



TOS.No.46 of 2006 and
CS.No.118 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2022

PRONOUNCED ON : 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.46 of 2006 and
Tr.CS.No.118 of 2008

M.Sadagopan

Plaintiff -TOS
1st Defendant-CS

Vs

1. M.Narashiman

Defendant -TOS &
Plaintiff-CS

2. Ms.Lakshmikantham (deceased)

2nd Defendant-CS

Prayer:- This Testamentary Original Suit has been filed, under Sections 232 and 276 of the Indian Succession Act and Order 25 Rule 5 of the Original Side Rules, for the reliefs as stated therein. This Tr.CS has been filed under Order VII Rule 1 of CPC, for the reliefs, as stated therein.

For Plaintiff : Mr.T.N.Rajagopalan-TOS

For Defendant : Ms.Shyamala-TOS

COMMON JUDGEMENT

1. This Testamentary Original Suit has been filed to grant Letters of Administration, with a copy of the Will annexed, to the Plaintiff, as the son and legatee under the Will of the deceased, having effect limited to the State of Tamil Nadu.



TOS.No.46 of 2006 and
CS.No.118 of 2008

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2. This Tr.CS has been filed, seeking a judgement and decree, directing partition by metes and bounds and separate possession of the Plaintiff's 1/2nd share in the Plaint A, B and C Schedule properties and to allot one such 1/2nd share to the Plaintiff and directing the Defendants to pay future mesne profits to the Plaintiff from the date of the plaint till 26.09.2006 viz. the death of the 2nd Defendant for 1/3rd share of the suit property and thereafter, direct the 2nd Defendant to pay mesne profits till the Plaintiff gets possession of his 1/2nd share of the suit properties.
3. The case of the Plaintiff in TOS, in a nutshell, as set out, in the plaint is that the Plaintiff and the Defendant are brothers and their father D.Madavan Pillai, was ordinarily residing at No.9A, Ishwar Doss Lala Street, Triplicane, Chennai, until his death on 06.01.1978 at the said residence and his wife and parents predeceased him. The deceased father had also two daughters, namely, Lakshmi Kantham and Komala and he got properties under a Will, dated 20.8.1958 and the said Will was probated on 3.12.1965. He executed a Will, dated 21.10.1977, while he was in a sound and disposing state of mind and in the presence of the witnesses, bequeathing the properties to the Plaintiff and Komala, who died on 05.05.1994, as a spinster. In and by the said Will, Lakshmi Kantham was given the entire ground floor of the house at Door No.9A, Ishwar Doss Lala Street, Triplicane, Chennai-5 and Komala was given Door No.10, Nagojee Rao Street, Triplicane, Chennai-5 and the Plaintiff



TOS.No.46 of 2006 and
CS.No.118 of 2008

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was given the entire first floor of the house at Door No.9A, Ishwar Doss Lala Street, Triplicane, Chennai-5. The Defendant was leading a wasteful life and he was separated from the family on 03.01.1971 and he had accepted Rs.10,000/- in cash on 10.07.1976 in full quit and discharge of all his claims. The suit in OS.No.1952 of 2005 was filed by the Defendant for partition. Komala died on 5.5.1994 as a spinster leaving all her assets to the Plaintiff. The whereabouts of the attesting witnesses D.Perumal and P.Krishnaswamy Chetty are not known. But, another attesting witness Arugadoss has affirmed the execution of the Will. Hence, the Plaintiff is alone entitled to the properties bequeathed under the Will. The Testator has not made any appointment of executor of the said Will. The amount of assets, which is likely to come into the hands of the Plaintiff does not exceed in the aggregate the sum of Rs.10,00,000/-- and the net amount of the said assets, after deducing all the items, which the Plaintiff, is by law allowed to deduct, is only of the value of Rs.9,90,000/-. The Plaintiff has impleaded the only next of kin or other persons interested as the Defendant. There is no next of kin or other persons interested to be impleaded. Since the original Will was misplaced, a copy of the same has been filed. The Plaintiff undertakes to duly administer the property and the credits of the said Testator, in any way concerning his Will, by paying first his debts and then, the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit



TOS.No.46 of 2006 and
CS.No.118 of 2008

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the same in the Court, within six months from the date of grant of Letters of Administration, with the Will annexed to the Plaintiff and also render a true account of the said property and credits within one year from the said date. No application has been made to any District Court or delegate or any other High Court for probate or any Will of the said deceased or Letters of Administration with or without the Will annexed to his property and credits. Hence, this Testamentary Original Suit suit has been filed, seeking the reliefs, as stated above.

