



T.O.S.No.20 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 07.01.2025

PRONOUNCED: 27.03.2025

CORAM:

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

T.O.S.No.20 of 2006

(O.P No.187 of 2005)

1.P.M.Kamaraj
2.M.Velkumar

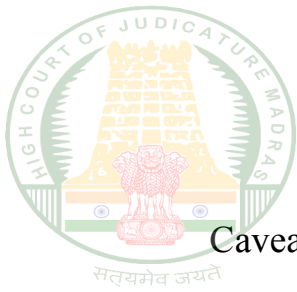
.. Plaintiffs

..Vs.

1.V.Rangam
2.V.Gayathri
3.P.M.Kumarasamy @ Raja
(3rd defendant transposed as per
order dated 19.08.2010 in
A.No.4502 of 2010)

.. Defendants

Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 and Order XXV Rule 5 of Original Side Rules for the grant of Letters of Administration in respect of the last Will and Testament of the deceased P.Muthu Nadar. Against this petition, a



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Caveat and Supporting affidavit was filed by the Caveators. As per order of this Court, the Original Petition No.187 of 2005 was converted into Testamentary Original Suit No.20 of 2006.

For Plaintiffs : Mr.S.Jaganathan
For Defendants : Mr.M.Sriram for D1 & D2
No Appearance for D3

J U D G M E N T

The Testamentary Original Suit is filed for grant of Letter of Administration in respect of the last Will and Testament of the deceased P.Muthu Nadar.

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

The deceased P.Muthu Nadar executed a Will on 03.03.1997 in the presence of the witnesses, whose names appear at the foot there of and the same was duly registered as Document No.23 of 1997 Book No.III, with SRO.Adyar. The said P.Muthu Nadar died on 06.08.2003 leaving behind his



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three sons viz., 1) P.M.Kumarasamy @ Raja (3rd defendant herein) 2) P.M.Kamaraj, and 3) M.Velkumar, the plaintiffs 1 & 2 herein and his four daughters viz., 1) K.Vimala 2) G.Janaki, 3) S.Devaki and 4) D.Uma, the respondents 1 to 4 in O.P as his only legal heirs under the Hindu Succession Act, 1956. Since the 1st son of late P.Muthu Nadar predeceased him leaving his wife and the only daughter as his heirs, the 5th and 6th respondents herein have also been added as parties in the above O.P. The above said P.Muthu Nadar had bequeathed his House property bearing Door No.1, 2nd Street, Kamaraj Avenue, Adyar, Chennai-20 and the superstructure with lease-hold right on the land at Door No.5, Sardar Patel Road, Adyar, Chennai-600 020 and the land at Palavakkam and other properties to his three surviving sons, the petitioners herein allotting the portion marked A and coloured Red in the sketch of the Will to the said P.M.Kumarasamy @ Raja, (3rd defendant), the portion marked B and coloured Blue in the sketch of the Will to P.M.Kamaraj (1st plaintiff) and the portion marked 'C' and coloured yellow in the sketch of the Will to the 2nd plaintiff, M.Velkumar absolutely. Hence the said three sons are provided and benefited by the said Will of P.Muthu Nadar.

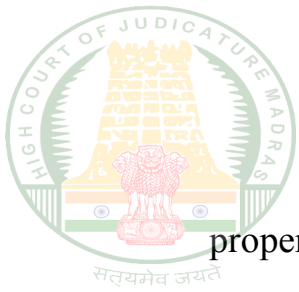


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2.01. The deceased P.Muthu Nadar was the absolute owner of the house property bearing Door No.1, 2nd Street, Kamaraj Avenue, Adyar, Chennai-600 020 having purchased the same from one Pannalal under a Deed of sale registered as document No.1394/1965 with S.R.O.Saidapet, The said deceased P.Muthu Nadar was the absolute owner of vacant land measuring 24 cents comprised in Survey No.107/2A, Palavakkam Village, Chennai-600 041 having purchased the same from one Jamuruth Beevi under a Deed of Sale registered as document No.1655 of 1972 with S.R.O, Saidapet, Moreover, the said deceased P.Muthu Nadar being a tenant in respect of the land measuring 1600 sq.ft. situated at Door No.5, Sardar Patel Road, Adyar, Chennai-600 020 under one T.S.Ranganatha Metha and having put up superstructure thereon became entitled to purchase the said land under Sec.9 of Tamil Nadu City Tenants Protection Act. Further, the deceased P.Muthu Nadar bequeathed his half share in the property situated at Door No.93, 2nd Street, Kamaraj Avenue, Adyar, Chennai-600 020 to his three sons, the petitioners/plaintiffs 1&2 and the 3rd defendant herein after disposal of the second appeal on the file of High Court of Madras.

