraph No.8, it is stated that the 1st petitioner is able to identify the signature of the Testator since the 2nd attester also died whose death certificate is in the list of documents. However, the 1st plaintiff has not whispered anything in this regard in the proof affidavit. Despite two attesting witnesses are in the Will, the Plaintiffs have not whispered anything about the 1st attesting witness in the plaint. But, even if the P.W1 has averred in the proof affidavit that two attesting witnesses are not alive, death certificate of the 1st attesting witness has not been filed to prove the same. Further, they have not taken any steps to identify him by serving notice and to bring his legal heirs to prove his signature. Hence, it creates suspicion.

17. On perusal of the alleged unregistered Will Ex.P-2, it is seen that the entire contents along with month and year have been typed in the last page of the Will, the date alone is found to be written. Further, in page No.3 of the Will, there were interpolations in third para where the typewritten "three" has been struck off and written as "four" and before the names of sons of the Testator, initial "T" has been written by hand. However, it has not been countersigned by the alleged testator. Further, the plaintiffs have not given



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any proper explanation in this regard in the proof affidavit and deposition.

Further, the Testator has not stated about his daughters in the Will regarding their names, while the defendants 1 & 2 are said that they are not keeping good health, unmarried and unemployed. Further, it is seen that the said Will was executed in non-judicial Stamp paper of Rs.20, one Advocate, Mr. K. Srinivasan being a Notary Public, has signed mentioning his Enrolment No and address. The recital of the said Will seems to be a Sale Deed. Therefore, it creates suspicion.

18. On perusal of deposition of PW1, it reveals that the suit property has been sold out. Thereafter, the claim for grant of Letters of Administration cannot be entertained. The plaintiffs have filed the present suit after 8 years of death of the Testator and original beneficiary. The reason for the delay stated in the plaint is untenable and not acceptable.

19. In the evidence of P.W.2, it is seen that as Mr.D.Sridhar son of late J. Desikan, is the relative of Narasiman, he seems to be an interested witness.



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20. In view of the aforesaid observations, this Court is of the considered view that the plaintiffs have failed to prove the alleged Will dated 22.08.2002 by way of oral and documentary evidence. Accordingly, Issue No.1 is answered and hence, the plaintiff is not entitled for letter of administration.

21. In the result, the TOS is dismissed. No costs.

01.04.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
msr/lbm

List of witnesses examined in TOS No.1 of 2021

PW1 - Mrs.N.Pushpa

PW2 – Mr.D.Sridhar

DW1 - Mr.T.R.Giri



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List of documents marked on the side of the plaintiff:

Ex.P1 is the original death certificate of T.D.Ranganathan, dated 08.06.2007

Ex.P2 is the original will dated 22.08.2002

Ex.P3 is the original death certificate of T.D.Narasiman, dated 18.12.2006

Ex.P.4 is the original legal heirship certificate of Mr.T.D.Narasiman dated 13.03.2007

Ex.P.5 is the original death certificate of J.Desikan, dated 17.12.2007

Ex.P.6 is the affidavit of assets showing the net value of the estate for Rs.3,00,000/-

Ex.P.7 is the paper publication in Tamil Daily 'MALAI SUDAR' dated 07.12.2015

Ex.P.8 is the paper publication in English daily 'NEWS TODAY' dated 27.11.2015

Ex.P.9 is the death certificate of R.Amirthavalli, dated 29.04.2023

Ex.P.10 is Photo

Ex.P.11 is Photo

Ex.P.12 is Photo

Ex.P.13 is Photo

Ex.P.14 is Photo

List of documents marked on the side of the defendants:

Ex.D.1 is the photocopy of the intimation about the transfer of 8th defendant to Bangalore dated 26.08.2002.



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Ex.D.2 is the intimation of the 8th defendant who stationed at Bangalore dated 08.10.2002.

Ex.D.3 is the letter to Branch Manager, Central Bank of India by “THE ARTS” dated 09.11.2006

Ex.D4 is the series of Blank documents (5 in Nos.) signed by the deceased T.D.Ranganathan.

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A.A. NAKKIRAN, J,

msr/lbm

Pre-Delivery Judgment made in
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