



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**CRP No. 4871 of 2026
and CMP No.21289 of 2026**

Nisha Agarwal
W/o Harrish Agarwal

Petitioner(s)

Vs

1. E.S.Ramakrishna
S/o Late E.V.Subramanian,
Presently residing at No.1103, Homestead
Lane, Chadds Ford, Pennsylvania,
P.S.19317 USA.

2.E.S.Giribabu,
S/o Late E.V.Subramanian, Presently residing
at No.55-215, Mississauga Valley, Bivd,
Mississauga ON L5A1Y7 Canada.

Petitioners 1 & 2 both Rep. by
Power Agent K.V.Prasad
S/o K.Venkateswaralu, No.1-55 Narasaraju
Agharam, Sathyavedu, Chittoor District,
Andhra Pradesh Pin 517 588.

Meenakshi (Died)
W/o.Late E.Kumarasamy

3.Sujatha,
Wo Sridhar

Respondent(s)

PRAYER

Petition filed under Article 227 of the Constitution of India, to set aside the order and Decree order dated 21.07.2026 in I.A.No.5 of 2026 in O.S.No.163 of 2022 on the file of the XXIV Assistant City Civil Court at Chennai.



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For Petitioner(s): MR. ARL. Sundaresan
Senior Counsel
for Mr. Karthik Lakshmanan AR

For Respondent(s): Mr.S.Sarath Chandran
for Mr.E.Prabhu

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.5 of 2026 in O.S.No.163 of 2022 on the file of XXIV Assistant City Civil Court, Chennai dated 21.07.2026, wherein the application filed by the petitioner/3rd defendant under Order VII Rule 11 CPC, to reject the plaint, came to be dismissed by the Court below.

2.Heard the learned Senior Counsel for the petitioner and the learned counsel appearing on behalf of the respondents

3.This Court carefully considered the submissions made on either side and the materials available on record. This Court also went through the order passed by the Court below.

4.The 1st and 2nd respondents are the plaintiffs in the suit filed in O.S.No.163 of 2022, seeking for the relief of declaration to declare the sale



deed dated 05.11.2018 executed by the 1st defendant in favour of the 2nd defendant as null and void and not binding on the plaintiffs and for a further declaration to declare the sale deed dated 30.01.2020 executed by the 2nd defendant in favour of the 3rd defendant as null and void and not binding on the plaintiffs and for a permanent injunction restraining the 3rd defendant from creating and registering any documents with respect to the subject property in favour of any third parties.

5. During the pendency of the suit, the petitioner/3rd defendant filed IA No.5 of 2026 under Order VII Rule 11 of CPC for rejection of plaint. This application was filed on the ground that the plaintiffs are claiming their right by virtue of a Will dated 09.07.1996 and that this Will is not probated and therefore the suit that has been laid based on the unprobated Will is not maintainable and accordingly, the petitioner sought for the rejection of plaint as barred by law.

6. The petitioner took a further stand that even after the repeal of Section 213 of the Indian Succession Act, 1925, [hereinafter referred to as 'the Act'] the benefit will not enure in favour of the plaintiffs since it will have only a prospective effect and it will not save the invalidity of the Will at the time when the suit was filed.

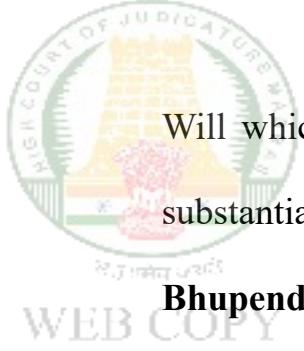
7. The Trial Court while dealing with the application for rejection of plaint



came to a conclusion that the suit is not been barred since Section 213 of the Act has been repealed and that insofar as the genuineness of Will is concerned, it will be decided only in the main suit and accordingly, the Court below dismissed the application by order dated 21.07.2026. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

8.The main ground that was urged by the learned Senior Counsel appearing on behalf of the petitioner is that the repeal of Section 213 of the Act, will not in any manner come to the aid of the plaintiffs since the repealing and amendment Act does not set right the invalidity of the unprobated Will which law prevailed before coming into force of the repealing Act. Apart from that, the plaintiffs have already filed a petition in OP.No.740 of 2021, before this Court seeking for grant of probate and the same was dismissed by an order dated 21.11.2023. Therefore, the Will that is now sought to be relied upon by the plaintiffs is admittedly not probated and hence, the plaintiffs can never be granted the relief sought for in the suit. Consequently the plaint is liable to be rejected.

