



WEB COPY



1

TOS.No.28 of 2006 & CS.No.1144 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :03.08.2023

PRONOUNCED ON :22.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

TOS.No.28 of 2006
and CS.No.1144 of 2009

- | | |
|------------------------|--|
| 1. S.Manoharan | ...Plaintiff-TOS.28/2006
D1-CS.1144 /2009 |
| ... Vs.... | |
| 1. C.S.Rajasekaran | ...Plaintiff-CS.28/2006
Defendant-TOS.28/2006 |
| 2. L.Vijaya (Deceased) | |
| 3. M.Selvi | ...Defendants-CS.1144/2009 |

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 relief as stated therein. This Civil Suit has been filed, under Order VII Rule 1 of CPC, for the relief as stated therein.

For Plaintiff : Mr.R.Balachandran -TOS.28/2006
M/s.S.Sujatha-CS.1144/2009

For Defendants : Mr.R.Balachandran-DD1 and 2-CS.1144/2009
M/s.S.Sujatha-Defendant-TOS.28/2006

**COMMON JUDGMENT**

WEB COPY

This Testamentary Original Suit has been filed to grant Letters of Administration with the Will annexed to the Plaintiff as the Legatee under the Will of the deceased P.Srinivasan, having effect limited to the State of Tamil Nadu.

2. This Civil Suit has been filed, seeking a judgement and decree, for the following reliefs:-

- (a) For Permanent injunction, restraining the Defendants from alienating or encumbering the suit property.
- (b) For Partition and separate possession of the suit property by metes and bounds of 1/3 share each.
- (c) Costs.

3. The plaintiff in the TOS is the younger brother of the plaintiff in the CS who are vice versa contesting the both suit for their relief and the 2nd defendant in the civil suit is their sister and the 3rd defendant in the civil suit is legal heir of 2nd defendant who has been impleaded as party since 2nd defendant died and the wife of the plaintiff in TOS.



WEB COPY

4.The case of the Plaintiff in TOS, is as follows:-

(i) The deceased Testator, P.Srinivasan is the father of the Plaintiff and the Defendants. The 2nd Defendant has filed a consent affidavit. The Testator died on 03.10.2002 at his ordinary residence at No.1/8, Seshadripuram Second Cross Street, Velachery, Chennai 600042. Another son of the Testator, namely, Sukumaran died as a bachelor in 1984. The interested next of kin have been impleaded as the Defendants 1 and 2. The Testator performed the marriages of all the three children. The wife of the Plaintiff, namely, Latha died on 17.08.1985. The 3rd Defendant is the daughter of the 2nd Defendant and she is the second wife of the Plaintiff. Out of the wedlock with Selvi, the Plaintiff had two children, namely, Nirmala and Rajesh. The 1st Defendant after his marriage in 1979 disowned his biological parents and he was adopted by one Sivam as his son and the same was published in the Gazette Notification, dated 19.02.1983, in Part IV Section 4 of Tamil Nadu Government Gazette. The Testator purchased the properties in the name of his wife Padmavathi for her benefit. The said Padmavathi predeceased the Testator on 05.01.2001. The Plaintiff alone took care of the Testator. The Last rites and



ceremonies for the Testator were performed by the Plaintiff.

WEB COPY

(ii) The Testator executed a registered Will dated 07.06.2002 at Jeyamkondam, in favour of the Plaintiff, in the presence of the witnesses, P.Dhakshinamoorthy and Chandrasekar, whose names appear at the foot of the Will and in the document before the Registrar Office. The Testator did not appoint any Executor for the Will. Out of the Annexure A properties, two of the properties, which are valued as Rs.10,00,000/- which are lying within the jurisdiction of Corporation of Chennai. The other three properties are lying out side the jurisdiction of Corporation of Chennai, which are valued at Rs. 48,000/-. The 1st Defendant issued a notice dated 01.06.2003 for partition of the properties situated within the Corporation of Chennai. The Plaintiff gave a reply.

