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A. Nos.5757 & 5758/
in TOS.Nos.36 & 37/



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27-01-2025

Pronounced On : 20 .02.2025

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A. Nos. 5757 & 5758 of 2024 in TOS.Nos.36 & 37 of 2016

and CS.No.675 of 2016

V.Thulasidass

S/o.K.Varatharajalu, residing at Door No.11/45,
Neelamthottam, 3rd Street, Sembium, Perambur, Ch-600 011

Applicant(s)

Vs

R.Rathinabai (Deceased)

V.Lakshmanan (Deceased)

1.P.Varalakshmi 11 others

W/o.v.Purushothaman, residing at Door No.24/34,
Neelamthottam , 2nd Street, Sembium, Perambur, Chennai-600
011

2. P.Dilli Babu

s/o.Late V.Purushothaman, residing at Door No.24/34, Neelamthottam , 2nd Street,
Sembium, Perambur, Chennai-600 011

3. P.Gopala Krishnan

S/o.Late V.Purushothaman, residing at Door No.24/34, Neelamthottam , 2nd Street,
Sembium, Perambur, Chennai-600 011

4. P.Yuvaraj

S/o.Late v.Purushothaman, residing at Door No.24/34, Neelamthottam , 2nd Street,
Sembium, Perambur, Chennai-600 011

L.Navaneetham (Deceased)

5. L.Mohan Kumar

S/o.late V.Lakshmanan, S/o.late V.Lakshmanan No.109-B, 7th Circular Road, Anna
Nagar, Chengleput 603001 Kancheepuram Dist

6. L.Sreedhar

S/o.late V.Lakshmanan, Om Sakthi Illam, PLOT No.29, Eden Garden, ECR Road,
Pudupattinam, Kalpakkam 603102 Kancheepuram District

7. N.Padmavathy

D/o.late V.Lakshmanan W/o.B.Naresh, No.2, Plot No.2, Sree Chakkara Flat,



Narmada Street, Gangai Nagar, Kallikuppam, Chennai- 600 053



8. R.Jayachandran

S/o.V.Ramamoorthy, New No.9-A/Old No.5-A, Thiruvenkadaiah 1st Street,
Villivakkam, Chennai 600 049.

9. R.Pushparaj

S/o.V.Ramamoorthy

10. D.Jamuna Bai

W/o.N.Devaraj, No.5/8, Lakshmipuram NRN Compound, Villivakkam, Chennai
600 049.

11. B.Mythili

W/o.K.Babu, AP 1119, 74th Street, 12th Sector, K K Nagar West, Chennai 600 078.

12. K.Sasikala

W/o.K.Kumar. ... Respondent(s)

PRAYER IN A.No.5757/2024: This application has been filed to direct the

Forensic and Biometric Investigation Service (FBIS) at No.96, 2nd floor, 100 feet

road, Vadapalani, Chennai 600 026 or any other forensic agency to scientifically

examine and compare the left thumb impression of the deceased Vijayalakshmi in

her last Will and Testament executed on 14.08.1985 at Sembium, Perambur,

Chennai 600 011 marked as Exhibit P-19 with the left thumb impression of the

deceased Vijayalakshmi in the following documents that were executed by the said

Vijayalakshmi and registered during her lifetime, namely:

i. Mortgage Deed dated 12.03.1936 bearing Doc.No.460 of 1936 executed by

Vijayalakshmi (the deceased) in favour of Mahadeva Mudaliar, marked as

Exhibit P-2;

ii. Mortgage Deed dated 05.10.1940 bearing Doc.No.1596 of 1940 executed by

Vijayalakshmi (the deceased) in favour of N.Somasundara Chettiar, marked as

Exhibit P-3;

iii. Mortgage Deed dated 12.12.1946 bearing Doc.No.2504 of 1946 executed by

Vijayalakshmi (the deceased) in favour of Meenambal Ammal-duly cancelled,



marked as Exhibit P-4 and

iv. Mortgage Deed dated 27.08.1956 bearing Doc.No.1974 of 1956 executed by Vijayalakshmi (the deceased) and K. Varatharajalu in favour of Madras Purasawalkam Hindu Janopakara Saswatha Nidhi-Duly cancelled, marked as Exhibit P-5;

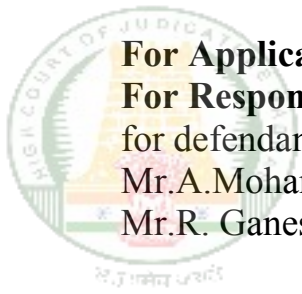
and file a report in the form of Expert Opinion before this court.

