



TOS.No.47 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.47 of 2008
(O.P No. 824 of 2006)

N. Jothibai,

... Plaintiff

..Vs..

1.T. Jayaseelí,(Deceased)

2.S. Raju

... 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 S. Thangaraj. Against this petition, a Caveat and supporting affidavit was filed by the Caveator on 29.08.2008. As per order of this Court on 02.12.2008 in the Original Petition No.824 of 2006, it was converted into Testamentary Original Suit No.47 of 2008.

For Plaintiff : Mr.G.S. Sivakumar

For Defendants : Mr. S. Kamadevan for D2



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JUDGMENT

This Testamentary Original Suit has been filed to grant of Letters of Administration, dated 04.11.1994, executed by the deceased Testator S. Thangaraj, in favour of the Plaintiff, having effect throughout the State of Tamil Nadu.

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

(i). The last Will and Testament of the said S. Thangaraj, was duly executed by him at No.113, Ring Road, DAE Township, Kalpakkam, Pudupattinam, on 04.11.1994 where he was residing and registered at the office of the Sub Registrar, Thirukazhikundram on 04.11.1994 and died on the 09.04.1995 at D.A.E. Hospital, Kalpakkam, then Chengleput District, Tamilnadu. The deceased Thangaraj had two wives and a daughter and an adoptive daughter. The first Respondent Jayaseeli is the second wife of the deceased. The second respondent Indrani is the first wife of the deceased Thangaraj. The petitioner N. Jothibai is the daughter of the deceased Thangaraj through his first wife Indrani. The third respondent is the adoptive daughter of the first respondent. The petitioner and the respondents alone as his sole surveying legal heirs and that all of them have



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been made as parties to this petition. The parents of the deceased have predeceased him.

(ii) That the said deceased at the time of death left the property in the city of Chennai particularly Tamilnadu Slum Clearance Board plot with construction bearing No.68, 7th Street, Kamaraj Colony, Kodambakkam, Chennai 600 024, and in the state of Tamil Nadu within the jurisdiction of this Honourable Court. The first attesting witness at the foot of the Will is Mr. G. Jayaraman, son of Govindasamy, residing at No.71, 11th Avenue, Kalpakkam- 603 102. The Affidavit of the above named G. Jayaraman the first attesting witness is filed herewith. The deceased Thangaraj even during his life time entrusted with the petitioner herein possession of the land and superstructure bearing No.68, 7th Street, Kamaraj Colony, Kodambakkam, Chennai-600 024 which is only property mentioned in the above Will. The deceased also entrusted with the petitioner all the relevant document of title pertaining to the above property. For the past 11 years and more, the petitioner is in possession of the property along with her family members and the second respondent, without any objection or obstruction from any one as a sole and absolute owner. She performed the last rites of the deceased Thangaraj. The



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petitioner made known to all, about the present Will on the 10th day death ceremonies of the testator. Mr. Thangaraj was living with the petitioner continuously for more than 10 years till his demise. The petitioner was put in possession of the property by her father the deceased Thangaraj and that she was living there without any problem by any one and possessing the same as absolute owner till date.

(iii) It is further submitted that by the said Will the deceased appointed no executor. While the petitioner has applied with the Tamilnadu Slum Clearance Board for effecting name change in the statutory records, the petitioner was asked by the legal advisors to get the Letters of Administration of the said Will. So the petitioner has filed the petition for proving the Will and for grant of Letters of Administration of the said Will. The delay in applying for the Letters of Administration is not intentional.

(iv) The amount of asset which is likely to come to the petitioner's hands does not exceed in the aggregate the sum of Rs.63,200/- 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.60,200/-. The petitioner hereby undertakes to duly administer the property and credits of the said S. Thangaraj deceased and in any way concerning his



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Will by paying first his 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 the grant 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.

(v) That 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 to this property and credits. Thus, the petitioner prays that Letters of Administration with the Will annexed may be granted to her as the Sole Beneficiary/legatee under the Will of the said deceased.

