



T.O.S.No.9 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.01.2025

CORAM:

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

T.O.S.No.9 of 2024

(O.P No.630 of 2022)

1.C.Rajan (deceased)
2.P.Kanchanamala
3.P.Bhavani
4.P.Manibalan
5.P.Annapoorani
6.P.Lakshmi
7.Rajeswari Rajan
8.Harikrishnan Rajan
9.Kamalakannan.R
(Petitioners 7 to 9/plaintiffs 7 to 9 are
brought on record as legal heirs of the
deceased 1st defendant as per order
dated 20.10.2023 in A.No.5570 of 2023)

.. Plaintiffs

..Vs.

C.Srinivasan

.. Defendant

Prayer: Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for a grant of Letters of Administration in respect of the last Will and Testament of the deceased



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Saraswathy. Against this petition, a Caveat and Supporting affidavit were filed by the Caveator/5th respondent. As per order of this Court, the Original Petition No.630 of 2022 was converted into Testamentary Original Suit No.9 of 2024.

For Plaintiffs : Ms.Anil Relwani
For M/s.K.Jegannathan
For Defendant : Set Exparte

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 Saraswathy.

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

The deceased Saraswathy, was an ordinary resident of Old No.29, New No.30, Kabaleeswarar Koil South Mada Street, Mylapore, Chennai-600 004. She passed away on 02.08.1997 at her residence due to old age. She was possessed of and left the property described in the schedule, located within Chennai and under the jurisdiction of this Court. The deceased Saraswathy purchased the schedule mentioned property out of her own funds



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from one P.Umapathy by way of a sale deed dated 26.05.1972 registered as document No.948 of 1972 in the office of the Sub Registrar, Mylapore. The deceased Saraswathy executed a Will dated 18.02.1976 in the presence of witnesses whose names appear at the foot thereof and the said Will was duly registered in the office of the Joint Sub Registrar of Madras as document No.32 of 1976. The registered Will states that after her life time, the property will bequeath to her sons 1.C.Purushothaman (23 years) and 2.C.Rajan (20 years), as beneficiaries under the Will, for their use and enjoyment during their lives in equal shares. The property will be inherited by their respective legal heirs with full power of alienation. The Will was attested by C.Shanmugam and R.V.Raman and being the Will was executed before 40 years, the whereabouts of the witnesses was not known to the petitioners and their best to trace the whereabouts of the witnesses and their efforts went in vein. Hence a third party affidavit of Kanchanamala, wife of the deceased Purushothaman and the daughter-in-law of the deceased Saraswathy has been filed to identify the signature of the testatrix in the said Will. Purushothaman was appointed as executor under the Will. The Will was in possession of C.Purushothaman as 6th son of the Testatrix. The



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Testatrix Saraswathy died leaving her 4 sons and 3 daughters as her next of kin. The son of the deceased C.Saraswathy, late C.Purushothaman, is one of the beneficiaries under the Will and died on 28.04.2017 without executing any Will, leaving his wife and 4 children as Class-I heirs to succeed to his estate.

2.01. The petitioners 2 to 6 are the legal heirs of late C.Purushothaman. The 1st petitioner C.Rajan is the son of late N.Chinnadurai Naicker and late Saraswathy. The respondents 1 to 3 are the legal heirs of late C.Sundaram. The said C.Sundaram is the son of late N.Chinnadurai Naicker and late Saraswathy. The respondent No.4 is daughter of late N.Chinnadurai Naicker and late Saraswathy. The respondent No.5 is the son of late N.Chjinnadurai Naicker and late Saraswathy. Respondent No.6 and 7 are the legal heirs of late Vasantha. The said Vasantha is the daughter of late N.Chinnadurai Naicker and late Saraswathy. The respondent Nos.8 and 9 are the legal heirs of late Gajalakshmi. The said Gajalakshmi is the daughter of late N.Chinnadurain Naicker and late Saraswathy.



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2.02. The testatrix bequeathed the schedule mentioned property to the said Purushothaman and the 1st petitioner in equal shares and after the death of each beneficiary, to be inherited by their respective heirs. There is a delay of 24 years in filing this petition. The petitioners 2 to 6 are the legal heirs of the said Purushothaman and 1st petitioner is one of the beneficiary of the said Will and they have filed this petition for grant of Letters of Administration. The amount of the assets which are likely to come into the petitioners' hands does not exceed in the aggregate the sum of Rs.50,00,000/- and the net amount of the said assets, after deducting all items which the petitioners by law allowed to deduct, is only of the value of Rs.50,00,000/-. The petitioners have impleaded all the next of kin or other persons interested as respondents. 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 late Saraswathy, deceased, in any way concerning her Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a



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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 petitioners 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. Though summons was served on the defendant, neither the defendant nor his counsel had chosen to appear before this Court. Hence, the defendant was set exparte on 11.07.2024.

