



T.O.S.No.30 of 2005

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.O.S.No.30 of 2005

Mr.V.Rajasekar

... Plaintiff

Vs.

1.Mr.Padmanabhan

2.Mrs.Maheswari

3.Mrs.G.Mangaiyarkarasi (Deceased)
W/o.Gopal

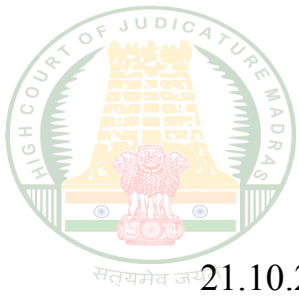
(The 3rd Defendant is impleaded as per order passed in Application No.2732 of 2009 dated 20.07.2009 and time extended for carrying out amendment in Application No.4882 of 2009 dated 05.10.2009)

4.G.Narayanan,
S/o.S.Gopal

5.G.Ganesan

6.R.Lalitha

7.Vijayalakshmi
(Defendants 4 to 7 brought on record as Legal Representatives of the deceased 3rd Defendant and amendment carried out as per order dated



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21.10.2024 in Application Nos.3997 to 3999
of 2024 in T.O.S.No.30 of 2005)

... Defendants

Prayer: This Suit is filed under Sections 222 and 276 of the Indian Succession Act, 1925, read with Order XXV, Rule 4 of the Original Side Rules, the plaintiff may be allowed to prove the Will in Common Form and that probate thereof, to have effect limited to the State of Tamil Nadu may be granted to him.

For Plaintiff : Mr.V.Ravi
For Defendants :
For D3, D4, D5 and D7 : Mr.M.Anandharaj
For D6 : Ms.D.Yuva Jaishree

JUDGMENT

This Testamentary Original Suit has been filed for grant of probate of Unregistered Will which is said to have been executed on 05.02.2004 by the Testator named K.Radhakrishnan (since Deceased).

2. The Plaintiff is a nephew of the deceased K.Radhakrishnan (Testator) and son of his brother Late K.Veeraraghavan. Initially, the



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above Testamentary Original Suit was filed by the Plaintiff in O.P.No.52 of 2005.

3. In the above Original Petition, the brother and sister of the Plaintiff namely V.Padmanabhan and V.Maheswari and the Plaintiff's Paternal Aunt G.Mangaiyarkarasi (since Deceased) sister of the Testator K.Radhakrishnan and the Plaintiff's father Late K.Veeraraghavan filed Caveat pursuant to which the above O.P.No.52 of 2005 was converted into the above Testamentary Original Suit.

4. During the pendency of the suit, the Plaintiff's Paternal Aunt the 3rd Defendant namely G.Mangaiyarkarasi (since Deceased) died on 09.04.2019. A copy of the Death Certificate of the 3rd Defendant has been filed and was taken as Court Record at the time of impleading the 3rd Defendant.

5. Pursuant to the order passed by this Court on 05.10.2009 whereby, the Legal Representatives of the 3rd Defendant G.Mangaiyarkarasi (since Deceased) were impleaded. They are



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G.Narayanan, G.Ganesan, R.Lalitha and Vijayalakshmi. They have been shown in the amended copy of the plaint as the 3rd to 6th Defendants in place of the deceased Defendant/Plaintiff's Paternal Aunt G.Mangaiyarkarasi who died on 09.04.2019.

6. Although the Plaintiff has entered into the witness box and has examined himself as P.W.1 and one of the attesting witness (1st attesting witness) namely K.Elumalai has deposed evidence as P.W.2, none of the Defendants have been come forward to cross-examine either of the Witnesses. Incidentally, the 5th Defendant has shown in the amended copy of the plaint. The 6th Defendant R.Lalitha is the Plaintiff's wife.

7. The only issue that arises for consideration is whether the Will dated 05.02.2004 which has been marked as Ex.P2 by the Plaintiff (who examined himself as P.W.1) which is said to have been executed by Late K.Radhakrishnan, the Testator bequeathing the right of the Suit Schedule Property in favour of the Plaintiff is valid or not?



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8. The Will is said to executed in favour of the Plaintiff (P.W.1)

on 05.02.2004. After executing the Will, the Testator Late K.Radhakrishnan died within few days on 23.02.2004. It is informed by the Plaintiff that the Plaintiff is in possession of the Suit Schedule Property which is a residential property. The 2 witnesses named in the said Will are K.Elumalai and S.Anandakumar. The 2nd attesting witness S.Anandakumar died during the year 2012.

9. There is no defence on behalf of the Defendants despite the Legal Representatives of the deceased 3rd Defendant being impleaded in this Testamentary Original Suit. None of the original Defendants namely the 1st Defendant and the 2nd Defendant have let in evidence after marking their appearance.

10. Although, Mr.M.Anandharaj, learned counsel appears for the 3rd, 4th, 5th and 7th Defendants namely G.Mangaiyarkarasi (since Deceased), G.Narayanan, G.Ganesan and Vijayalakshmi, who have been arrayed as the 3rd, 4th, 5th and 7th Defendants in this Testamentary Original Suit, there is no resistance on their behalf.



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11. Having perused the subject Will dated 05.02.2004 which is said to have been executed by the deceased Testator K.Radhakrishnan and having perused the Exhibits and the deposition of the Plaintiff and the 2nd witness to the aforesaid Will dated 05.02.2004, I have no hesitation to conclude that the aforesaid Will dated 05.02.2004 was executed by the deceased Testator K.Radhakrishnan in the manner known to law in favour of the Plaintiff as it has been witnessed by two witnesses, one of them, namely K.Elumalai has deposed as P.W.2. The Plaintiff can be said to have proved the execution of the subject Will dated 05.02.2004 by the deceased Testator K.Radhakrishnan in his favour whereby he has bequeathed the Suit Schedule Property in favour of the Plaintiff.

12. Therefore, the Plaintiff is entitled for a decree as prayed for. Accordingly, this Testamentary Original Suit stands allowed. No costs.

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Neutral Citation : Yes / No

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Plaintiff's witness:

Mr.V.Rajasekar : P.W.1
Mr.K.Elumalai : P.W.2

Defendants' witness: Nil

Documents exhibited by the Plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1	P1	26.02.2004	Photocopy of the Death Certificate of K.Radhakrishnan
2	P2	05.02.2004	Original Will executed by K.Radhakrishnan (Deceased)

Documents exhibited by the Defendants : Nil



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C.SARAVANAN, J.

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