(iii) The amount of assets, which is likely come into the hands of the Plaintiff does not exceed in the aggregate sum of Rs.10,59,140.48/- 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.10,59,140.48/-. The Plaintiff undertakes to duly administer the property and the credits of the said deceased Testator, in any way concerning his Will, by paying first his debts and then, the legacies therein



WEB COPY

bequeathed so far as the assets Will extend and to make a full and true inventory thereof and exhibit the same in the Court, within six months from the date of grant of Probate, with the Will annexed to the Plaintiff and also to 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 to 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 properties and credits. Hence, this Testamentary Original Suit has been filed, seeking the reliefs, as stated above.

5.The case of the Defendant in TOS, as set out in the written statement, is as follows:-

(i) The Plaintiff is his younger brother and Vijaya is their sister and she was originally arrayed as the 2nd Respondent in the OP. She was driven away from the house property and she made criminal complaints to many authorities against him. Hence, it is highly impossible for the Plaintiff to obtain a consent affidavit from her. The alleged Will is not genuine. The deceased Testator was ordinarily residing at Chennai. Whereas the alleged Will was executed at Jayamkondam. There is



WEB COPY

suspicious circumstances, coercion and undue influence on the part of the Plaintiff. The Testator died on 03.10.2002, four months, after the execution of the alleged Will. The property listed as item no.1 in the Will was purchased in the name of Padmavathy out of the lands sold by the maternal father late Narayanasamy Pillai, the grand father of the parties, in Villupuram District during the year 1974-76. Padmavathi has also constructed a house in the said plot by disposing of her father Narayanasamy Pillai's 2.5 acres of land, which is also in Villupuram District. There are no details of the source of funds for the purchase of the property listed in item no.2. Due to difference of opinion, the defendant left the house and is living separately. He was frequently visiting his mother and attending on her requirements till her last breath. The Defendant only performed the last rites of their mother. The Plaintiff took possession of all the original title deeds and other documents. It was the salary of the defendant which was the main source of income for the family. The Testator had no right or title over the properties of Padmavathy.

(ii) When OS.No.4096 of 2003 was pending, the Plaintiff, in order to defeat the claim of the defendant, filed OP.No.350 of 2005. In



WEB COPY

OS.No.4096 of 2003, a preliminary exparte decree, dated 05.07.2007 has been passed and suppressing the actual stage of the suit, the suit was transferred and renumbered as CS.No.1144 of 2009. The averment that the Defendant was taken in adoption is a story, made out of the publication of the name change of the defendant in the Gazette Notification. The defendant was very much living with his parents and family, emotionally. In such circumstances, the TOS is liable to be dismissed.

6. On the pleading of the TOS, the following issues were framed:

1. *Whether the Will of Late P.Srinivasan dated 07.06.2002 is genuine?*

2. *Whether the plaintiff is entitled to obtain letters of Administration?*

7.The case of the Plaintiff in Civil Suit, is as follows:-

(i) The defendant is none other than the only younger brother of the Plaintiff. The suit property belonged to late S.Padmavathy, wife of the Testator and who is none other than the mother of the Plaintiff and the defendants. Vijaya is not only the sister of the defendant, but also the



WEB COPY

mother-in-law. The suit property was purchased in the name of Padmavathy, out of the lands sold by the maternal father, late Narayanasamy Pillai, the grand father of Plaintiff and defendant in Villupuram District during the year 1974-76. Padmavathi has also constructed a house by disposing of her father Narayanasamy Pillai's 2.5 acres of land, which is also in Villupuram District. His father late Srinivasan had no income. The suit property is the absolute property of the mother of the Plaintiff and the defendants. The Plaintiff had performed his last rites of his late mother Padmavathy, who died intestate. Due to difference of opinion, the Plaintiff is living separately. The Plaintiff and the Defendants are equally entitled to 1/3th share in the suit property.

