



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2026

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

A No. 707 of 2026

AND

TOS NO. 60 OF 2025

Pramila R Baliga
D/o.K.P.Mukunda Rao,
W/o.R.Baliga,
No.744, 18th Cross 23rd Main, R.R.Nagar,
Kengeri, Bengalore 560 098.

..Applicant(s)

Vs

1. K.P.Shasidar Rao and Another
S/o.K.P.Mukunda Rao,
540, (old No.144), T.T.K.Road,
Sriram nagar, Chennai 600 018.
2. K.P.Janadhana Rao.
S/o.K.P.Mukunda Rao,
540, (old No.144), T.T.K. Road,
Sriram Nagar, Chennai 600 018.

..Respondent(s)

A No. 707 of 2026

To reject the Complaint/Petition in T.O.S.No.60 of 2025 in O.P.No.422
of 2025.

For Applicant(s): Mr.N.Karthikeyan

For Respondent(s): Mr. A. Govindasamy for R1

**ORDER**

This Application is filed by the 2nd defendant in the suit under Order VII Rule 11 of the CPC seeking rejection of the plaint/ petition in T.O.S.No.60 of 2025.

2.The case of the applicant, in substance, is that the 1st respondent / plaintiff founded his claim upon an unregistered Will dated 10.05.1985, allegedly executed by late Sharada Rao, Mother of the parties. According to the applicant, the property described as item No.1 of Schedule A to the Will dated 05.02.1988 executed by the father of the parties namely K.P.Mukunda Rao who died on 03.05.2002 and that the property contained in the Will executed by their father was not his absolute property. It is contended that the property had been acquired under a partition deed dated 27.01.1973 and that after the enactment of the Hindu Succession Act, 2005, Section 6 (1) of the Hindu Succession Act amended wherein the “daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son”. Further, the subsequent rulings of the Apex Court in Vineet Sharma’s case and later decisions of the Hon’ble Supreme Court, irrespective of the date of death of the father, the daughters are equally entitled for shares along with the sons. Therefore, the father K.P.Mukunda Rao could not have bequeathed the entirety of the properties under the Will dated 05.02.1988.



3. The learned counsel for the applicant would contend that, the mother of the applicant died on 11.01.2017 and that the alleged Will propounded by the 1st respondent, dated 10.05.1985 was never probated. According to her, the 1st respondent had knowledge of the alleged Will much earlier and ought to have sought probate within three years. It is therefore, contended that the proceedings are barred by Article 137 of the Limitation Act, 1963.

4. It is also contended that the properties allegedly bequeathed to the 1st respondent under the Will dated 10.05.1985 had already been gifted away by the mother Sharada Rao during her life time and, therefore, there was no property available to bequeath under the said Will. The applicant consequently alleges that the Will dated 10.05.1985 has been fabricated for the purpose of defeating her claim.

5. The application is resisted by the 1st respondent. The learned counsel appearing for the 1st respondent would submit that the Will dated 05.02.1988 executed by K.P.Mukunda Rao was already probated by this Court in O.P.No.14 of 2008 on 10.04.2008. The applicant / 2nd defendant did not contest those proceedings and had consented to the grant of probate. It is submitted that under the said Will, one third share in item No.1 of Schedule A property vested in Sharada Rao. The 1st respondent further relies upon the Will dated 10.05.1985 executed by Sharada Rao, under which the properties belonging to her were



bequeathed in his favour. According to him, the applicant, having accepted the Will dated 05.02.1988 and claimed a share in the property on the basis thereof, cannot now contend that the said Will was invalid. It is further submitted that the question as to when the 1st respondent obtained knowledge of the Will dated 10.05.1985, when the necessity to seek probate arose, whether the Will was genuinely executes, whether it was duly attested, and whether the properties covered by the Will were available with the testatrix on the date of her death are all matters requiring evidence. The 1st respondent therefore, contends that the plaint / petition cannot be rejected at the threshold.

