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T.O.S.No.10 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2025

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.10 of 2002

(O.P No.734 of 2001)

S.K.Shamala

.. Plaintiff

..Vs.

1.T.S.Mythili
2.Minor Vidya Bhavani
rep. by her mother and natural
guardian Tmt.T.S.Mythili
the first caveator/defendant
3.S.K.Jaganathan (deceased)
(3rd defendant was impleaded
as per the order of this Court
dated 21.06.2011 in Application
No.2284/2011)
4.Vijayalakhmi
5.Jayaraman
6.Rajalakshmi
(Defendants 4 to 6 were impleaded as
the legal heirs of the deceased Jaganathan
as per order dated 23.12.2022 made in
A.No.5454 of 2022)

.. Defendants



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Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 4 of the High Court Original Side Rules, for a grant of Letters of Administration in respect of the last Will and Testament of the deceased S.P.Kallapiran Iyengar. Against this petition, a Caveat and Supporting affidavit were filed by the Caveators. As per order of this Court, the Original Petition No.734 of 2001 was converted into Testamentary Original Suit No.10 of 2002.

For Plaintiff : Ms.Vasudha Thiagarajan

For Defendants : Set Exparte- D1, D2, D4 to D6
D3 - deceased

J U D G M E N T

The Testamentary Original Suit is filed for grant of Letters of Administration in respect of the last Will and Testament of the deceased S.P.Kallapiran Iyengar.

2.The brief facts of the case of the plaintiff are as follows:

The deceased Kallapiram Iyengar was a permanent resident of Chennai residing at No.44, IV Circular Road, Jawahar Nagar, Chennai-600 082. The deceased has left behind him as his next of kin and legal heirs, the respondents herein only and no one else. He passed away on 12.04.1999 at



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Chennai. The deceased Kallapiran Iyengar executed a Will dated 18.03.1994 in the presence of witnesses whose names appear at the foot thereof and the said Will was duly registered in the office of the Sub Registrar, Periamet, Chennai as document No.23 of 1994 on 22.03.1994. No one has been appointed as the executor of the Will. The 1st respondent viz., Gayathri in O.P No.734 of 2001, who is the daughter of late S.P.Kallapiran Iyengar has filed an affidavit consenting to the Letters of Administration with a Will annexed being granted in favour of the petitioner herein. The amount of the assets which are likely to come into the petitioner's hand does not exceed in the aggregate the sum of Rs.2,50,000/- and the net amount of the said assets, after deducting all items which the petitioner is by law allowed to deduct, is only of the value of Rs.2,50,000/-.

2.01. So far as the petitioner has been able to ascertain or is aware, there are no properties and credits other than what are specified in the schedule attached to the affidavit of assets annexed herewith. All persons having an interest in the matter as legal heirs of the Testator have been impleaded as parties herein. There is no other legal heir who has any interest



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in the matter. No application has been 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 annexed of her property and credits. The petitioners hereby undertake to duly administer the property and credits of the said S.P.Kallapiran, deceased, in any way concerning the Will by paying first her 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 regard within six months from the date of Letters of Administration with the Will annexed to the petitioner and also to render to this Court a true account of the said property and credits within one year from the said date. Hence, she prayed to grant Letters of Administration with the Will.

3. The brief averments made in the written statement filed by the defendants 1 to 3 are as follows:

The plaintiff herein fraudulently created a Will by making false and frivolous allegation with reference to the available right for the executor of the Will and the witnesses who alleged to have signed in the Will were not



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aware of the fact that the executor had no sense of mind at the time of execution of the Will as he was acting in order to fulfill the requirement of the beneficiaries under the alleged Will which was created with ulterior motive for the reasons best known to her. It is apparent on the fact of the record that the beneficiaries of the alleged Will had fraudulently obtained the legal heir certificate by suppressing the fact of the legal heirs and thereafter, it was revealed by other legal heirs, the 3rd defendant herein, by ascertaining the fact that the plaintiff had been intending to mislead the revenue authority concerned and the revenue authorities were misguided by submission of forgery records submitted by the plaintiff in order to obtain the legal heir certificates. The District Collector had to cancel the legal heir certificate issued in this regard in its proceeding No.Vo06/12142//00 dated 06.08.2005. That the 3rd defendant herein had already been endowed with the privilege of one of the schedule of property which was mentioned in the alleged Will under para 4 in which 5 acres of 3 bits of dry land at Elankulam Village, Nanguneri Taluk, Tirunelveli District was in the name of the 3rd defendant. Therefore, the 3rd defendant had to execute a sale deed on 20.07.2009 in favour of intended purchaser of his own accord. Hence the executor wrongly



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incorporated the said property under the alleged Will.