3. The case of the 2nd Defendant, in a nutshell, as set out in the written statement, is as follows:

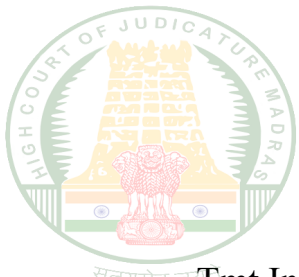
(i) This defendant purchased the suit property under a registered sale deed dated 03/06/2008 from the first defendant as she got property pursuant to the sale deed executed by the Tamilnadu Slum Clearance Board dated 03/05/2006. The defendant came to understand



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from the records handed over to him by the first defendant at the time of the sale that originally the suit property was a vacant land allotted by the Tamilnadu Slum Clearance Board to one Thangaraj, husband of the defendant's vendor who was working as driver in the Corporation of Chennai and he retired from service on 30/06/1985. While he was working at Corporation of Chennai, the Tamilnadu Slum Clearance Board allotted a plot to him which is the suit property. It was only an allotment with a condition to pay the cost of the plot on equal instalments and therefore the said allotment will not confer any absolute right or title to the allottee till the title is conferred or sale deed is executed by the Tamilnadu Slum Clearance Board.

ii) It was only an allotment by the Board and no sale deed was executed in favour Thangaraj till his death. The said Thangaraj died on 09/04/1995 and after his death, the plaintiff herein and one Indirani objected the settlement of family pension and other benefits payable by the Corporation of Chennai payable to the deceased in favour of the first defendant. Thereafter, in the legal battle on various cases, the first defendant was declared as the legally wedded wife and sole legal heir of the deceased and the claim and status of the plaintiff and her mother



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Tmt.Indirani was rejected. Hence they cannot claim any right or whatsoever in the suit property through the deceased Thangaraj as his wife and daughter.

iii) Thereafter, the Slum Clearance Board effected name transfer in favour of first defendant in respect of the suit property in the proceedings dated 28/09/2005. After the name transfer was made in favour of the first defendant, the Board did not execute the sale deed in her favour. Hence, she filed writ petition before this court in WP.No.108 of 2006 and this court by order dated 27/01/2006 directed the Board to execute the sale deed and thereafter only a registered sale deed was executed by the Slum Clearance Board on 03/05/2006 in her favour.

iv) Thereafter, as the plaintiff was in illegal occupation of the land in question, after a long legal battle, the title and possession of the property is legally recognised and settled in favour of this defendant. Hence, the plaintiff has no right or legal claim over the suit property and the alleged "Will" could not confer any right to the plaintiff to maintain the suit. Above all, the said Thanagarj was not all the owner of the property and it was only an allotment till his death. After his death only the first defendant paid the balance amount and got the sale deed executed in her



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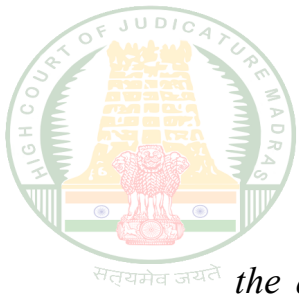
favour thereby transfer of interest and right made by the Slum Clearance Board. Further, the plaintiff and her mother made false claim as if they are the wife and daughter of the deceased Thangaraj and the same was disbelieved by the court and held against them in the earlier two suits and the same was also confirmed by this court. It was categorically held that her mother Indiranri got married one Thangaduri and not the Thangaraj and therefore, the alleged will do not confer any right in favour of the plaintiff in as much as she is the daughter of Thangadurai. Hence, he seeks to dismiss the suit with exemplary costs.

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

1. Whether the last Will and Testament dated 04.11.1994 executed by the Testator S.Thangaraj in favour of the plaintiff is valid and genuine?

2. Whether the deceased Thangaraj was having any valid title and he was the absolute owner of the property on the date of the execution of the Will?

3. Whether the plaintiff can claim herself as the daughter of



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the deceased Thangaraj in view of the earlier suit proceedings in O.S.No.10180 of 1996 and the findings rendered in S.A.No. 1704 of 2004?

4. Whether the judgment and decree passed by the City Civil Court, Chennai in O.S.No. 9095 of 2010 is binding the plaintiff as she is also party to the said proceedings?

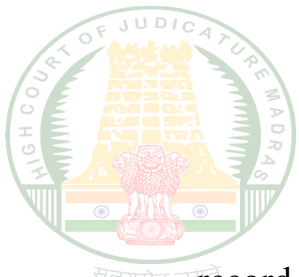
5. Whether the 1st defendant Ms.Jayaseeli (Deceased) had lost the right on the subject property of the Will, in view of the judgment and decree made in OMS.No.17 of 1987, dated 23.09.1987 by the High Court, Madras, under which, Ms.Jayaseeli (Deceased) obtained divorce against S.Thangaraj, her husband, the Testator of Will dated 04.11.1994?

6. Whether the plaintiff has proved the Will alleged to have been executed in terms of Section 63 of the Indian Succession Act?.

7.To what other relief both the parties are entitled to?