(ii) The defendants took the original sale deeds and other documents. The Defendants are trying to alienate the suit property, showing a registered Will dated 7.6.2002. The alleged Will is null and void. The Plaintiff has caused a notice dated 01.06.2003, calling upon the defendants to partition the suit property. A reply dated 10.06.2003 was sent by the Defendants, for which the Plaintiff has also given a rejoinder dated 16.07.2003 and the Defendants has also given a reply. The defendant is attempting to probate the Will. Hence, the suit has been filed, seeking the



reliefs as stated above.

WEB COPY

8. The case of the Defendant in Civil Suit, as set out in the written statement, is as follows:-

The father of the defendant out of his earning and income from Army Pension and IIT, Chennai purchased the suit properties in the name of his mother ie. Mrs. Padmavathy, for her benefit. The mother of the defendant has no income or property, prior to the purchase of the suit property. She was depending on her husband and the defendant for her survival. After the marriage of the plaintiff Rajasekaran, he disowned his biological parents ie. P.Srinivasan and Padmavathy and was adopted by one Cuddalore Sivam as his son and thereafter, he has changed his name as Cuddalore Sivam Rajasekaran. Vide Ex.P5. The 1st defendant alone maintained his parents and his sister along with brother in law. The 1st defendant's mother predeceased her husband. The 1st defendant's father after death of his wife, executed a registered Will dated 07.06.2002 bequeathing the suit properties in favour of the 1st defendant instructing the 1st defendant that he should maintain the 2nd defendant ie his sister and enjoy the suit schedule properties, absolutely. The filing of the suit for



partition is nothing but to create multiplicity of proceedings intentionally, when the matter is pending before this Court to decide the effect of the said Will. Hence, it is liable to be dismissed.

9. On the pleading of the Civil Suit, the following issues were framed:

- 1. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 2. Whether the plaintiff is entitled for 1/3rd share of the suit property?*
- 3. Whether the suit property is not available for partition?*
- 4. Whether the plaintiff is not at all a legal heir of S.Padmavathi?*

10. On the side of the plaintiff, Ex.P1 to Ex.P22 were marked and the Plaintiff in TOS was examined as PW.1, one Attesting Witness of the Will, Mr.S.Chandrasekar was examined as P.W.2 and one Mr.M.Hari babu was examined as PW.3. On the side of the defendants, Ex.D1 to Ex.D6 were marked and the 1st defendant in TOS and the Plaintiff in Civil Suit was examined as D.W1.

11. Heard both sides and perused the material available on records



in both suits.

WEB COPY

12.The learned counsel for the plaintiff in TOS and 1st defendant in CS would submit that since the plaintiff's father ie. P.Srinivasan, being the Testator of the Will dated 07.06.2002 did not appoint any executor for his Will, the plaintiff herein has filed the said TOS for grant of letters of Administration with the Will annexed. The said Will dated 07.06.2002 was executed by the father of the plaintiff herein before the SRO, Jayamkondam as Document NO.9 of 2002 in Book No.3 in the presence of two witnesses ie. (i) Mr.P. Dhakshinamoorthy S/o. Dharmalingam, resident of Karadikulam, Jayamkondam Taluk and (ii) Mr.Chandrasekar, S/o. G.Somasundaram, No.95, Bazaar Street, Jayankondam.

13. It has been further submitted that the suit schedule properties were purchased out of the plaintiff's father hard earned salary from his Army Pension and Salary from IIT, Chennai in the name of the plaintiff's mother and he was absolutely enjoying the properties. The plaintiff's mother predeceased plaintiff's father on 05.04.2001. The 1st defendant in the Civil suit, being the elder brother of the plaintiff herein, after his



WEB COPY

marriage, disowned his biological parents and was adopted as son of Cuddalore Sivam. In Ex.P5-Gazette Notification, his name has been mentioned as Cuddalore Sivam Rajasekaran. Under such circumstances, the Plaintiff alone took care of the Testator and his Last rites and ceremonies were performed by the Plaintiff herein. The Testator executed a registered Will dated 07.06.2002 at Jeyamkondam, in favour of the Plaintiff, in the presence of the witnesses, P.Dhakshinamoorthy and Chandrasekar. His sister has also given her consent affidavit vide Ex.P4 dated 30.06.2003 in granting letters of Administration for the said Will in favour of the plaintiff herein. Hence, he seeks this Court to grant the letter of Administration with the Will dated 07.06.2002 to the plaintiff in TOS.

