



Application No.774 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Application No.774 of 2025

in

T.O.S.No.33 of 2016

1.Sri Devi,
W/o. Late S.Deenadhayalan

2.Manish Kumar,
S/o. Late S.Deenadhayalan

... Applicants

Vs.

1.M.B.Bharath Kumar,
S/o. Balakrishnan

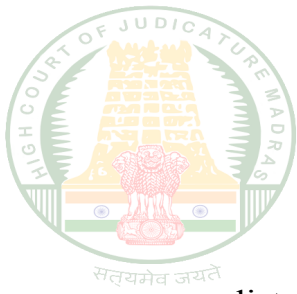
2.B.Yamini,
D/o. Balakrishnan

S.Deenadhayalan (Deceased)

3.S.Nagalakshmi @ S.Shanthi

... Respondents

Prayer: Application filed under Order XIV Rule 8 of the Original Side Rules read with Order VIII Rule 1A(3) of the Code of Civil Procedure, 1908, to grant leave to the 1st Applicant / 3rd Defendant for filing documents in T.O.S.No.33 of 2016 on the file of this Court which are



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enlisted in the List of Documents filed herewith order for reception of the same to be file before this Court.

For Applicants : Mrs.Vedavallikumar

For Respondents :

For R1 and R2 : Mr.G.Mutharasu

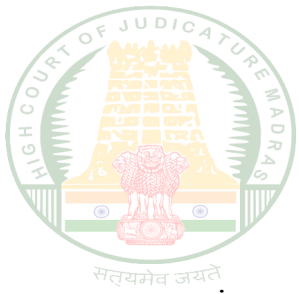
For R3 : Mr.R.Mubarak Basha

ORDER

The Applicants are the 3rd and 4th Defendants in the Testamentary Original Suit. They have stepped in as the Legal Representatives of the 1st Defendant in the Suit namely S.Deenadhayalan who died on 31.03.2024.

2. Earlier, the deceased 1st Defendant in the Suit namely S.Deenadhayalan had filed Application No.1998 of 2024 for introducing the documents which are subject matter of the present Application.

3. The said Application No.1998 of 2024 appears to have been filed on 08.03.2024. However, before the Inquiry would be concluded, the 1st Defendant in the Suit S.Deenadhayalan died on 31.03.2024. Under these



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circumstances, Application No.1998 of 2024 was dismissed on 16.07.2024.

4. After the Applicants herein the 3rd and 4th Defendants in the Suit namely the wife and son of the deceased 1st Defendant in the Suit were impleaded, they have moved this Application for introducing the documents.

5. It appears that the Will that is subject matter of the Testamentary Original Suit is dated 06.02.1976. This was prior to the birth of the deceased 1st Defendant in the Suit on 15.04.1977. The Will dated 06.02.1976 is a registered Will and the Suit Schedule Property was vested with the Testator's wife namely Kuppabai and thereafter on the 2nd Defendant, mother of the 1st and 2nd Respondents, who is none other than the sister of the deceased 1st Defendant in the Suit.

6. It is endeavour of the Applicants to establish that when the aforesaid Will was registered on 06.02.1976, the 1st Defendant in the Suit



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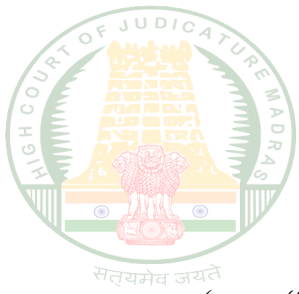
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namely S.Deenadhayalan was not even born and that subsequently, there have been changes in the family and in all the endeavours of Late Sampath Naidu the Testator who died on 20.06.1979, the 1st Applicant's husband and the 2nd Applicant's father Late S.Deenadhayalan was a sole nominee and therefore the Will that was executed on 06.02.1976 cannot be acted upon.

7. Opposing the prayer in this Application, the learned counsel for the 1st and 2nd Respondents would submit that the Application is bereft of details.

8. That apart, it is submitted that earlier Application No.1998 of 2024 was dismissed on 16.07.2024 and therefore, the present Application is without any merits.

9. That apart, it is submitted that the endeavour of the Applicants at best should be only to show that the Will was not executed in the manner known to law, satisfying the test under the Indian Evidence Act, 1872



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(now "The Bharatiya Sakshya Adhiniyam, 2023). It is therefore submitted that on this count, this Application filed by the Applicants is liable to be dismissed.

10. That apart, it is submitted that the Application with bereft of any details barring the averments in Paragraph 6 of the Affidavit filed in support of this Application clearly states that the Document Nos.1 to 15 in the Table annexed thereto are to be marked.

11. Heard the learned counsel for the Applicants and the learned counsel for the Respondents.

12. I see no impediment in allowing this Application for marking the documents. Ultimately, the Respondents will have to prove that the aforesaid Will was executed on 06.02.1976 in the manner known to law.

13. These documents which are proposed to be introduced in the evidence *ipso facto* would not determine the execution of the Will one



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way or the other. In any event, the documents can be allowed to be marked subject to admissibility, proof and relevancy.

14. Therefore, this Application is allowed with a caveat that the documents that are proposed to be allowed to be marked will be marked subject to admissibility, proof and relevancy.

15. List the suit before the learned Additional Master-II on 05.06.2025 for continuation of trial.

23.04.2025

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C.SARAVANAN, J.

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