5. On the side of the Plaintiff, P.W1 and PW2 were examined. Ex.P1 to Ex.P4 were marked. On the side of the Defendants, D.W1 was examined and Ex.D1 to Ex.D16 were marked.

6. Heard both sides and perused the materials available on



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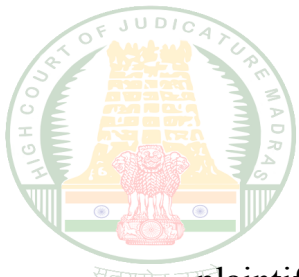
record.
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Issue No.1:

7.The learned counsel for the plaintiff submitted that the Testator, the plaintiff's father who was the absolute owner of the suit schedule property, executed the Will in sound and disposing state of mind and in full consciousness in the presence of two witnesses in favour of the plaintiff on 04.11.1994. The same was registered before the concerned SRO on the same day. After the demise of the Testator, the plaintiff found the Will and filed the present suit.

8.It has been further submitted that the plaintiff has produced the Original Will dated 04.11.1994 along with other supporting documents before this Court and one of the attesting witnesses was examined as P.W2 to prove the Will. Hence, he seeks to grant the Letters of Administration in favour of the plaintiff.

9.The learned counsel for the 2nd defendant submitted that the



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plaintiff is not at all the daughter of the Testator but born to her mother Indrani with who got marriage one Thangadurai and they had separate family and other children through the said marriage. It is evident on seeing the Judgments in various cases filed by the plaintiff, her mother and the 1st defendant who is the original owner of the suit schedule property. Vide Ex.D1 to Ex.D7. The 2nd defendant has purchased the suit property from the 1st defendant. Vide Ex.D7. The plaintiff and her mother have no right in the suit property.

10.It has been further submitted that as the defendant's title and possession was recognized by the court of law in which the plaintiff is also a party, he sold the property under a registered sale deed in favour of one Karthik (DW-1) and another on 30/12/2019. After their purchase, they applied for planning/building permission before the Greater Corporation of Chennai and also obtained necessary permission for the construction of residential building. On the strength of the same, they have completed the construction and also occupied the same. The property is now assessed with property tax, Metro water and EB connections are now stand in the name of the DW-1 (Ex-B-11, Ex-14, Ex-15& Ex-16). Hence, there is no



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question of granting Letter of Administration in favour of the plaintiff and the suit is liable to be dismissed with exemplary costs.

11. On perusal of the plaint averment, it is seen that the Testator one S.Thangaraj executed the Will on 04.11.1994 and he died on 09.04.1995. The present suit was filed in the year 2006 after a lapse of 12 years. In the plaint averments, the reason for belated filing of the present suit has not been mentioned and merely it has been stated that the plaintiff found the Will after the demise of the Testator and filed the present suit without any explanation and reasons therein.

12. Further, the plaintiff claims the suit property based on the Will as daughter of the Testator stating two witnesses have subscribed their signature in the Will. However, the plaintiff has averred only first attesting witnesses mentioning his name as G.Jayaraman S/o. Govindasamy and there is no whisper anything about the 2nd attesting witness in the plaint. Whereas, on the plaintiff's side, the first attesting Witness by name G. Jayaraman was not examined, instead one Mr. Desingu was examined as P.W2 as the 2nd attesting witness to the Will. The reasons for not examining



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the first attesting witness, has not been clarified. Further, on seeing the Will, even though there is initial as N.M. in the signature, before the name of the 2nd attesting witness, the name of the 2nd attesting witness could not be found clearly. Whereas, one Mr.Desingu was examined as P.W2 as 2nd attesting witness and he signed in his proof affidavit without initial of M and while comparing his signature found in his proof affidavit, along with the Will, there is quite difference. In this regard, the plaintiff has not taken any steps to prove the signature of P.W2 in both Proof Affidavit and the Will, is one and the same.

13. On perusal of the deposition of P.W1, it is seen that to the question as to whether she knew the attesting witnesses of the Will, she answered that she did not know. While the plaintiff has not stated any thing about the Two attesting witnesses, how she came to know one Mr.Desingu as the 2nd attesting witnesses to the said Will. It has not been clarified. Further, she admitted herself in the cross examination that she is not in possession of the suit property at the time of the death of Thangaraj and thereafter and she did not know about who were in possession of the suit property. Further, she did not whisper anything about who has prepared the



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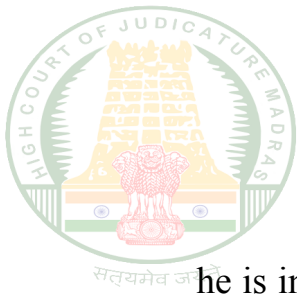
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Will and she did not chose them for examination to prove the said Will.