14. The learned counsel for plaintiff in C.S.No.1144 of 2009 and 1st defendant in TOS No.28 of 2006 would submit that the plaintiff in TOS No.28 of 2006 being the younger brother of the plaintiff herein, by fraud, undue influence and coercion, has made the said Will dated 07.06.2002 and registered at Jeyamkondam while their father, Testator, Thiru.P.Srinivasan, was ordinarily residing at No.8, Old No.1, Seshadripuram 2nd cross street, Velacherry, Chennai. It would be evident



WEB COPY

on seeing the Ex.D3, wherein L.Vijaya/2nd defendant herein has lodged a complaint addressing to the ADGP, Crime Branch CID, Guindy, Chennai-600 032 stating that S.Manoharan, the plaintiff in TOS, kidnapped her father and got the Ex.P1 executed at Jeyamkondam Registration office using his influence as Police Officer in Jayamkondam.

15.It has been further submitted that while Ex.D1 dated 20.01.2003 is the complaint letter sent by L.Vijaya, addressing to the ADGP, Mylapore, Chennai levelling serious allegations against the Plaintiff in TOS, the consent affidavit dated 30.06.2003 would not have been given by her. In her complaint letter against the plaintiff in TOS, it has been stated that she was driven away from her mother's house and she was staying with C.S.Rajasekaran-plaintiff herein whereby it is evident that she was not in good terms with the Plaintiff in TOS and was away from him during that period she was said to have signed Ex.P4-Consent Affidavit. Hence, Ex.P4 is to be considered as fabricated one for the purpose of the case and is to be rejected and cannot be relied on. Further, it is to be mentioned that the Plaintiff in TOS had not chosen to examine L.Vijaya,- 2nd defendant herein, being his sister, who was said to have signed Ex.P4-



WEB COPY

the consent affidavit and L.Vijaya-2nd defendant herein died on 14.11.2022, after closing of the evidence on the plaintiff's side. Hence, he seeks to dismiss the Testamentary suit filed by the plaintiff in TOS.

16.It has been further submitted by the learned counsel for the plaintiff in Civil Suit that Ex.D2, dated 05.01.2008- a handwritten letter by the 2nd defendant L.Vijaya, would reveal that she was forced by the plaintiff in TOS to sign several documents and some plain papers also.

17. The learned counsel for the plaintiff would further submit that it is not fact that the plaintiff herein severed his relation with the Testator P.Srinivasan and went in adoption to one Cuddalore Sivam showing Ex.P5-Gazett Notification wherein the plaintiff's name has been mentioned as Cuddalore Sivam Rajasekaran. It does not support the theory of adoption and is invalid without submitting any written document and any adoption ceremony under the provisions of Hindu Adoption and Maintenance Act, 1956. Mere altercation between the father and son will never result in severance of father and son relation. Further, Ex.D6-Legal heir certificate issued after the demise of the Testator P. Srinivasan, would



WEB COPY

indicate that the plaintiff herein is the son of P.Srinivasan. It is to be noted that even though the original legal heir certificate is available with the plaintiff in TOS, he had not chosen to file the same fearing his adoption theory will be nullified.

18.It has been further submitted that the suit schedule properties were purchased in the name of mother of the parties. ie. Tmt. S.Padmavathi and not in the name of Father ie.P.Srinivasan. Further, the plaintiff in the TOS has not proved that the Testator P.Srinivasan, father of the parties, has provided funds for purchasing of the suit properties in his wife name ie. Tmt.S.Padmavathi. In view of the above, since the suit schedule properties belonged to S..Padmavathi, mother of the parties, it should be divided equally among the parties. Hence, the plaintiff herein seeks partition and separate possession of the suit property by metes and bounds of 1/3 share each dismissing the Testamentary Original Suit.