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3.01. It is also pertinent to note that the property morefully described in para 3 of the alleged Will was purchased by late wife of Kallapiran namely Srivara Mangai under a valid registered document No.393 of 1950 dated 03.02.1959. Whereas in the alleged Will, it is fraudulently stated that as if the executor of the alleged Will namely Kallapiran had absolute right over the property. Whereas the property right of the executor in the alleged Will is not enforceable in the eye of law. The 3rd defendant already filed a suit for partition in O.S No.54 of 2000 on the file of the Ambasamuthram Sub Court and the same was transferred to this Court in order to have a joint trial as referred in the application No.4245 of 2010 in T.O.S No.10 of 2012. As such the subject matter is brought before this Court in order to ascertain the facts regarding the property right available for the parties herein. Hence the Will alleged to have been executed by late Kallapiran is not enforceable in the eye of law and the same is liable to be rejected under the law in force.

4. The defendants 1 to 3 have filed their written statement. Pending



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the suit, the 3rd defendant died and hence, the defendants 4 to 6 were impleaded as legal heirs of the deceased 3rd defendant. Thereafter, the defendants have not chosen to appear before this Court and contest their case and hence, the defendants 1, 2, 4 to 6 were all set exparte on 30.01.2025.

5. Heard the learned counsel for the plaintiffs and perused the records.

6. The plaintiff examined herself as P.W.2 and she had narrated the averments made in the petition stating that the plaintiff has filed the main original petition for the grant of Letters of Administration in her favour in respect of the Last Will and Testament executed by the testator on 18.03.1994. Ex.P3 is the computer generated copy of death certificate of the deceased of S.P.Kallapiran Iyengar and the same has been filed to prove that the deceased died on 12.04.1999. Ex.P4 is the computer generated copy of death certificate of the deceased Sreevara Mangai, who is the wife of the testator S.P.Kallapiran Iyengar. Ex.P5 is the death certificate of one S.K.Venkatesan, who is the brother of the plaintiff. Ex.P6 is the paper publication issued by the plaintiff in memory of her father in one issue of



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'Dinamalar' dated 17.04.1999.

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7. One of the attestors of the Will dated 11.03.2013 viz., T.M.Nallathambi was examined as P.W.1. In his evidence, P.W.1 has stated that the testator executed his last Will and Testament on 18.03.1994 in his presence, as second attesting witness and in the presence of first attesting witness viz., T.Rajamanikam and they subscribed their respective names and signatures at the foot of the testamentary paper as witnesses thereto. To prove the same, the original Will dated 18.03.1994 is marked as Ex.P1. The affidavit of the attesting witness-T.M.Nallathambi in O.P No.734 of 2001 is marked as Ex.P2. While executing the Will, the testator was in a sound and disposing state of mind and in his presence, the attesting witnesses subscribed their signature in the Will. The evidence of P.W.1 has not only proved the execution, but also attestation of the Will.

8. Considering the fact that the evidence of PW.1 and PW.2 and the documents filed on behalf of the plaintiff remain unchallenged and taking note of the fact that there is no rebuttal evidence against the case of the



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plaintiff, this Court is of the view that the plaintiff has proved her case and entitled for the issuance of Letters of Administration in her favour.

9. Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in favour of the plaintiff. The plaintiff is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The plaintiff is also directed to 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. The plaintiff is further directed to render true and correct accounts once in a year.

30.01.2025

Index : Yes/No

Internet : Yes

Speaking/Non-speaking order

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Witnesses examined on the side of the plaintiff:

P.W.1. - T.M.Nallathambi

P.W.2 - S.K.Shamala

Exhibits produced on the side of the plaintiff:

Ex.P1 18.03.1994 Original Will executed by the deceased

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Kallapiram Iyengar.

Ex.P2 19.03.2001

Affidavit of T.M.Nallathambi

Ex.P3 19.04.1999

Computer generated copy of death certificate of Kallapiran Iyengar.

Ex.P4 13.12.1989

Computer generated copy of death certificate of Sreevara Mangai

Ex.P5 09.03.1987

Computer generated copy of death certificate of S.K.Venkatesan.

Ex.P6 17.04.1999

Paper Publication issued by the plaintiff in one issue of Dinamalar.

Witnesses & documents on the side of the defendants:

Nil.

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A.A.NAKKIRAN,J

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