4. The case of the Defendant, in TOS, in a nutshell, as set out in the written statement is that the alleged Will is a forged and fabricated one. His deceased father ever executed a Will in respect of the suit properties. If really he had executed any Will, he would have executed the same in his own hand writing. In the alleged Will, the date and month were inserted and written in ink on the 1st as well as 2nd page. The suit is bad for non joinder of necessary parties. As per the judgement and decree made in OS.No.15766 of 1996, the Defendant is entitled to a share in the suit properties. The Defendant is married and well educated. The TOS is a counter blast to the suit for partition filed by the Defendant in OS.No.1952 of 2005. The averment that Komala died, leaving all her assets to the Plaintiff and he and Lakshmi Kantham alone are entitled to the properties is false. The Defendant as Class II heir is entitled to a share in all her immovable properties. The Defendant issued a notice



TOS.No.46 of 2006 and
CS.No.118 of 2008

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dated 26.06.2000 to the Plaintiff, demanding partition and filed a suit for partition in March 2005. The attesting witnesses are fictitious persons. The alleged Will is false and fictitious and does not exist. In such circumstances, the TOS is liable to be dismissed.

5. The case of the Plaintiff in the Tr.CS, in a nutshell, as set out, in the plaint is that the Plaintiff, the 1st Defendant and the 2nd Defendant are the sons and daughter of Late D.Madhavan Pillai. The grandfather of the Plaintiff M.S.Damodaran Pillai possessed vast properties and he died on 05.02.1965 and his legal heirs by partition and release, dated 27.2.1967, divided the properties amongst them. The suit properties were allotted to the father of the Plaintiff. The mother of the Plaintiff was possessed of nearly 100 sovereigns of jewels at the time of her death. The father of the Plaintiff died on 06.01.1978 and his mother died on 21.02.1972, leaving behind her the Plaintiff and the Defendants 1 and 2 and another daughter M.Komala, as their legal heirs. Komala died as a spinster on 5.5.1994. Thus, The Plaintiff is entitled to 1/3rd share in the suit properties. The Defendants 1 and 2 are enjoying the rental income after the demise of their father and they are not giving any share to the Plaintiff. The 2nd Defendant died as a spinster on 26.09.2006, leaving behind the Plaintiff and the 1st Defendant as her legal heirs. Thus, the Plaintiff is entitled to 1/2nd share in the suit properties. In such circumstances, the Tr.CS has been filed, seeking the reliefs, as stated above.



TOS.No.46 of 2006 and
CS.No.118 of 2008

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6. The case of the Defendants, in the Tr.CS, in a nutshell, as set out in the written statement filed by the 1st Defendant, is that the relationship between the parties is admitted. The suit properties are the absolute properties of D.Madhavan Pillai by way of partition. His mother did not possess 100 sovereigns of jewels. The Plaintiff is not in joint possession of the suit properties. As per the receipt dated 10.7.1976, the Plaintiff got separated from the family in 1971. To the notice dated 7.4.1975 issued by the Plaintiff, a reply dated 16.4.1975 was sent. Again, to the notice dated 12.2.1976 issued by the Plaintiff, a reply dated 13.3.1976 was sent. D.Madhavan Pillai executed a Will dated 21.10.1977, leaving his properties to the Defendants and Komala. The Plaintiff is not entitled to 1/3rd share in the suit properties. The Plaintiff is aware of the alleged Will. The Defendants alone are entitled to the suit A and B Schedule properties and there is no item of jewellery. The suit has not been properly valued and there is no cause of action. In such circumstances, the Tr.CS is liable to be dismissed.

7. On the pleadings of the parties, in TOS, the following issues were framed:-

- (1) Whether the Letters of Administration on the alleged second copy of the original Will of D.Madhavan Pillai is maintainable?
- (2) Whether the Will dated 21.10.1977 is true and genuine and whether it was duly executed and validly attested?
- (3) Whether the petition is hit by limitation?
- (4) To what relief, the Plaintiff is entitled?