9.Per contra, the learned counsel appearing on behalf of the 1st and 2nd respondents/plaintiffs submitted that there is no bar in filing the suit since the right has vested in favour of the plaintiffs under Section 211 of the Act, and if at all there is a bar, the bar will confine itself only with respect to the unprobated



Will which cannot be admitted in evidence. The learned counsel in order to substantiate his submissions, relied upon the judgment in **Ramniklal v. Bhupendra Impex Pvt.Ltd.**, reported in **2001 2 Mh.L.J. 536**. The learned counsel also relied upon the judgment in **Binapani Kar Chowdhury v. Sri Satyabrata Basu and Another** reported in **2006 10 SCC 442** and in **Meyyappa Chetty v. Supramanian Chetty** reported in *AIR 1916 Privy Council 202*.

10.The learned counsel further submitted that the repeal of Section 213 of the Act, will enure in favour of the plaintiffs since the provision that has been repealed has removed the discrimination that was prevailing against persons belonging to particular communities and that discrimination cannot be continued after the repeal of the said provision. It is further submitted that Order IX Rule 9 of CPC, will not apply to probate proceedings and even if the earlier petition is dismissed, that will not stand in the way of the plaintiffs.

11.In the considered view of this Court, this Court has to first examine as to whether the suit can be maintained before the Court below based on the unprobated Will dated 09.07.1996, that is relied upon by the plaintiffs.

12.It is not in dispute that the Will dated 09.07.1996 has not been probated. It is contended that if the Will is not probated, the suit itself cannot be



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maintained. This stand taken on the side of the petitioner is not sustainable. It must be kept in mind that by virtue of the Will, on the demise of the testator, the right will vest in favour of the legatee and therefore, there is no bar in filing the suit even with an unprobated Will. The real challenge will arise only when this unprobated Will is attempted to be admitted in evidence before the Court since such unprobated Will is inadmissible in evidence. In the case in hand, the suit has not reached the stage of marking the unprobated Will and the objection has been raised even at the outset by the petitioner/3rd defendant on the ground that the suit itself is not maintainable and there is a bar in law since an unprobated Will is relied upon by the plaintiffs.

13.This Court holds that there is no legal bar in maintaining the suit based on the unprobated Will and a plaint cannot be rejected on this ground. However, when this unprobated Will is sought to be marked, the real challenge will start and that is the appropriate time for the Court below to decide on the effect of the repeal of Section 213 of the Act. It is not necessary to deal with this legal issue now since that occasion will arise only during trial.

14.The Court below while deciding the application has gone into this issue also and concluded that the repeal of Section 213 of the Act will automatically enure in favour of the plaintiffs. The Court below need not have



gone into this issue and the Court could have merely dealt with the maintainability of the suit based on the unprobated Will.

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15.The suit as such is maintainable when filed with an unprobated Will and hence the plaint cannot be rejected on this ground. This Court intentionally did not go into the effect of the repeal of Section 213 of the Act and that issue is left open. As and when the unprobated Will is sought to be marked, this issue can be decided by the Trial Court uninfluenced by the Order passed in IA.No.5 of 2026 and the order passed in the present Civil Revision Petition. Ultimately, the answer given by the Court below regarding the effect of the repeal of Section 213 of the Act, will take the Court to the next stage of proof of Will.

16.In the result, the Civil Revision Petition is disposed of in the above terms. There shall be a direction to the petitioner/3rd defendant to file the written statement before the Court below, within a period of four weeks. No costs. Consequently, connected miscellaneous petition is closed.

18-08-2026

Index:Yes
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes
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N. ANAND VENKATESH., J

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