Issues Nos.1 & 2 in TOS and Issues Nos.1 to 4 in Civil Suit:

19. On a perusal of the Will dated 07.06.2002 in question, it is seen that while the Testator was residing at Velacherry, in Chennai, the



WEB COPY

said Will dated 07.06.2002 was executed at Jeyamkondam where at that time, the plaintiff in the TOS was working as a Police Officer. While being so, the reasons of executing the Will at Jeyamkondam has not been explained by the plaintiff in TOS while the Testator was residing at Velacherry, Chennai. Further, on perusal of evidence of P.W.2 in TOS, who is one of the attesting witness in the Will, it is seen that the attesting witnesses are not friends and relatives of the Testator. They are also not known to the testator directly and since they were residing at Jeyamkondam, they would be known to the plaintiff in TOS while he was in service at Jeyamkondam. Hence, the execution of Will dated 07.06.2002 creates suspicion. Further, even though Ex.P4-consent affidavit has been filed by L.Vijaya, she has lodged various complaints before the authorities concerned under Exs.D1 to D5 against the plaintiff in TOS. Hence, this also creates suspicion.

20.As regards Ex.P5-Gazette Notificate, it has to be pointed out that merely changing the name as Cuddalore Sivam Rajasekaran, he cannot be considered as an Adopted son of Cuddalore Sivam and other than Gazette Notification, the plaintiff in TOS has not produced any oral and documentary evidence under the Hindu Adoption and Maintenance Act,



WEB COPY

1956. Hence, the plaintiff in the Civil suit cannot be considered as adopted son of Cuddalore Sivam.

21. Admittedly, the suit schedule properties are in the name of the plaintiffs' mother ie.S.Padmavathi. Even though it has been stated by the learned counsel for the plaintiff in the TOS that the suit schedule properties were purchased with the financial assistance of the plaintiff's father, ie. P.Srinivasan, the plaintiff in TOS has miserably failed to prove the same.

22.In view of the aforesaid observations and discussions, it is evident that the suit schedule properties stand in the name of the plaintiffs' mother and hence, after the death of S.Padmavathy, the suit properties devolve on her legal heirs and thus, her husband, sons and daughter are entitled to equal share over the suit schedule properties. Hence, the plaintiff in Civil Suit is entitled for permanent injunction as prayed for and he is also entitled for 1/3rd share of the suit property and the suit property is available for partition. Accordingly, Issue Nos.1, 2 and 3 together are



WEB COPY

answered in favour of the plaintiff in the Civil Suit. While the mother of the plaintiff is the absolute owner of the property, the father of the plaintiff does not have any right to execute the said Will dated 07.06.2002 in favour of his younger son bequeathing all rights, title and interest to him. Hence, the said Will dated 07.06.2002 is considered as invalid. Accordingly, Issue No.1 is answered against the plaintiff in TOS. Further, the plaintiff in TOS is not entitled to grant the letter of Administration with the Will annexed and accordingly, Issue No.2 is answered against the plaintiff in TOS.

23. Since the plaintiff in TOS failed to prove that the plaintiff in the Civil Suit as adopted son of Cuddalore Sivam, considering the Ex.D6-legal heir certificate, it is proved that the plaintiff in C.S is the legal heir of S.Padmavathi. Accordingly, Issue No.4 is answered in favour of the plaintiff in Civil Suit.

24. Under such circumstances, in these cases, the plaintiff and the each defendant in the suit are entitled to equal share ie. $1/3^{\text{rd}}$ share in the suit schedule properties.



WEB COPY



25.In the result, the Civil Suit in C.S. No.1144 of 2009 is decreed as prayed for and as a sequel, the Testamentary Original Suit is dismissed. No costs.

22.11.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm/Lbm

List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – Mr.C.S. Manoharan
2. P.W.2 – Mr. S. Chandrasekar
3. P.W.3 – Mr. M. Haribabu

List of Witnesses Examined on the side of the Defendants:-

- 1.D.W.1 – Mr. C.S. Rajasekaran

List of Exhibits Marked on the side of the Plaintiff/Plaintiffs:-

- 1.Ex.P1 is the Original Registered Will along with English Translations dated 07.06.2002.