8. On the pleadings of the parties, in Tr.CS, the following issues were framed:-



TOS.No.46 of 2006 and
CS.No.118 of 2008

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(1)Whether the Plaintiff proves that he is entitled for 1/3rd share in the suit Schedule properties A, B and C, as prayed for?

(2)Whether the Defendants prove that in view of issuance of receipt by acknowledging the receipt of Rs.10,000/- on 107..1976 by the Plaintiff, who also acknowledged that he has no claim over the suit Schedule properties and also executed the draft release deed and as such the suit is to be dismissed?

(3)Whether the Plaintiff is entitled to mesne profits as prayed for?

(4)Whether the Court fee paid is correct?

(5)Whether there is any cause of action for the suit?

(6)To what relief the Plaintiff is entitled?

9. The Plaintiff in TOS is the 1st Defendant in the Tr.CS. The sole Defendant in TOS is the Plaintiff in Tr.CS. A common trial was conducted. The Plaintiff in TOS was examined as PW.1 and one of the attesting witnesses to the Will, D.Arugadoss was examined as PW.2. The Defendant in TOS was examined as DW.1. In TOS, Ex.P1 to Ex.P8 were marked and Ex.D1 to Ex.D5 were marked. In Tr.CS, Ex.P1 to Ex.P18 were marked and Ex.D1 to Ex.D5 were marked.

10.This Court heard the submissions of the learned counsel on either side in both TOS and Tr.CS.

11.TOS.No.46 of 2006:-

12.The learned counsel for the Plaintiff has submitted that he and the Defendant are the sons of Madhavan Pillai. Madhavan Pillai bequeathed the properties under a Will, dated 20.8.1958 and that Will was probated on 3.12.1965.



TOS.No.46 of 2006 and
CS.No.118 of 2008

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Madhavan Pillai died on 6.1.1978, leaving behind his daughters, Lakshmi Kantham and Komala and two sons, Narashiman and Sadagopan. Madhavan Pillai executed a Will on 21.10.1977 and in that Will, Narasimhan was not allotted any share because he is leading a wasteful life. While he was executing the Will, he was in a sound and disposing state of mind. The Will was proved by him by examining the attesting witness, PW.2. Hence, he prays for allowing this TOS.

13.The learned counsel for the Defendant would submit that the suit properties were allotted to Madhavan Pillai and he was in absolute possession and enjoyment of the properties. Madhavan Pillai never executed a Will in respect of the properties. The Will was fabricated by the Plaintiff and his sisters. No executor is appointed in the Will and the Will was not registered. There are so many corrections in the Will and proper explanation was not given. The reason stated by him that the original Will was misplaced is not acceptable. The original copy of the Will is not filed. The Will is not proved beyond reasonable doubts. The attestors are fictitious persons. The 3rd attesting witness's signature and address were inserted subsequently. The will is not a genuine one.

14.The learned counsel for the Defendant has relied on the following decisions:-

- i. 2001 7 SCC 503 (N.Kamalam Vs. Ayyasamy), wherein it was held as under:-

“3. Turning on to the former expression onus probandi, it is now a



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fairly well-settled principle that the same lies in every case upon the party propounding the will and may satisfy the court's conscience that the instrument as propounded is the last will of a free and capable testator, meaning thereby obviously, that the testator at the time when he subscribed his signature on to the will had a sound and disposing state of mind and memory and ordinarily, however, the onus is discharged as regards the due execution of the will if the propounder leads evidence to show that the will bears the signature and mark of the testator and that the will is duly attested. This attestation however, shall have to be in accordance with Section 68 of the Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so however, in the event of there being an attesting witness alive and capable of giving the evidence. The law is also equally well settled that in the event of there being circumstances surrounding the execution of the will shrouded in suspicion, it is the duty paramount on the part of the propounder to remove that suspicion by leading satisfactory evidence.”