She did not depose anything about whether the alleged Will was read over to the Testator and signed in the presence of both witnesses and the Testator saw other Attesting Witnesses who signed the Will.

14. On perusal of the deposition of P.W2, it is seen that even though PW2 has averred in his proof affidavit about the 1st attesting witness by name Mr.Jayaraman, he did not mention anything about him and his whereabouts. Further, in the cross examination to the question of who prepare the Will, PW2 answered that he did not remember and he did not know. Subsequently, it has been asked that whether the Will was handwritten or typed one? P.W2 answered that it is handwritten one. However, the alleged Will is typed one and not in handwritten. It is not clarified.

15. Further, it can be seen on perusal of the Ex.D1, the suit schedule property was sold out to the 2nd defendant by the 1st defendant and subsequently, D.W1 has purchased the said property from the 2nd defendant. Although the 2nd defendant was the party in the suit, he was not examined and D.W1 was examined. In this case, D.W.1 has deposed that



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he is in the possession and enjoyment of the suit property after mutation of his name in all statutory documents.

16.In view of the above, this Court is of the considered view that the plaintiff has not proved alleged Will whether the Last Will and Testament dated 04.11.1994 executed by the Testator S.Thangaraj in her favour is valid and genuine and hence, the plaintiff is not entitled for letter of administration. Accordingly Issue No.1 and 7 are answered. Since issue No.1 and 7 are answered against the plaintiff, other issues do not arise.

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

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

lbm

List of Witnesses examined on the side of the Plaintiff/s:-

1. PW.1 – Mrs. N.Jothibai

2. PW.2 - Mr.Desingu

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

1. Ex.P1 -is the original Will dated 04.11.1994. (In Safe Custody)



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2. Ex.P2 is the true copy of death certificate of S.Thangaraj dated 19.05.1995.

3. Ex.P3 is the legal heir certificate dated 31.08.2001.

4. Ex.P4 is the online printout copy of death certificate of G.Jayaraman dated 10.10.2021. (certificate 65B submitted)

2. List of Witnesses examined on the side of the Defendant/s:-
DW1 – Mr. J.Karthik

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

1. Ex.D1 is Judgment and Decree copy in O.S. 10180 of of 1996 on the filed of city civil court is marked as Ex.D1 and Ex.D2.

2. Ex.D2 is Judgment and Decree copy in O.S. 10180 of of 1996 on the filed of city civil court is marked as Ex.D1 and Ex.D2.

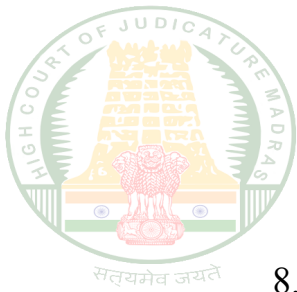
3. Ex.D3 is the Copy of Judgment passed in the Second Appeal

4. Ex.D4 is the photocopy of proceedings of the slum clearance board dated 28.09.2005.

5. Ex.D5 is the photocopy of order in Writ Petition No. 108 of 2006 dated 27.01.2006.

6. Ex.D6 is the photocopy of judgment in O.S.No.5279/2006 dated 20.12.2007.

7. Ex.D7 is the photocopy of sale deed dated 03.06.2008 by D1 (deceased) to D2.



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8. Ex.D8 is the photocopy of judgment in O.S.No.9095/2010 dated 07.01.2015.

9. Ex.D9 is the photocopy of judgment in A.S.No. 86/2015 dated 29.11.2016.

10.Ex.D10 is the photocopy of order in E.P.No. 1362/2015 dated 29.11.2018.

11.Ex.D11 is the photocopy of property tax card and online copy of property tax receipt dated 25.03.2024.

12.Ex.D12 is the photocopy of plaint in O.S.No. 2982 of 2021 filed by the plaintiff against DW1 and another.

13.Ex.D13 is the certified copy of judgment in O.S.No.2982/2024 dated 29.01.2024.

14.Ex.D14 is the online copy of the encumbrance certificate reflecting sale by 2nd defendant dated 17.07.2024. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)

15.Ex.D15 is the online copy of metro water tax receipt dated 31.03.2023. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)

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16. Ex.D16 is the online copy of TNEB payment receipt dated 06.06.2024. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)



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