



TOS.No.7 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.7 of 2016
(O.P No.353 of 2014)

1.P.Kuppuswamy
2.K.Bahirathan

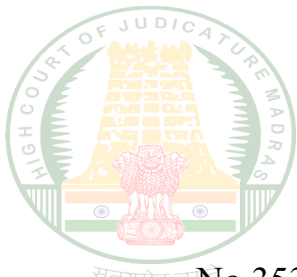
... Plaintiffs

..Vs..

1.P.Perumal (deceased)
2.P.Parvathy
3.A.Pallavi
4.P.Sarvanan
(D2 to D4 were brought on record
as legal heirs of the deceased sole
defendant amended as per order
dated 07.01.2022 in A. No.3303 of 2021)

... Defendants

Prayer : Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for grant of Letters of Administration in respect of the last Will and Testament of the deceased Chinnathai. Against this petition, a Caveat and Objection affidavit was filed by the Caveators. As per order of this Court, the Original Petition



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No.353 of 2014 was converted into Testamentary Original Suit No.7 of 2016.

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For Plaintiffs : Mr.K.Harishankar

For Defendants : M/s.K.Bhaskar for D2 to D4
D1-deceased

J U D G M E N T

This Testamentary Original Suit has been filed to grant Letters of Administration with the Will, dated 12.11.2001, executed by the deceased Testatrix Chinnathai, annexed, in favour of the Plaintiffs as beneficiary under the said Will, having effect throughout the State of Tamil Nadu.

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

The respondent/ defendant is the brother of the first plaintiff and father of the second plaintiff. The property bearing Door No.40, Kamarajapuram 2nd Street, Nungambakkam, Chennai-600 035 was purchased by Chinnathai, wife of Poongavanam, out of her personal savings from the Tamil Nadu Slum Clearance Board by a registered sale



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deed dated 12.11.2001 under Document No.954 of 2001. The testatrix was in absolute possession and enjoyment of the property till her life time. The deceased Testatrix Chinnathai, had executed a registered Will, dated 12.11.2001 under document No.46 of 2001, in the presence of the two witnesses, who attested at the foot, bequeathing the suit property in favour of the Plaintiffs, namely 1), P.Kuppuswamy and 2) K.Bahirathan. The deceased has not appointed any executor under the Will. The deceased had no Class I legal heir and the husband and the parents of the deceased already predeceased her.

(ii).The Testatrix died on 01.01.2006 at No.40, Kamarajapuram 2nd Street, Nungambakkam, Chennai-600 034, where she was residing. The deceased at the time of her death was possessed of property at Chennai within the jurisdiction of this Court. She had bequeathed the property in favour of the plaintiffs. The deceased had clearly stipulated that the respondent was given and settled with other properties and the Testatrix has not given any interest / share in her property as set out in the Schedule 'A'. There is a delay in filing the petition for probate in view of the misplacement of the original Will. The deceased had no other first class or second class heirs to be impleaded as parties.



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(iii).The amount of assets, which is likely come into the hands of

the Plaintiffs does not exceed in the aggregate sum of Rs.15 lakhs and the net amount of the said assets, after deducing all the items, which the Plaintiff, is by law allowed to deduct, is only of the value of Rs.14,98,000/- 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 properties and credits.

(iv)The Plaintiffs undertake to duly administer the property and the credits of the said deceased Testatrix, 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 full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of Letters of Administration of the Will annexed to the petitioners and also to render a true account of the said property and credits within one year from the said date. Hence, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.



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3.The case of the Defendant, in a nutshell, as set out in his written statement, is as follows:-

(i).The first plaintiff is his brother and the second plaintiff is the son of the first plaintiff. It is absolutely false to state that the suit schedule property was purchased by his mother Chinnathai. The said Chinnathai is neither educated nor employed. She can only speak Tamil language. She cannot read or write any language. She doesn't know how to affix her signature and she can only affix her left thumb impression. The suit schedule property was originally allotted to the family of late S.N.Poongavanam, father of the first plaintiff and defendant, by the Slum Clearance Board prior to 1960. The said Poongavanam was living with his family by constructing a hut house in the suit schedule property. He was working in M/s.Gemini Studios as Light Boy. He retired in 1972 and the defendant was working in M/s.Larsen & Toubro Club House Road, Mount Road. His father constructed a house in the suit schedule property after selling his property with the contribution from the defendant through his monthly salary. After completing the construction of the house only, the plaintiff sought a job in the Civil Supplies Corporation.