PRAYER IN A.No.5758 of 2024: This application has been filed to direct the Forensic and Biometric Investigation Service (FBIS) at No.96, 2nd floor, 100 feet road, Vadapalani, Chennai 600 026 or any other forensic agency to scientifically examine and compare the signature subscribed by the deceased K.Varatharajalu in his last Will and Testament executed by him on 14.08.1985 marked as Ex.P-21 with the signature of the deceased K. Varatharajalu in the following documents that were executed by the said K. Varatharajalu and registered during her lifetime, namely:

i) Mortgage Deed dated 22.11.1958 bearing Doc.No.3129 of 1958 executed by K. Varatharajalu (the deceased) in favour of Kamalabai-duly cancelled, marked as Exhibit P-3;

ii) Mortgage Deed dated 03.08.1966 bearing Doc.No.3014 of 1966 executed by K. Varatharajalu (the deceased) in favour of Bangarammal-duly cancelled, marked as Exhibit P-5;

iii) Special Loan Mortgage Deed dated 03.07.1968 bearing Doc.No.2544 of 1968 executed by K. Varatharajalu (the deceased) and Vijayalakshmi in favour of the Purasawalkam Dhana Vardhana Saswatha Nidhi Limited -duly cancelled, marked as Exhibit P-6 and



For Applicant(s): Mr.CPG Yoganand

For Respondent(s): M/s.V.S.Usha Rani

for defendants 2, 7 to 9

Mr.A.Mohamed Ismail for D1, 11 to 15

Mr.R. Ganesh Kumar for D3 to D6 in both the cases

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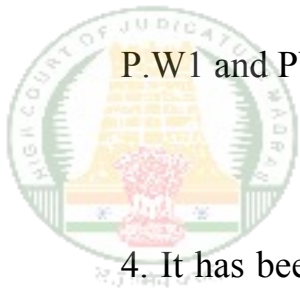
COMMON ORDER

These applications have been filed for the above stated reliefs.

2. The learned counsel for the applicants submitted that the Testator one K.Varatharajulu and the Testatrix one Vijayalakshmi executed the Will dated 14.08.1985 each. Since one of the attesting witnesses, namely V.Ramalingam died on 17.02.2018 during the pendency of both suits, another attesting Witness namely L. Arul was examined as P.W2 and the plaintiff of the aforesaid suits was examined as P.W1. In the written statements filed in both the suits, the defendants have disputed the genuineness and questioned the authenticity of the signature and left thumb impression of the Executant in both suits. Hence, he prays to allow these applications as prayed therein.

3. The learned counsel for the respondents submitted that while there are so many attending circumstances as contemplated under the Evidence Act, to prove the genuineness of Will, the applicants have filed these applications to fill up the lacunae in the evidences

which is legally not sustainable in law. Further, as the said applications have been filed after ten years of filing the present proceedings and also after completion of evidence of



P.W1 and PW2, the same is only belated and an exercise of causing delay.



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4. It has been further submitted that since proving of Will is specifically dealt with under Sections 63 and 68 of the Indian Succession Act, seeking for an expert opinion as to the identity of signature of the testator/testatrix is not relevant. Further, as per Sections 45, 68, 69, 70 and 71 of the Indian Evidence Act, an expert opinion as to the identity of signature of the testator is not at all relevant. It is not relevant where the subject matter of enquiry is not one pertaining to any of the matter enumerated under Section 45 of the Indian Evidence Act. Further, it is settled law that unlike other documents, Will cannot be proved by an opinion of an experts as to the signature/thumb impression in the document. In regard to the execution of Will, the Court has to decide the case from the evidence as prescribed under Sections 68, 69 and 71 of the Indian Evidence Act. Hence he prays to dismiss these applications.

5. In this case, perusal of records would show that PW1 and PW2 were already examined. While both the Testator and Testatrix have executed the Will on 14.08.1985, Ex.P2 to Ex.P6 proposed for comparison of the signature/thumb impression of them by the Forensic and Biometric Investigation, are not contemporaneous documents. Further, the petitioners

<https://www.hcma.org.in> have marked both the Wills dated 14.08.1985, which are Xerox copies which cannot be compared with the documents in Ex.P2 to Ex.P6 proposed by the respondents. Hence, it



seems that the applicants have filed these applications just to fill up the lacuna, protract the suit proceedings. Hence, this Court is not inclined to allow these applications at this stage.

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6. In the result, these applications are dismissed. No costs.

7. Post these suits on 27.02.2025.

20.02.2025

gv

To

1. R.Rathinabai (Deceased) V.Lakshmanan (Deceased)

1.P.Varalakshmi and 11 others

W/o.v.Purushothaman, residing at Door No.24/34, Neelamthottam,
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**Pre-delivery Orders made in
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