WEB COPY

2.Ex.P2 is the Original Death Certificate of P.Srinivasan dated 03.10.2002.

3. Ex.P3 is the Original Death Certificate of P.Padmavathy dated 05.04.2001.

4.Ex.P4 is the Original Consent Affidavit of Vijaya dated 30.06.2003.

5.Ex.P5 is the copy of the Tamil Nadu Government Gazette dated 03.03.1993.

6.Ex.P6 is the Original Sale Deed document bearing No.1234 of 1976 dated 09.06.1976.

7. Ex.P7 is the Original Sale Deed document bearing No.1410 of 1996 dated 23.05.1996.

8. Ex.P8 is the Original Sale Deed document bearing No.6333 of 1983 dated 15.07.1983.

9.Ex.P9 is the Original Sale Deed document bearing No.8349 of 1983 dated 30.09.1983.

10.Ex.P10 is the Original Sale Deed document bearing No.3431 of 1983 dated 24.11.1983.

11.Ex.P11 is the Original Paper Publication dated 25.10.2005.



WEB COPY

12.Ex.P12 is the Original Paper Publication in News Today dated 18.10.2005.

13.Ex.P13 is the Photo copy of the half of the letter.

14. Ex.P14 is the certified copy of the letter.

15. Ex.P15 is the Photocopy of the Aadhar Card (Compared with the Original) (Marked with the consent of the learned counsel for the plaintiff in CS No.1144 of 2009 and Defendant in TOS No.28 of 2006)

16. Ex.P16 is the Photocopy of the Driving License (Compared with the Original) (Marked with the consent of the learned counsel for the plaintiff in CS No.1144 of 2009 and Defendant in TOS No.28 of 2006)

17. Ex.P17 is the Photocopy of the Voter ID.(Compared with the Original) (Marked with the consent of the learned counsel for the plaintiff in CS No.1144 of 2009 and Defendant in TOS No.28 of 2006).

18. Ex.P18 is the Photocopy of the PAN Card (Compared with the Original) (Marked with the consent of the learned counsel for the plaintiff in CS No.1144 of 2009 and Defendant in TOS No.28 of



2006).

WEB COPY

19. Ex.P19 is the signature of the 2nd attesting witness in Ex.P1.
20. Ex.P20 is the Photocopy of the Aadhar Card. (Compared with the original)
21. Ex.P21 is the discharge certificate issued by the Army
22. Ex.P22 is the ID card issued by IIT, Madras.

List of Exhibits Marked on the side of the Defendant/Defendants:-

1. Ex.D1 is the Original Complaint Letter by L.Vijaya to the Additional Director General of Police, Mylapore, Chennai – 600 004 with original Postal Acknowledgment dated 20.01.2003.
- 2.Ex.D2 is the Original Letter written by L.Vijaya to the Plaintiff in TOS No.28 of 2006 dated 05.01.2008.
- 3.Ex.D3 is the Original Complaint Letter by L.Vijaya to the Additional Director General of Police, (Crime Branch CID, Guindy, Chennai with original Postal Acknowledgment card dated 12.06.2009.
- 4.Ex.D4 is the Original Complaint Letter to the Human Rights Commission, Chennai by L. Vijaya with Original Postal Acknowledgment card dated 14.10.2009.
5. Ex.D5 is the Original Complaint by L.Vijaya to the District Collector, Vellore, with Original Postal Acknowledgment card dated 22.10.2009.



6. Ex.D6 is the certified copy of the legal heir certificate of Mr.P.Srinivasan dated 28.04.2003, issued on 01.06.2022.

22.11.2023



WEB COPY



24

TOS.No.28 of 2006 & CS.No.1144 of 2009

A.A.NAKKIRAN, J.

Srem/Lbm

Pre-Delivery Judgement in
TOS.No.28 of 2006
and CS.No.1144 of 2009

22.11.2023