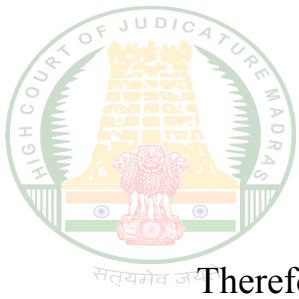


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(ii).The suit schedule property was allotted to S.N.Poongavanam

by the Slum Clearance Board, Chennai and as such all the family members are equally entitled to the suit schedule property. The said Poongavanam expired on 03.03.1987 and hence when the Slum Clearance Board started executing the sale deeds, they conducted an enquiry with the family members of late S.N.Poongavanam. During the enquiry, it was decided by the first plaintiff and the defendant to obtain the sale deed in favour of their mother Chinnathai as she being the head of the family after the demise of their father. Hence both the first plaintiff and the defendant executed No Objection Letters to the Slum Clearance Board to that effect. Accordingly, the Slum Clearance Board had executed a sale deed in favour of Chinnathai dated 11.11.2001 and registered on 12.11.2001 as Document No.954 of 2001 in the office of Sub Registrar, Thousand Lights, Chennai. The land in the suit schedule property allotted by the Slum Clearance Board for the family of late S.N.Poongavanam and subsequently developed by constructing a house by the father as stated above cannot be construed as Tmt.Chinnathai's property just because the sale deed stood in her name. In fact she is only a name lender. Hence she has no right to execute any Will as alleged by the plaintiffs with respect to the suit schedule property.

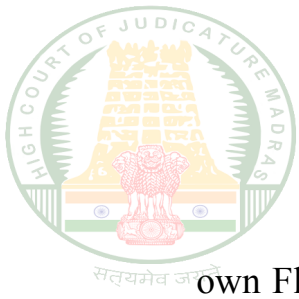


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Therefore, the alleged Will dated 12.11.2001 said to have been executed by Chinnathai in favour of the plaintiffs registered as Document No.46 of 2001 in the office of the Sub Registrar, Thousand Lights, Chennai as alleged in the plaint is forged and bad in the eye of law.

(iii)The defendant states that soon after the completion of construction of a house in the suit schedule property by late S.N.Poongavanam in the year 1976, the entire family which consist of father, mother, plaintiff, his wife, four children and defendant started living there. Subsequently, the defendant even after his marriage in 1980 was living in the suit schedule property along with his family. Thereafter, the said S.N.Poongavanam expired on 03.03.1987. Due to space constraint, the defendant's family left the suit property in 1985. Thereafter, mother Chinnathai was living in one portion in the ground floor of the suit schedule property. During the 1987 the defendant constructed a house next to the suit schedule property and started living there along with his family. However, she attended. Thereafter, mother Chinnathai was not allowed to live or have food with the defendant and kept her completely under their control and influence by threat. During 2003, the defendant left his house and started living in various rental houses and atlast settled in his

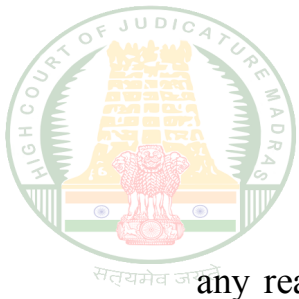


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own Flat No.F-4, Salim's "Marvellous Enclave", No.37, 5th Street, Alagiri Nagar, Vadapalani, Chennai-600 026 from 2006 onwards. Tmt.Chinnathai Expired on 01.01.2006. Even assuming without admitting that she is entitled to execute a Will, an illiterate aged lady cannot go to the Slum Clearance Board and obtain sale deed in her favour and on the same day cannot execute a Will in favour of the plaintiffs without the knowledge of the defendant. Hence the plaintiffs are very well aware about the execution of the Will. However the same was not revealed to the defendant either at the time of the alleged execution when the defendant was very well living in the next house of the suit schedule property or soon after the death of the testatrix Chinnathai. After a lapse of 13 years, the plaintiffs have filed the present O.P.