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

5. The 3rd plaintiff examined herself as P.W.1 and she had narrated the averments made in the petition stating that the plaintiffs have filed the main original petition for the grant of Letters of Administration in their favour in respect of the Last Will and Testament executed by the testatrix on 18.02.1976. Ex.P1 is the photocopy of sale deed executed in favour of deceased Saraswathy dated 25.05.1972, which shows that the deceased



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Saraswathy purchased the schedule mentioned property out of her own funds from one P.Umapathy. Ex.P2 is the original Will executed by the deceased Mrs.Saraswathy. Ex.P3 is the death certificate of Mrs.Saraswathy and the same has been filed to prove that testatrix died on 02.08.1997. Ex.P4 is the legal heirship certificate of the deceased, which shows that the 1st plaintiff Rajan, deceased Purushothaman, (who is the husband of 2nd plaintiff and father of the 3 to 6 plaintiffs) and the defendant are the legal heirs of the deceased Saraswathy. Ex.P5 is the death certificate of Purushothaman, who is the elder son of the testatrix Saraswathy. Ex.P5 shows that the elder son of the testatrix died on 28.04.2017. Ex.P6 is the photocopy of legal heirship certificate of Purushothaman which shows that the plaintiffs 2 to 6 are his legal heirs. Ex.P12 is the death certificate of C.Rajan, who is the younger son of the testatrix Saraswathy, which shows that he died on 17.08.2023. Ex.P13 is the photocopy of legal heir certificate of C.Rajan which shows that the plaintiffs 7 to 9 are his legal heirs.

6. Since the whereabouts of both the attesting witnesses of the Will



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dated 18.02.1976, were not known to the plaintiffs, they sent notices to the said attesting witnesses namely C.Shanmugam and R.V.Raman and the same was returned as "unclaimed". In the absence of the said attesting witnesses, to prove the authenticity and genuineness of the Will, one N.Subramani, who is the identifying witness was examined as P.W.2 on the side of the plaintiffs. In his evidence, he has stated that he is a close family friend of the deceased C.Purushothaman, son of Saraswathy and the deceased Saraswathy executed her last Will and Testament on 18.02.1976 in his presence and in the presence of two attesting witnesses namely C.Shanmugam and R.V.Raman and both the attesting witnesses also signed the Will in his presence. Further, he affirm that he saw the deceased Saraswathy appending her signature to the Will in the presence of the said attesting witnesses. He also specifically confirms that R.V.Raman who was one of the attesting witnesses to the Will, signed the document in his presence and he is familiar with his handwriting and signature and he can positively identify his signature on the Will. The evidence of identifying witness has not only proved the execution, but also attestation of the Will.

7. Considering the fact that the evidence of PW.1 and PW2 and the



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documents filed on behalf of the plaintiffs remain unchallenged and taking note of the fact that there is no rebuttal evidence against the case of the plaintiffs, this Court is of the view that the plaintiffs have proved their case and entitled for the issuance of Letters of Administration in their favour.

8. Accordingly, this Testamentary Original Suit is decreed as prayed for. Issue Letters of Administration in favour of the plaintiffs. 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 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 plaintiffs are further directed to render true and correct accounts once in a year.

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Index : Yes/No

Internet : Yes

Speaking/Non-speaking order

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Witnesses examined on the side of the plaintiffs:



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P.W.1. - P.Bhavani
P.W.2 - N.Subramani

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Exhibits produced on the side of the plaintiffs:

- Ex.P1 25.05.1972 Photocopy of the sale deed in favour the deceased Saraswathy.
- Ex.P2 18.02.1976 Original Registered Will of the deceased Saraswathy
- Ex.P3 02.08.1997 Photocopy of death certificate of Saraswathy
- Ex.P4 21.06.2005 Photocopy of legal heir certificate of Saraswathy
- Ex.P5 28.04.2017 Photocopy of death certificate of Purushothaman
- Ex.P6 25.05.2017 Photocopy of legal heir certificate of Purushothaman
- Ex.P7 17.01.2010 Photocopy of property tax receipt in the name of Saraswathy.
- Ex.P8 .. Photocopy of E.B card in the name of Saraswathy
- Ex.P9 .. Photocopy of Ration card in the name of Purushothaman
- Ex.P10 .. Original returned postal covers of attesting witness R.V.Raman
- Ex.P11 .. Original returned postal covers of attesting witness C.Shanmugam
- Ex.P12 17.08.2023 Photocopy of death certificate of Rajan
- Ex.P13 01.10.2023 Photocopy of legal heir certificate of Mr.Rajan.C

Witnesses & documents on the side of the defendant:



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Nil.

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A.A.NAKKIRAN,J

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