2026:MHC:4392

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:09.10.2026	Pronounced on: 30.10.2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

O.P. No.700 of 2024

Dr.Saroja Sivakumar,
W/o.Late Dr. M.R.Sivakumar,
No.10, Balaji Villa, "S" Block,
16th Street, Anna Nagar,
Chennai - 600 040.

..Petitioner(s)

Vs

1.Dr.S.Sanjeev,
S/o.Late Dr.M.R.Sivakumar,
No.10, Balaji Villa "S" Block,
16th Street, Anna Nagar,
Chennai - 600 040.
Also at
254, Yorkswell Lane,
Greenville, SC 29607, USA.

2.Dr.S.Shravan,
S/o.Late Dr. M.R.Sivakumar,
No.10, Balaji Villa "S" Block,
16th Street, Anna Nagar,
Chennai - 600 040.

..Respondent(s)

PRAYER: This Original Petition is filed under Section 232 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the O.S. Rules, to issue a Letters of Administration with the Will dated 06.10.2014 annexed may be granted to her as the wife and beneficiary under the Will of the said deceased having effect throughout the State of Tamil Nadu.

For Applicant(s): Mr.Niranjan Rajagopalan
for M/s.G.R.Associates
For Respondent(s): No Appearance

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Heard Mr.Niranjan Rajapoalan, for M/s.G.R.Associates, learned counsel for the petitioner.

2. This Original Petition No.700 of 2024, has been filed for grant of Letters of Administration of an unregistered Will dated 06.10.2014, executed by Dr.M.R.Sivakumar, who died on 10.11.2020.

3. The petitioner is the wife and sole beneficiary of the estate of Dr.M.R.Sivakumar, the Testator under his last Will and Testament dated 06.10.2014. Under the said Will, the Testator, husband of the petitioner has bequeathed all his property, movable and immovable to his wife, the petitioner herein, with a rider that in the event of the petitioner pre-deceasing the Testator, then the property would go to the respondents equally. One K.R.Uma Mageswaran, who was appointed as sole executor under the said Will. However, the executor died on 14.07.2018, even prior to the demise of the Testator and thereafter, since the Testator has not chosen to execute a fresh Will or even a codicil and hence the petitioner as beneficiary, has come forward with the present application for grant of Letters of Administration.

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4. The respondents/sons of the Testator have given consent expressing no objection for grant of Letters of Adminstration in favour of their mother/petitioner. This Court by order dated 03.09.2026, finding that without knowledge of the Will dated 06.10.2014, the petitioner and the respondents have jointly alienated some of the properties owned by the Testator, raised an objection with regard to the maintainability of the Original Petition seeking Letters of Administration.

5. Mr.Niranjan Rajagopalan, learned counsel has advanced arguments in this regard, addressing the objections raised by my Predecessor. It is the contention of Mr.Niranjan Rajagopalan, learned counsel that though some of the properties viz., specifically Item Nos.4 and 5 of the Will have admittedly been sold to third parties and documents relating to such alienations have been placed before the Court by way of typedset of papers on 09.09.2026. In fact, the same has also been brought to the notice of this Court even in the proof affidavit filed by the petitioner, while letting in evidence before the learned Master.

6. It is his further submission that neither the petitioner nor the respondents were aware of the Will, executed in June, 2024 and that the petitioner and the respondents discovered the original Will later and therefore,

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had to necessarily seek for grant of Letters of Administration. As regards the properties already sold, Mr.Niranjan Rajagopalan, would firstly contend that none of the legal heirs viz., wife and sons of deceased Testator were even aware of the factum of the Will having been executed in the year 2014, by late Dr.M.R.Sivakumar and therefore, assuming that he had died intestate, the properties had been dealt with.

7. Inviting my attention to Section 232(b) of the Indian Succession Act, 1925, Mr.Niranjan Rajagopalan, learned counsel would contend that it is permissible for the Court to grant Letters of Administration with the Will annexed not only for the entire estate, but also for a limited extent. He would therefore state that the mere fact that some of the properties forming part of the Will have been dealt with already, even before the discovery of the Will, would not render the Will incapable of being proved or impede this Court from granting Letters of Administration, limited to the properties that continue to remain in the name of the deceased Dr.M.R.Sivakumar. He would also invite my attention to Section 255 of the Indian Succession Act, which provides for exceptions to be made while granting Probate or Letters of Administration, with the Will annexed.