(iv).The defendant denies the allegation that the suit schedule property is the only property left out by late S.N.Poongavanam and late Chinnathai, as they have already sold the other properties during the life time. No other property was settled to the defendants as alleged in the plaint by the plaintiffs and put them to strict proof of the same. The delay in filing the petition for probate is willful and wanton and there is no bonafide reason for the delay. The plaintiffs have not chosen to disclose

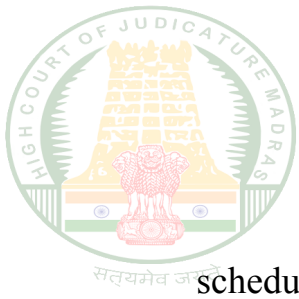


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any reason for the same, which clearly reveals the fact that the Will was obtained under force, coercion and misrepresentation, without revealing the Testator that it is a Will. The plaintiffs were under the impression that the Will is their ultimate title document for the suit schedule property and hence obtained the same from Chinnathai, who was under their complete influence by misrepresentation and that is why both sale deed from the Slum Clearance Board and the Will was obtained and registered on the same date. When they came to know that the Will has to be probated during 2014, they directly filed a probate petition without issuing any notice to the defendant. Even in the said probate petition, the defendant's address for service was wrongly mentioned and attempted to receive the said summons from the bailiff in order to obtain an exparte order of probate from this Court.

(v).The value of the suit schedule property is more than Rs.1,00,00,000/- and the plaintiffs herein have purposely suppressed the actual market value of the property and thereby trying to cause a loss to the exchequer by paying less court fee. The defendant did not receive any summons from any other court with respect to the suit schedule property from the plaintiffs. The defendant is entitled to half share in the suit



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schedule property as a legal heir of late S.N.Poongavanam and late Chinnathai. The alleged Will is obtained through fraud and misrepresentation and therefore, the alleged Will dated 12.11.2001 is non-est in the eye of law. The plaintiffs have no locus standi to file the present case and is not maintainable both on facts and in the eye of law. There is no cause of action for the suit. Hence the suit is liable to be dismissed with exemplary costs.

4. The brief averments made in the Reply Statement filed by the plaintiffs, is as follows:-

(i).All the allegations contained in the written statement are denied. The defendant has stated in the written statement that the testatrix have no right to execute any Will with respect to the suit schedule property. The defendant having disputed the title of the testatrix to the suit schedule property in the present proceedings, is not entitled to maintain the caveat opposing the grant of Letters of Administration with the Will annexed. Without prejudice to the above stated preliminary objection, the property at New No.42, Old No.67, Kamarajapuram 2nd Street is the property now owned by the defendant and therefore mentioning the said



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address in the proceedings is proper. It is false to state that the plaintiffs have requested the bailiff to handover the summons to them during service.

The suit schedule property and the adjoining property were both allotted to the family of the father of the 1st plaintiff and defendant, viz., late S.N.Poongavanam. Since only one plot could be allotted by Slum Clearance Board to one family, the plaintiff was shown as a part of the family of late S.N.Poongavanam and the defendant was shown as independent family and thereby two plots were obtained in allotment from the Slum Clearance Board. All payments to Slum Clearance Board for both plots were made by late S.N.Poongavanam. Once the payments were completed, sale deeds were executed for both plots in favour of respective allottees. After the demise of the father S.N.Poongavanam, on 17.09.89, a Family Understanding was recorded wherein the 1st plaintiff and defendant had executed the said Family Understanding with respect to the properties that were being enjoyed by the members of the family namely Plot No.145 that was allotted in the name of the defendant is lesser in value compared to Plot No.146 which was under the possession and enjoyment of the 1st plaintiff. Therefore to make the value of both properties equal, the 1st plaintiff had given a sum of Rs.35,000/- to the



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defendant and the defendant having received the said sum acknowledged the same under the Family Settlement dated 17.09.89 and having received a sum of Rs.35,000/-, agreed that the 1st plaintiff shall be entitled to Plot No.146, the defendant is estopped from claiming otherwise. It was only to give effect to the said Family Understanding that the Will was executed bequeathing Plot No.146 in favour of the plaintiff.