2.02. The deceased P.Muthu Nadar bequeathed his share of the



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property situated at Pallathur of Kayamozhi Village, Tiruchendur Taluk, Tuticorin District to his three sons who are the petitioners/plaintiffs 1 & 2 and 3rd defendant herein. After distributing his immovable properties to his three sons in the above said manner, he has bequeathed seven Insurance Policies each to the value of Rs.10,000/- to his 1st daughter-in-law Mrs.Rangam and his three sons viz., Kumarasamy @ Raja, Kamaraj & Velkumar and three daughters viz., Janaki, Devaki and Uma. The deceased Muthu Nadar who has deposited Rs.10,000/- for one year in Norton Super Benefit Fund, Chennai-28 in the name of his grand daughter Gayathri, the 6th respondent/2nd defendant herein, has redeposited in UCO Bank in Sastri Nagar Branch entitling her to receive the same on her attaining the age of majority. Further, the deceased has deposited a sum of Rs.22,000/- in Industrial Development Bank, Cafe Baroda I.D.B.I Tower, Mumbai in two application receipts in the name of his grand daughter Gayathri, the 6th respondent/2nd defendant herein entitling her to receive the same with interest on the date of her marriage. Hence, he had absolute right and legal capacity to execute the above Will in favour of his legal heirs. He had executed the Will while he was in sound and disposing state of mind, out of

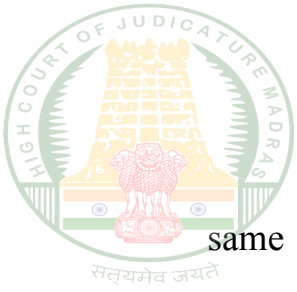


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his own free will and discretion, and the same was duly registered by him.

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2.03. The amount of assets which are likely to come to the petitioner/plaintiffs does not exceed in the aggregate a sum of Rs.40,97,000/- and the net amount of the said assets after deducting all items which the petitioners/plaintiffs 1 & 2 are by law allowed to deduct is only of the value of Rs.39,52,704/-. 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 with or Letters of Administration with or without the Will annexed of his properties and credits. The plaintiffs hereby undertakes to duly administer the property and credits of the said late Mr.P.Muthu Nadar, deceased, in any way concerning his Will by paying first his debts and then the legacy therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the



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same in this regard within six months from the date of Letters of Administration with the Will annexed to the petitioners/plaintiffs 1 & 2 and also to render to this Hon'ble Court a true account of the said property and credits within one year from the said date. Hence, they prayed to grant Letters of Administration with the Will.

3. The brief averments made in the written statement filed by the defendants 1 & 2 are as follows:

All the allegations contained in the plaint are denied as false except those that are specifically admitted herein. The alleged Will dated 3.3.97 has not been executed by the testator out of his own free will and volition and the same is a concocted and fabricated document procured for the purpose of snatching away the property of late Muthu Nadar from the other legal heirs. The testator Muthu Nadar was possessed of ancestral properties in Kayamozhi Village, Pallathur, Thoothukudi District. From the income of the said ancestral properties, the testator established a business at Chennai with the help of his eldest son M.Vijayan, husband of the 1st defendant and father of the 2nd defendant. From and out of the income generated by the