- ii. 2007 7 SCC 225 (Apoline D'Souza Vs. John D'Souza), wherein it was held as under:-

“13. Section 68 of the Evidence Act, 1872 provides for the mode and manner in which execution of the will is to be proved. Proof of attestation of the will is a mandatory requirement. Attestation is sought to be proved by PW 2 only. Both the daughters of the testatrix were nuns. No property, therefore, could be bequeathed in their favour. In fact one of them had expired long back. Relation of the testatrix with the respondent admittedly was very cordial. The appellant before us has not been able to prove that she had been staying with the testatrix since 1986 and only on that account she was made a beneficiary thereof. The will was full of suspicious circumstances. PW 2 categorically stated that the will was drafted before her coming to the residence of the testatrix and she had only proved her signature as a witness to the execution of the will but the document was a handwritten one. The original will is typed in Kannada, although the blanks were filled up with English letters. There is no evidence to show that the contents of the will were read over and explained to the testatrix. PW 2 was not known to her. Why was she called and who called her to attest the will is shrouded in mystery. Her evidence is not at all satisfactory in regard to the proper



TOS.No.46 of 2006 and
CS.No.118 of 2008

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frame of mind of the testatrix. There were several cuttings and overwritings also in the will.

.....

20. The ratio of the said decision does not assist the appellant, as the mode and manner of proof of due execution of a will indisputably will depend upon the facts and circumstances of each case. It is for the propounder of the will to remove the suspicious circumstances, which has not been done in this case.”

- iii. 2007 5 CTC 513 (L.Bakthavatsalam Vs. R.Alagiriswamy), wherein it was held as under:-

“47. It is true that Section 68 of the Indian Evidence Act applies to cases where the attesting witnesses are alive and Section 69 applies to cases where no attesting witnesses are alive. But the question to be considered in these cases is that even if Section 69 is applicable, it must be proved that the attestation of one of the attesting witnesses at least is in his handwriting and that the signature of the person executing the document is proved to be in his handwriting. In the absence of Original Will produced before the Court and in the absence of any such evidence as required under Section 69 of the Indian Evidence Act, except the evidence of the attesting witness Venkatasamy Naidu in Section 145, Cr.P.C. proceedings which was marked as Ex.B. 7, it is patently clear that there is no compliance of the requirements under Section 68 or 69 of the Indian Evidence Act on the facts of the present case. While so, it is not known as to how it is relevant to consider the credibility of the attesting witness, when the requirement of law in respect of proof of execution of the Will requires the evidence of attesting witness to show that the Testator was in a sound state of mind and the Testator has seen the attesting witnesses, who have signed in the presence of the Testator as required under Section 63(c) of the Indian Succession Act and not the credibility of the attesting witnesses. Therefore, the conclusion arrived at by the learned First Appellate Judge as if the attesting witnesses of Ex.B. 10 are having high credibility and therefore, there is no reason to disbelieve them, has absolutely no meaning.

58. Applying the provisions of the said Section, I am not able to appreciate as to how Ex.B. 10 being the registration copy of the Will can be allowed to be relied upon as a secondary evidence, when it is stated in the plaint itself in the present Suit, O.S. No. 89 of 1983 that the Original Will was with the Executor, who was also made as a



TOS.No.46 of 2006 and
CS.No.118 of 2008

WEB COPY

party, viz., 12th defendant who died during the pendency of the suit. But, till the date of his death, which is stated to be in 1990, the plaintiff has not taken any steps to direct him to produce the Original Will. Even after his death, only summons was issued to his son-Venkatramani and no further steps have been taken for the production of the Will. As I have stated earlier, even in the Suit filed by Mrs. Krishnammal in O.S. No. 71 of 1958, it was specifically stated in the Plaint that the Registration Copy of the Will was filed and the Original Will would be produced later. Strangely, in Section 145, Cr.P.C. proceedings marked as Ex.B. 2, the Will is stated to have been marked as Ex.P. 68, whereas on a reading of the entire Ex.B. 2 order, one cannot find as to whether Ex.P. 68 marked in that proceedings was Original Will or not. It is not known as to why the plaintiff has not taken any steps to summon the records in the said Criminal proceedings. All these things would show that it is not the case of the plaintiff that Will was lost or destroyed or unable to be produced for any reasonable cause. On the other hand, there is contradiction in evidence of Venkatasamy Naidu, given in the Criminal Court, the deposition of which was marked as Ex.B. 7 and the pleadings by defendants 1 to 3 in the present Suit, viz., O.S. No. 89 of 1983 about the place of execution of the Will. While the endorsement on Ex.B. 10 shows that it was executed in the place of Ammani Ammal, the evidence of Venkadasamy Naidu in the criminal proceedings shows that it was in the house of R.V. Rangasamy Naidu. It is unimpeachable and almost acceptable position that R.V. Rangasamy Naidu was not keeping in good health. All these factual position create a suspicion on the validity of the Will certainly necessitating or imposing a heavy onus on the plaintiff to prove the genuineness of the same. The legal position regarding the removal of suspicion on the Will is laid down by the Supreme Court in H. Venkatachala v. B.S. Thimmajamma, AIR 1959 SC 443, which is reiterated by the Apex Court in Rani Purnima Debi and another v. Kumar Khagendra Narayan Deb and another, AIR 1962 SC 567, in the following words:

“5..... The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the Will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be



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TOS.No.46 of 2006 and
CS.No.118 of 2008

completely removed before the document was accepted as the last Will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the Will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the Will might be unnatural and might cut off wholly or in part near relations.”

Therefore, in fact, the Trial Court has considered all these aspects and came to the conclusion that the Will has not been proved in the manner known to law. A reversal finding by the First Appellate Court for the above said reasons are not sustainable in law. In view of the same, there is no difficulty to come to the conclusion that the finding arrived at by the learned First Appellate Judge in holding that the Will of R.V. Rangasamy Naidu dated 10.5.1955 stands proved cannot be accepted.

- iv. 2009 3 CTC 503 (P.R.Vijayarangam Vs. P.R.Ramanujam), wherein it was held as under:-

“19. It is in evidence that the testatrix was afflicted by mortal disease viz., cancer. To quell the rithing pain on account of cancer attack, seductives would have been freely used. But, it is seen that the plaintiff, who would contend during the course of evidence that the Doctor who attended the testatrix issued a Medical Certificate to establish her mental condition, has not produced any document from the Doctor nor had he examined the Doctor to establish the sound and mental status of the testatrix. The predominant role of the propounder of the Will not only in the matter of preparation of the Will but also in the matter of execution and registration of the Will throws doubt on the execution of the Will with her free will and volition. The sound and disposing state of mind in such a volatile health profile of the testatrix is found to be highly suspicious. No reason was assigned for completely disinheriting the other brother of the testatrix. In the above facts and circumstances, the aforesaid ratio does not come to the rescue of the plaintiff. “

- v. 2009 6 CTC 34 (Valliammal Vs. Lakshmiammal), wherein it was held as under:-



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“41. Hence, in these circumstances, it cannot be held that Ex.B2, the “Will” was proved as per law. The perusal of the judgement of the Trial Court, to say the least, is far from satisfactory as without adverting to the aforesaid serious lacuna in the evidence relating to proving of the Will, it held as though the Will was proved. The Trial Court was expected to apply its mind on the suspicious circumstances as highlighted supra, thereat the learned Judge should have looked for evidence, which are capable of dispelling such suspicions. However, the Trial Court resorted to the dubious approach of blindly believing the version of D.Ws.1 and 2 coupled with the version of DW3 and simply recorded the finding in favour of DW3. As such, the findings of the Trial Court relating to the validity of Ex.B2 is liable to be set aside and accordingly, the same is set aside.”

15.This Court considered the said submissions of the learned counsel on either side and also perused the materials available on record.

16.Issues Nos.1 and 2:-

17.PW.1 has deposed that Ex.P1 was executed by Madhavan Pillai and it contains the original signatures of the Testator as well as the witnesses. The signature of the Testator found in Ex.P1 is his father's signature and three witnesses have signed in the Will.

18.PW.2 has deposed that he is one of the attesting witnesses to the Will executed by Madhavan Pillai. On 21.10.1977 he was present with D.Perumal and Krishnasamy Chetty, at the house of the Testator Madhavan Pillai. Madhavan Pillai signed in the Will and another copy of the Will. Later on, Perumal and Krishnasamy Chetty subscribed the signatures at the foot of the testamentary papers. Later on, Perumal, Krishnasamy Chetty and he subscribed the signatures at the foot of both the testamentary papers. At the



TOS.No.46 of 2006 and
CS.No.118 of 2008

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time of executing the Will, Madhavan Pillai was in a sound and disposing state of mind and memory and understanding. In his cross, he has deposed that Madhavan Pillai had read out the Will which was with him and he signed the Will first in their presence and then he requested them to sign as witnesses in the Will. Signing formalities and everything were over by 15 minutes.