(ii).Once again the defendant has made allegations only for the purpose of causing prejudice and the allegations relating to the plaintiffs not allowing the mother not attend the house warming ceremony are all baseless, false and motivated. The defendant disputes the title of late Chinnathai (Testatrix) and as stated earlier on this ground of disputing title, the defendant's caveat has to be discharged and Letters of Administration granted. It is an admitted fact that the defendant is allotted Plot No.145 while only the other property left by the parents is Plot No.146 which was purchased in the name of the mother late Chinnathai and she is absolutely empowered to deal with her property as she pleases. The allegation regarding delay in filing the proceedings for grant of Letters of Administration are hereby denied. The defendant admitted the request in terms of the Will dated 11.11.2001. The defendant had requested the 2nd



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plaintiff to prepare settlement deed whereby he would release and relinquish his share in Plot No.146 in favour of the 1st plaintiff as per the wishes of the testatrix. All along the defendant had made the plaintiffs to believe that he would act in accordance with the wishes of the mother as expressed in the registered Will. Therefore, there was no necessity for obtaining Letters of Administration. The plaintiffs were under the bonafide belief that the defendant was going to give effect to the wishes of the mother. It is only when the defendant continued to delay the execution of settlement deed, the plaintiffs were compelled to approach this Court by filing the petition for grant of Letters of Administration.

(iii).The correspondence between the 2nd plaintiff and the defendant by way of E-Mails evidence the fact that the draft of settlement deed had been exchanged between the parties in terms of the Last Will of the Testatrix dated 11.11.2001. Therefore, the cause of action for filing the petition for grant of Letters of Administration only arose after the defendant refused to act in terms of the intention of the Testatrix as expressed in her last Will. The valuation of the property is done by the



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Collector and accordingly, duty is payable as per the Collectors valuation.

Hence be prays to grant Letters of Administration with a Will annexed in favour of the plaintiffs.

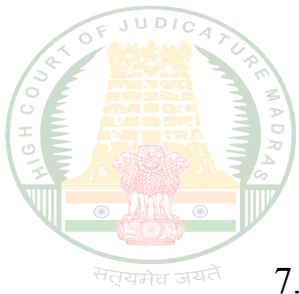
5. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

(1) Whether the Will executed dated 11.01.2001 is true and valid?

(2) Whether there are any suspicious circumstances surrounding the execution of the Will dated 11.01.2001?

(3) To what other reliefs of the parties are entitled?

6. On the side of the Plaintiffs, the plaintiffs were examined as PW1 and PW2 and other two witnesses were examined as PW3 and PW4 and Ex.P1 to Ex.P15 were marked. On the side of the Defendants, the 4th defendant was examined as DW1 and Ex.D1 was marked.



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

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Issue Nos.1 to 3:

8. The learned counsel for the plaintiff submits that even the plot No.145 was allotted in the name of 1st defendant and 146 in the name of the father of late S.N.Poongavanam, entire payments of both plots were made by the father of late S.N.Poongavanam. Once the payments were completed, sale deeds were executed for both plots in favour of respective allottees. After the demise of the father S.N.Poongavanam, on 17.09.1989, a Family Understanding was recorded wherein the 1st plaintiff and defendant had executed the said Family Understanding with respect to the properties that were being enjoyed by the members of the family namely Plot No.145 that was allotted in the name of the defendant is lesser in value compared to Plot No.146 which was under the possession and enjoyment of the 1st plaintiff. Therefore to make the value of both properties equal, the 1st plaintiff had given a sum of Rs.35,000/- to the defendant and the defendant having received the said sum acknowledged the same under the Family Settlement dated 17.09.89 and having received a sum of Rs.35,000/-, agreed that the 1st plaintiff shall be entitled to Plot

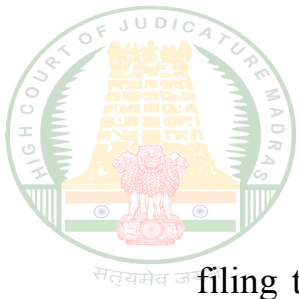


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No.146, the defendant is estopped from claiming otherwise. It was only to give effect to the said Family Understanding that the Will was executed bequeathing Plot No.146 in favour of the plaintiffs.