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said family business, properties have been acquired. The husband of the 1st defendant during his life time having his own independent business and also a partner and looking after his own business of water supply from his lands at Palavakkam. The husband of the 1st defendant had acquired certain immovable properties such as lands at S.No.107, Palavakkam Village, Chennai-41 and Door No.1, 2nd street, Kamaraj Avenue, Chennai-20. The husband of the 5th defendant was also looking after the family business of selling firewood, charcoal and pandal contractors etc., That apart, he was also carrying on Vadapalani Water Supply Works, T.V.R & Co., a Commission Agency, etc., at Adyar. The husband of the 5th defendant was doing the business jointly with his father from his young days joined his father and was actively participating in the family business till his death i.e on 24.06.85. Out of love and affection and the respect, late husband of the 1st defendant had with his father, the properties were purchased in the name of his father P.Muthu Nadar.

3.01. Prior to the date of death of the husband of the 1st defendant, i.e. 24.6.85, the family was living jointly and after the death of the husband of the 1st defendant, the defendants 1 and 2 were shifted to the property



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owned by the said Vijayan, husband of the 1st defendant. There is absolutely no necessity nor any occasion for the deceased Muthu Nadar to execute any Will. As the legal heirs of the deceased son, the 1st and 2nd defendants are entitled to 1/4th share in the ancestral properties and 1/8th share in other properties. After the death of the said Muthu Nadar on 06.08.2003, the petitioners have not divulged any information about the existence of the Will and when the defendants 1 and 2 demanded partition of the property, the petitioners were giving lame excuses and avoiding the legitimate right of the defendants 1 and 2. The property bearing Door No.1, 2nd Avenue, Kamaraj Nagar, Adyar, Chennai-20 is not the absolute property of Muthu Nadar and the said property has been purchased by the husband of the 1st defendant. Therefore, the said property cannot be a subject matter of the Will. With regard to the land at Palavakkam and other properties, the deceased promised the defendants 1 and 2 that the said properties will also be handed over to them since the 1st defendant lost her husband at the young age of 20 years. The defendants does not admit about the existence of any sketch and the same seems to have been brought out to suit the convenience of the petitioners. The rear portion of the properties



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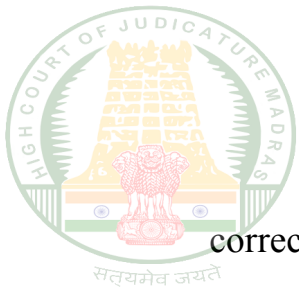
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have no access from the main road which would go to show that the

intention of the deceased was to allot the properties to the defendants 1 and

2. The 1st defendant nor her husband never admitted any pathway in the land.

3.02. Insofar as the lands measuring 24 cents comprised in S.No.107/2A Palavakkam, Chennai-41 are concerned, the same were also purchased in the name of the deceased Muthu Nadar out of the joint family income of the husband of the 1st defendant. Insofar as Door No.5, Sardar Patel Road property is concerned, to the knowledge of the respondents, the litigation was not yet over. With reference to Door No.93, 2nd Street, Kamaraj Avenue, Adyar, Chennai-20 is concerned, the said Muthu Nadar seems to have lost the case and to the knowledge of the respondents no litigation is pending. The property situated at Pallathur, Kayamozhi Village, Thiruchendur Taluk, Thoothukudi District which is an ancestral property and along with the petitioners, the defendants 1 and 2 are having equal rights. With regard to insurance policies, the defendants 1 and 2 are not aware of the same. Even after the death of the testator, no policies were shown to the defendants. The petitioners have not valued the properties



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correctly and the valuation given therein is incorrect and misleading. Hence the suit is liable to be dismissed.

4. Based on the aforesaid pleadings, the following issues are framed for consideration:

1) Whether the Will executed by P.Muthu Nadar is true, genuine and valid?

2) Whether the plaintiffs are entitled to Letters of Administration as prayed for?

5. On the side of the Plaintiffs, the 1st plaintiff and one of the attesting witness of the Will were examined as PW.1 and PW.2 and Ex.P1 to Ex.P3 were marked. On the side of the Defendants, the 2nd defendant was examined as DW1 and Ex.D1 to Ex.D8 were marked.