19.DW.1 has deposed that Madhavan Pillai ever executed a Will in respect of the properties. Ex.A1 has not been executed by Madhavan Pillai and it is a forged and fabricated one. If really his father executed a Will, he would have executed the same in his own handwriting and appointed an executor and he would have registered the same. The Will is not a true and genuine one. He did not find Arugadoss and no such person was living. The Will is not a genuine one and was not executed by his father.

20. A perusal of Ex.P1 reveals that the date mentioned in that Will is 21st October 1977. At the end of the Will, one signature found is that of Madhavan Pillai and at the bottom, three witnesses have signed. The 3rd witness, Arugadoss's name is mentioned. Arugadoss, in his evidence, has deposed that after the Will was prepared, Madhavan Pillai had signed and later on, all these three had signed in that Will and at the time of executing the Will, Madhavan Pillai was in a sound and disposing state of mind.

21.To prove a Will, one attesting witness is enough. At the same time,



TOS.No.46 of 2006 and
CS.No.118 of 2008

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Narashiman has deposed that the Will is not a genuine one and it was fabricated by the Plaintiff and his sisters. To prove his contention, he has not filed any document and in his cross, nothing is extracted from PW.1 that the Will is not a genuine one. So, PW.1 examined himself and proved the Will.

22.It is well settled law that the Wills need not be registered. In this case, PW.1 has proved his contention by examining himself and also one of the attesting witnesses and marking the documents. So, it is clear that the Will was executed by Madhavan Pillai on 21.10.1977 and it is proved by the Plaintiff in this case. Hence, issues nos.1 and 2 are answered in favour of the Plaintiff.

23.Issue No.(3):-

24.In 2016 1 CTC 257 (S.Vatsala Vs. K.S.Mohan), it was held as under:-

“36..... More over, if the execution of the Will is proved, the delay in taking steps to probate the Will, will not loom large, since Order XXV, Rule 9 of Madras High Court Original Side Rules has not prescribed any period of limitation and probably, it aims to give explanation alone. Though delay may cause suspicion about the Will, it cannot be held that the application is barred by limitation under Article 137 as it may not be possible to find out as to when the right to apply accrued. Delay in taking steps may be one of the circumstances to be considered while determining the genuineness of the Will.”

In view of the above said decision and also the settled legal position, this case is not hit by limitation. Hence, the issue no. (3) is answered in favour of the Plaintiff.

25.Issue (4):- The Plaintiff is entitled for the relief, as prayed for.

26.In fine, this Testamentary Original Suit is allowed, as prayed for and Letters



TOS.No.46 of 2006 and
CS.No.118 of 2008

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of Administration is ordered to be issued in favour of the Plaintiff in TOS. The Plaintiffs is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The Plaintiff is directed to take inventory of the assets of the Testator within six months from today and is also directed to render true and due accounts of the properties and credits once a year. The Plaintiff is directed to execute a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.), High Court, Madras-104.

27.Tr.CS.No.118 of 2008

28.The learned counsel for the Plaintiff has submitted that Madhavan Pillai is his father and the 1st Defendant, Komala and Lakshmi Kantham are his brother and sisters. His grandfather Damodharan Pillai allotted the suit properties to his father and he was in possession and enjoyment of the property. Madhavan Pillai died in 1978. Komala died in 1994. Lakshmi Kantham also died in 2006. Since the properties are ancestral properties, he is also in joint possession. Therefore, he is entitled to 1/2nd share in the suit property.

29.The learned counsel for the Defendant has submitted that his grand father Damodharan Pillai executed a Will in 1958 and it was probated. Therefore, the properties bequeathed to Madhavan Pillai became the absolute properties of Madhavan Pillai. Madhavan Pillai executed a Will on 21.12.1977 and bequeathed the properties to this Defendant and his two daughters. The



TOS.No.46 of 2006 and
CS.No.118 of 2008

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Plaintiff was a wayward son. Therefore, his father gave him a final settlement of Rs.10,000/- on 10.7.1976 and the Plaintiff acknowledged it and he also gave a receipt. Therefore, the Plaintiff is not entitled to any share in the property.

30.This Court considered the said submissions of the learned counsel on either side, including the materials available on record.