9.It has been further submitted that it is an admitted fact that the 1st defendant is allotted Plot No.145, while plot No.146 left by the parents was purchased in the name of the mother late Chinnathai and she is absolutely empowered to deal with her property as she pleases. Further, the 1st defendant had requested the 2nd plaintiff to prepare settlement deed whereby he would release and relinquish his share in Plot No.146 in favour of the 1st plaintiff as per the wishes of the testatrix. The correspondence between the 2nd plaintiff and the defendant by way of E-Mails evidence the fact that the draft of settlement deed had been exchanged between the parties in terms of the Last Will of the Testatrix dated 11.11.2001. All along the defendant had made the plaintiffs to believe that he would act in accordance with the wishes of the mother as expressed in the registered Will. Therefore, there was no necessity for obtaining Letters of Administration. Since the defendant continued to delay the execution of settlement deed, the plaintiffs were compelled to approach this Court by



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filing the petition for grant of Letters of Administration. Therefore, there was a delay for filing the petition for grant of Letters of Administration. Hence, he prays to grant letter of Administration in favour of the plaintiff.

10.The learned counsel for the defendants submits that the suit schedule property was allotted to S.N.Poongavanam by the Slum Clearance Board, Chennai and as such all the family members are equally entitled to the suit schedule property. After the demise of the said Poongavanam, with the consent of both the first plaintiff and the defendant, the Slum Clearance Board had executed a sale deed in favour of Chinnathai dated 11.11.2001 and registered on 12.11.2001 as Document No.954 of 2001 in the office of Sub Registrar, Thousand Lights, Chennai. Hence, it cannot be construed as Tmt.Chinnathai's property just because the sale deed stood in her name and she is only a name lender. Hence she has no right to execute any Will as alleged by the plaintiffs with respect to the suit schedule property. Therefore, the alleged Will dated 12.11.2001 said to have been executed by Chinnathai in favour of the plaintiffs is forged and invalid.

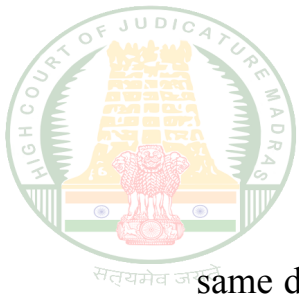


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11. It has been further submitted that the Testatrix is an illiterate aged lady who cannot go to the Slum Clearance Board and obtain sale deed in her favour and on the same day cannot execute a Will in favour of the plaintiffs without the knowledge of the defendant. Hence the plaintiffs are very well aware about the execution of the Will. However the same was not revealed to the defendant either at the time of the alleged execution when the defendant was very well living in the next house of the suit schedule property or soon after the death of the testatrix Chinnathai. After a lapse of 13 years, the plaintiffs have filed the present O.P. Further, no other property was settled to the defendants as alleged in the plaint by the plaintiffs. The delay in filing the petition for probate is willful and wanton and there is no bonafide reason for the delay. Hence, the suit is liable to be dismissed with exemplary cost.

12. On perusal of the records, it is seen that the Will dated 12.11.2001 executed in favour of the plaintiffs by the Testatrix, is on the



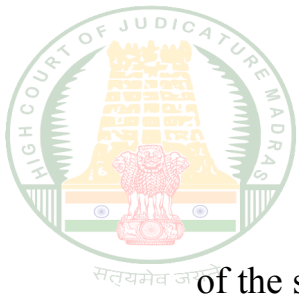
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same date of registration of Sale Deed ie. 12.11.2001 which is executed in favour of the Testatrix by the Slum Clearance Board even though the Plot No.146 was allotted to her husband. Further, on perusal of the Will, it is seen that the date of Will is in the hand written and the Document No.954 is inserted in the Will by witting. It is seen from the Will that an Advocate namely Mr.P. Seetharaman said to have been prepared the said Will. But, the plaintiff failed to examine the Advocate to prove the Will.

13.On perusal of the evidence of P.W3 and P.W4, it is seen that both attesting witnesses are said died, their sons were examined as P.W3 and P.W4. They have only identified their fathers' signatures without showing any supporting documents signed by their father to corroborate the same.