6. This Court heard the arguments on either side and also perused the materials available on record.

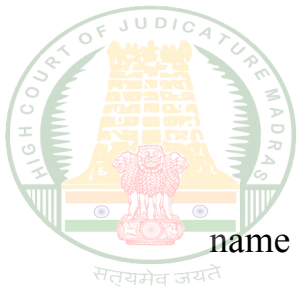
7. Issues 1 & 2:



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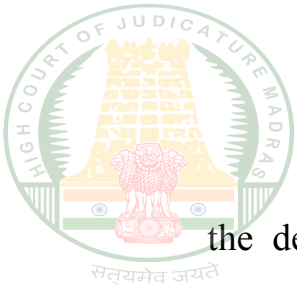
The learned counsel for the plaintiffs contended that the deceased P.Muthu Nadar by way of a Registered Will dated 03.03.1997, had bequeathed his house property bearing Door No.1, 2nd Street, Kamaraj Avenue, Adyar, Chennai-20 and the superstructure with lease-hold right on the land at Door No.5, Sardar Patel Road, Adyar, Chennai-600 020 and the land at Palavakkam and other properties to his three surviving sons, the petitioners/plaintiffs 1 & 2 and the 3rd defendant herein, allotting the portion marked A and coloured Red in the sketch of the Will to the said P.M.Kumarasamy @ Raja, (3rd defendant), the portion marked B and coloured Blue in the sketch of the Will to P.M.Kamaraj (1st plaintiff) and the portion marked 'C' and coloured yellow in the sketch of the Will to the 2nd plaintiff, M.Velkumar absolutely. It is further contended by the learned counsel that after distributing his immovable properties to his three sons in the above said manner, he has bequeathed seven Insurance Policies each to the value of Rs.10,000/- to his 1st daughter-in-law Mrs.Rangam and his three sons viz., Kumarasamy @ Raja, Kamaraj & Velkumar and three daughters viz., Janaki, Devaki and Uma. The deceased Muthu Nadar who has deposited Rs.10,000/- in Norton Super Benefit Fund, Chennai-28 in the



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name of his grand daughter Gayathri. Further, the deceased has deposited a sum of Rs.22,000/- in Industrial Development Bank, Cafe Baroda I.D.B.I Tower, Mumbai in two application receipts in the name of his grand daughter Gayathri, entitling her to receive the same with interest on the date of her marriage. Hence, he had absolute right and legal capacity to execute the above Will in favour of his legal heirs.

8. The learned counsel further contended that the testator had executed the Will, while he was in a sound and disposing state of mind, out of his own free will and discretion, and the same was duly registered by him. The testator had not appointed anybody as the executor to take possession of the property and to give effect to his Will after his death. Anyhow, the petitioners/plaintiffs being the surviving sons and beneficiaries under the Will have taken out this petition for the Letters of Administration of the Will. The Will has been proved in the manner known to law. The attesting witness has not only spoken about the execution, but also the attestation of the Will. Besides, there is no suspicious circumstance whatsoever brought on record to doubt the genuineness of the Will. Though



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the defendants denied the execution of the Will by the Testator in the Written Statement, the 2nd defendant/DW1, who is the grand daughter of the testator in her cross examination admitted that the Will was executed by her grand father. Hence, he prays to grant Letters of Administration in favour of the plaintiffs.

9. Per contra, the learned counsel appearing for the defendant contended that the alleged Will dated 3.3.1997 has not been executed by the testator out of his own free Will and volition and the same is a concocted and fabricated document procured for the purpose of snatching away the property of late Muthu Nadar from the other legal heirs. The learned counsel for the defendants further contended that the husband of the 1st defendant had acquired certain immovable properties such as land at S.No.107, Palavakkam Village Chennai and Door No.1, 2nd Street, Kamaraj Avenue, Chennai out of love and affection, the properties were purchased in the name of his father and hence, the testator is not the absolute owner of the properties mentioned in the Will and he has no absolute right of disposition. Hence he prays for dismissal of the present suit.