31.Issues Nos.1 and 2:-

32.PW.1 has deposed that his grand father Damodharan Pillai possessed immovable properties and the suit property was allotted to his father and he was in absolute possession and enjoyment of the same. His father died in 1978 and he is in joint possession of the property with the Defendant. His sister Komala died as a spinster on 5.5.1994 and another sister Lakshmi Kantham died in 2006. He issued a legal notice on 26.06.2000. He has further deposed that his father used to obtain his signature in blank papers and blank stamp papers. So this was utilised by the Defendant to grab the property. So the receipt dated 10.7.1976 is such nature of the document. The Will dated 21.10.1977 is not a genuine one and it is not a registered one. It had no evidentiary value.

33.DW.1 has deposed that his grand father Damodharan Pillai possessed vast properties and under the Will, it was allotted to Madhavan Pillai. Therefore, the properties bequeathed to Madhavan Pillai became his absolute property.



TOS.No.46 of 2006 and
CS.No.118 of 2008

WEB COPY

It was acknowledged by the Plaintiff and he issued a receipt dated 10.7.1976.

He has further deposed that because of his violent behaviour, he left the home on his own in 1971. The Plaintiff signed a receipt dated 10.7.1976 and gave up all his relationship with any member of the family. The Plaintiff has been ousted from the family. So his claim is not at all sustainable. He has further deposed that his father executed a Will dated 21.10.1977, leaving his properties to the Defendant and other two daughters. The Plaintiff suppressed the facts.

34.In TOS.No.46 of 2006, this Court has decided that the Will is a genuine one.

On a perusal of the Will, it is clearly mentioned as, “I had one son M.Narashiman who had been leading a wasteful life and proving dangerous to remain in the family. He got separated from the family on 3.1.1971 under painful circumstances referred to in detail in my letter dated 16.4.1975 to M.Narashiman. However, he was given Rs.10,000/- in cash on 10.7.1976 in full quit and full discharge of all claims, if any. My two daughters contributed Rs.5,000/- each to this payment. He shall here after have no rights or interests in any of these properties.”

35.A perusal of the receipt, Ex.D5 reveals that in the same, it is mentioned as,

“(a) I have perused and understood the contents of Will dated 20.8.1958 executed by my paternal grandfather Mr.M.S.Damodaran Pillai, duly probated by order dated 3.12.1965 in OP.No.265 of 1965, High Court, Madras. (b) I got



TOS.No.46 of 2006 and
CS.No.118 of 2008

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separated in January 1971 and since then I had no connection with any member of the family. In June, 1976, I approached my father to view my present situation sympathetically and give me Rupees ten thousand, which he has paid and which I have received in the presence of witnesses, who have signed herein: (c) I declare that I have no claim to any of the properties-immovable and movable in the possession and power of my father, including the assets of my mother and I have no more personal or property relationship with any member of the family in any shape, form or manner.”

36.In his letter, he himself stated that he got separated from the family in January 1971. In cross, he admitted the signature. He further deposed that “I have received Rs.10,000/- and signed it. The Defendant further admitted in his cross that after 1971, I did not live with the family. So it is clear that he himself got separated from the family.

37.In TOS.No.46 of 2006, this Court held that the Will is true and a genuine one. In that Will, no properties were allotted to this Plaintiff. Further, for many years, he is not living with his family member. Therefore, he is not in joint possession and enjoyment of the property.

38.Regarding the jewels, he has not given any clear particulars and it is not proved by oral and documentary evidence. Therefore, he is not entitled to any share in the A, B, C- Schedule properties. Hence, issue no.1 is decided against the Plaintiff. Further, the receipt dated 16.7.1976 is also admitted.



TOS.No.46 of 2006 and
CS.No.118 of 2008

Therefore, the Issue No.2 is also decided against the Plaintiff.

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39.Issue No.3:- Issues Nos.1 and 2 are decided against the Plaintiff.

Therefore, this issue does not arise.

40.Issue No.4:- This Court has come to the conclusion that the Will has been proved. Therefore, the Plaintiff is not entitled to claim partition. Under the above said circumstances, the question of court fee need not be decided.

41.Issue No.5:- Since this Court has decided that the Will dated 21.10.1977 has been proved in TOS, the question of partition does not arise. Therefore, this Court comes to the conclusion that there is no cause of action in Tr.CS.

42.Issue No.6:- The Plaintiff is not entitled for any relief.

43.In fine, this Tr.CS is dismissed with costs.

08.07.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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TOS.No.46 of 2006 and
CS.No.118 of 2008

A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
TOS.No.46 of 2006 and
CS.No.118 of 2008

08.07.2022