14.In the plaint, the reason for the delay is mentioned as the Will has been misplaced. Per contra, in the examination on the side of the plaintiffs, it is stated that the denial of execution of the Settlement Deed which was said to be executed by the 1st defendant in favour of the 1st plaintiff for the suit schedule property, is the reason for the delay in filing



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of the said proceedings. As the execution of Will is known very well by the 1st plaintiff, if the Will was genuinely executed by the Testatrix, after the death of the Testatrix ie.01.01.2006, he would have come forward to file O.P. for grant of Letter of administration immediately. However, they have not taken any steps to probate the same in the manner known to law and filed the O.P after 13 years. The reason for the delay in filing O.P. is not acceptable.

15. On perusal of the Will, it is stated that since alternative arrangement was made to the 1st defendant, the said Plot No.146 was bequeathed to the plaintiffs. However, in the said Will, there is no whisper anything about what type of alternative arrangement was made to the 1st defendant by the Testatrix. It is seen from Ex.P9 that the Plot No.145 was allotted to the 1st respondent by the Slum Clearance Board and hut was laid therein. However, it is seen from the proof affidavit of D.W.1 that the Plot No.145 is said to have purchased from one Mr. Govindan by the 1st defendant. In this regard to deny the same, the plaintiffs failed to produce the Allotment letters for plot No.145 to prove his pleadings. Hence, it creates suspicion. Thus, the plaintiff is bound to clear the aforesaid



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suspicious circumstances in the execution of the Will. However, the plaintiff failed to prove the same by way of oral and documentary evidence. Hence, there are such suspicious circumstances surrounding the execution of the Will dated 11.01.2001. Accordingly, Issue No.2 is answered. Since Issue No.2 is answered against the plaintiff, the Will executed dated 11.01.2001 is not true and valid. Accordingly, Issue No.1 is answered against the plaintiff. Since the Issue No.1 and 2 are answered against the plaintiff, the plaintiff is not entitled to any relief as prayed in the suit. Accordingly, Issue No.3 is answered.

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

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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1. List of Witnesses examined on the side of the Plaintiff:-

1. PW.1 – P.Kuppuswamy
2. PW.2 - K.Bahirathan
3. PW.3 - D.Gunasekar
4. PW.4 - K.Kalaiselvam

2. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 -11.11.2001 Sale deed document No.954/2001 on the file of SRO, Thousand Lights executed by Tamil Nadu Slum Clearance Board in favour of Chinnathai.
2. Ex.P2 11.11.2001 Original Registered Will document no.46/2001 on the file of SRO, Thousand Lights executed by Chinnathai, along with English Translated copy
3. Ex.P3 01.01.2006 Original Death certificate of Chinnathai
4. Ex.P4 21.06.2013 Legal heir certificate of Chinnathai
5. Ex.P5 .. Original Death Certificate of Mr.S.N.Poongavanam
6. Ex.P6 30.08.1999 Registration copy of the sale deed document No.730 of 1999 on the file of SRO, Thousand Lights.
7. Ex.P7 .. Undated no objection letter issued by the defendant.
8. Ex.P8 .. Email correspondence between the 2nd plaintiff original deed. and the defendant with attachments of and modified draft of settlement deed.



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9. Ex.P9 17.09.1989 Original Family Understanding executed
between P.Kuppan and P.Perumal.

10.Ex.P10 21.09.2021 Death certificate of Dharman

11.Ex.P11 .. The first witness signature in the Will

12.Ex.P12 .. The 2nd signature found in reverse page of
Ex.P2.

13.Ex.P13 .. The 2nd signature found in 3rd page are the
signature of the plaintiff's father.

14.Ex.P14 .. Photocopy of the Aadhaar card of
Kalaiselvam

15.Ex.P15 12.04.2018 Photocopy of the death certificate of
attesting witness V.Kannan

3. List of Witnesses examined on the side of the Defendants:-

DW1 – P.Saravanan

4. List of Exhibits marked on the side of the Defendants:-

1. Ex.D1 .. Affidavit of attesting witness

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Pre-Delivery Judgement in
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