8. As regards the proof of due execution and attestation, Mr.Niranjan Rajagopalan, learned counsel would state that the evidence of P.W.1, the

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petitioner and one of the attesting witnesses, P.W.2, clearly satisfies, the requirement of Section 63(c) of the Indian Succession Act read with Section 67 of BSA, 2023 (Section 68 of the Indian Evidence Act, 1872). A general paper publication has also been effected as directed by this Court and in compliance with the provisions of the Indian Succession Act.

9. I have scanned the evidence of P.W.1 as well as P.W.2, the attesting witness and I am satisfied their evidence, clearly discharges the burden of proof of due execution and attestation of the Will. The original Will as well as the death certificate of the deceased Testator have also been exhibited and therefore, the factum of the testamentary instrument coming into force is also duly established. Now that the petitioner herself has admitted to the fact that Item Nos.4 and 5 mentioned in the Will have also been sold, the petitioner is not entitled to a grant insofar these items. However, at the same time, she cannot be denied a right of administration of the remaining estate.

10. In the light of the above, I do not see any impediment in granting Letters of Administration in favour of the petitioner with the Will annexed, concerning the estate of late Dr.M.R.Sivakumar, excepting Item Nos.4 and 5, set out in the Will.

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11. The provisions of the Indian Succession Act, clearly provide a statutory backing for the Probate Court to grant of Letters of Administration or even Probate, limited to some of the properties mentioned in the Will. Under Chapter II of Part IX of the Indian Succession Act, in fact, Section 257 specifically provides for probate or administration of rest of the estate of the Testator. In view of the Section, read with this Section 255, I do not see the Application for Letters of Administration being held as not maintainable, I have already found that due execution and attestation of Will has been proved through evidence of P.W.1 and P.W.2. Therefore from the foregoing discussions, the petitioner is entitled to grant of Letters of Administration, limited to the properties that are still available and not alienated.

12. In fine,

(i) This Original Petition is ordered and the Letters of Administration, having effect throughout the State of Tamil Nadu, shall be issued in favour of the petitioners, with the Will dated 06.10.2014, annexed, excepting Item Nos.4 and 5, set out in the Will;

(ii) The petitioner is directed to duly administer the properties and credits of the deceased more fully described in the suit schedule;

(iii) The petitioner shall 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;

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(iv) The petitioner is further directed to make a full and true inventory of the property and credits of the deceased testatrix, M.R.Sivakumar, to be made and the same be exhibited before this Court, within six months from the date of grant of Letters of Administration to her and also to render a true account of the property and credits of the testatrix, within one year from the date of obtaining the grant.

30-10-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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Witnesses examined on the side of the petitioner:

P.W.1 – Dr.Saroja Sivakumar
P.W.2 – Mr.K.R.Ganesh

Documents exhibited by the petitioner:

Exhibits	Description
Ex.P1	The Original Will dated 06.10.2014 executed by M.R.Sivakumar
Ex.P2	The certified copy of the sale deed dated 04.01.2001.
Ex.P3	The certified copy of the sale deed dated 08.09.2003.
Ex.P4	The certified copy of the sale deed dated 15.07.2010.
Ex.P5	The photocopy of the State Bank of India Passbook standing in the name of Sivakumar.M.R.
Ex.P6	The photocopy of the letter issued by the Branch Manager, SBI standing in the name of M.R.Sivakumar.
Ex.P7	The computer generated death certificate of M.R.Sivakumar

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Ex.P8 The computer generated legal heirship certificate of M.R.Sivakumar.

Ex.P9 (Series 2 Nos) are the copies of the paper publication effected in one issue of Tamil Daily "Maalai Malar" dated 19.11.2025 and English daily "Trinity Mirror" dated 29.11.2025.

Ex.P10 The affidavit of assets with a net value of estate Rs.7,16,54,191/-.

Ex.P11 The certificate under Section 63(4)(C) of BSA for the electronic documents.

Ex.P12 The Photocopy of the P.W.2s Aadhaar Card.

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P.B.BALAJI J.

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Pre-delivery Order in

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