6.I have considered the rival submissions.

7.At the outset, it is necessary to bear in mind the limited scope of an application under Order VII Rule 11 CPC. For determining whether a plaint is liable to be rejected, the averments contained in the plaint, read as a whole have to be taken as correct. The defence of the defendant are disputed questions of fact cannot ordinarily be taken into consideration for deciding such an application.

8.It is not in dispute that K.P.Mukunda Rao executed a Will on 05.02.1988 and that the said Will was subsequently probated by this Court in O.P.No.14 of 2008. The effect of the probate and the right flowing from the



Will dated 05.02.1988 are matters which cannot be reopened collaterally in the present proceedings merely by contending that the testator had no title to the entire property. However, the applicants present contention is not merely one concerning the genuineness of the Will dated 05.02.1988. Her case is that the property was coparcenary property and that the testator could not have disposed of more than his legally disposable interest. Whether the property is covered by item No.1 was coparcenary property, what was the effect of the partition deed dated 27.01.1973, what rights the parties acquired thereunder and what was the extent of the interest of K.P.Mukunda Rao are matters which depend upon the construction of the partition deed and the surrounding circumstances.

9.It would therefore, not to be appropriated in an application under Order VII Rule 11 CPC, to conclusively determine those disputed question and thereby adjudicate upon the title and extent of the interest of the testator.

10.The next contention raised by the applicant is that the alleged Will dated 10.05.1985 ought to have been probated within three years from the death of Sharada Rao on 11.01.2017 and that the failure to do so renders the present TOS barred under Article 137 of the Limitation Act. There is no dispute that Article 137 prescribes a period of three years for an application for which no period of limitation is otherwise prescribed, commencing from the death on which the right to apply accrues. However, it cannot be accepted as an absolute



proposition that the period necessarily commences from the date of death of the testator.

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11.The Hon'ble Supreme Court has repeatedly explained that the right to seek probate is a continuing right and that the expression "right to apply" under Article 137 has to be understood in the context of the facts of each case. The right to apply accrues when it becomes necessary to obtain probate, which may be when the Will is disputed or when a hostile claim is asserted against the testamentary disposition. More significantly, the recent judgment of the Hon'ble Supreme Court in *Sanjay Sharma @ Sanjay Bhadwaj Vs. Krishnadhan Khaware Ors* , *Civil Appeal No.9005 of 2026 decided on 15.07.2026*, has reiterated that an application for probate is not necessarily barred merely because it was not filed within three years of the testator's death. The Court has held that the right to apply is a continuous right and accrues when the necessity to apply arises. The Court has also emphasised that where limitation depends upon disputed facts, the matter cannot ordinarily be summarily decided at the threshold.

12.In the present case, there is a specific dispute regarding the alleged Will dated 10.05.1985, the date and manner in which the 1st respondent obtained knowledge of the necessity to establish the Will, the circumstances in which the Will was produced and the nature of the claim made by the applicant after the



death of the Sharada Rao. These matters cannot be determined merely on the basis of the dates appearing on the face of the pleadings. The contention that the 1st respondent had knowledge of the Will and ought to have obtained probate immediately is itself a matter requiring proof. The mere assertion that the 1st respondent was in possession of the Will or had knowledge of it cannot, without evidence, establish the date on which the right to apply under Article 137 accrued. The grounds raised by the applicant involved disputed questions of fact and mixed of questions of law and fact, which require adjudication after the parties are afforded an opportunity to lead evidence. Consequently, the applicant has failed to make out a case for rejection of the plaint/ petition under Order VII Rule 7 CPC.

13. Accordingly, application No.707 of 2026 is dismissed. All contentions raised by the applicant and the 1st respondent are left open to be agitated in the testamentary original suit. There shall be no order as to cost.

21.08.2026
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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.GOVINDARAJAN THILAKAVADI J.

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AND
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**21.08.2026
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