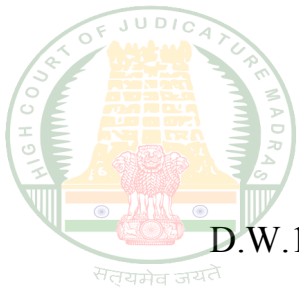
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10. On perusal of the records, it is seen that the Testator P.Muthu Nadar is said to have executed the Will dated 03.03.1997 bequeathing his properties to the plaintiffs 1 & 2 and the 3rd defendant as beneficiaries. However, the defendants denied the same. It is now to be found whether the said Will is true and genuine.

11. In order to prove the Will, the plaintiffs have produced the Ex.P1- registered original Will dated 03.03.1997 executed by the deceased Muthu Nadar, Ex.P2 is the death certificate of Muthu Nadar, Ex.P3 is the legal heirship certificate of the deceased dated 29.01.2004. Further, the 1st plaintiff was examined as P.W.1. In his evidence, he has stated about the execution of the Will by his father.

12. Despite the defendants have contended that the said Will is a concocted and fabricated document procured for the purpose of snatching away the property of late Muthu Nadar, in the cross examination of



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D.W.1/2nd defendant, she admitted that the Will was executed by her grand father.

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13. Of course, mere admission or non denial of the facts with regard to the Will is not sufficient to infer the proof of the document. The Will has to be proved in the manner known to law. For such proof atleast one of the attesting witness evidence is required.

14. In the evidence of P.W.2 being one of the attesting witnesses of the Will, he deposed that the Testator executed the Will, with hale and hearty and also in a sound and disposing state of mind in the presence of the one T.Beddhhu and himself. Both the attesting witnesses attested the Will in presence of the testator P.Muthu Nadar. The testator also saw both the attesting witnesses while signing the Will and both the attesting witnesses also saw the testator signing the Will. The testator was not compelled or forced by anybody to execute the Will. The evidence of attesting witness has not only proved the execution, but also attestation of the Will.



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15. In view of the above, in the absence of pleadings and evidence and materials even to infer any suspicious circumstance, this Court has no other option except to accept the evidence of the plaintiffs. Having taken into consideration the evidence of P.W.2, this Court does not find any suspicious circumstance attached to the Will. Hence, this Court is of the view that the Will has been properly executed by the said P.Muthu Nadar. As the Will has been established and proved in the manner known to law, the plaintiffs are entitled to the Letters of Administration. Issue Nos.1 and 2 are answered accordingly.

16. In the result, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in favour of the plaintiffs.

17. For issuance of Letters of Administration, the plaintiffs are directed to duly administer the properties and credits of the deceased more fully described in the schedule. The plaintiffs are also directed to execute a

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security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only)

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in favour of the Assistant Registrar (O.S.II), High Court, Madras. The plaintiffs are further directed to render true and correct accounts once in a year. No costs.

27.3.2025

Index : Yes/No

Internet : Yes

Speaking/Non-speaking order

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Witnesses examined on the side of the plaintiffs

PW1 - P.M. Kamaraj

PW2 – S.Rangasamy

List of documents marked on the side of the plaintiff:

Ex.P1 is the Original Registered Will dated 03.03.1997

Ex.P2 is the Original death certificate dated 08.08.2003

Ex.P3 is the Original legal heirship certificate dated 29.01.2004

List of witnesses examined on the side of the defendants:

DW1 - V. Gayathri

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List of documents marked on the side of the defendants:

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Ex.D.1 is the copy of death certificate of P.M.Vijayan dated 24.06.1985

Ex.D.2 is the certified copy of the sale deed dated 26.09.1979 in favour of M.Vijayan.

Ex.D.3 is the original patta No.1330 standing in the name of Vijayan in respect of property at Survey No.82/1A.

Ex.D.4 is the online copy of property tax receipt in respect of Kamaraj Avenue, II Street property.

Ex.D.5 is the online copy of joint patta in the name of D1 and D2 which was issued after the demise of M.Vijayan.

Ex.D.6 is the online copy of death certificate of V.Rangam, dated 09.05.2021

Ex.D.7 is the online copy of legal heir certificate of V.Rangam, dated 01.07.2021.

Ex.D.8 is the online copy of patta standing in the name of DW1-Gayathri after the demise of her mother

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