



T.O.S.No.15 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Delivered on : 20.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

T.O.S.No.15 of 2004

and

C.S.No.492 of 2007

T.O.S.No.15 of 2004:

K.Shylaja

...Plaintiff

Vs

1.D.Shanthi
2.K.Kalavathy
3.B.Premela

...Defendants

C.S.No.492 of 2007:

B. Premela

...Plaintiff

Vs

1.D.Kannan
2.D.Shanthi
3.K.Kalavathy
4.S.Geetha

...Defendants



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T.O.S.No.15 of 2004:

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This Testamentary Original Suit filed under Sections 222 and 276 of the Indian Succession Act, XXXIX of 1925 praying,

“that the petitioner may be allowed to prove the Will in common and that Probate thereof, to have effect throughout the whole State of Tamil Nadu may be granted to him with the Will Annexed and the Will describing the 1st item instead of 22 ares it is stated 22 grounds.”

(amended as per order dated 08.09.2003 in A.No.3727 of 2003)

C.S.No.492 of 2007:

This Civil Suit filed under Order 7 Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules praying,

a)for partition and separate possession of the suit schedule properties by metes and bounds by allotting her 6/20 share in Item - I to Item III and by allotting her 1/5 share in Item - IV and Item V of the suit schedule property

b)for the costs of the suit and

c)pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.



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For Plaintiffs : M/s.Pathy and Pathy
in T.O.S.No.15 of 2004
Mr.K.Rajasekaran
in C.S.No.492 of 2007

For Defendants : M/s.Pathy and Pathy
in C.S.No.492 of 2004 for D1

Mr.K.Rajasekaran
in T.O.S.No.15 of 2004 for D3

Mr.Ganesh,
in T.O.S.No.15 of 2004 for D1 & D2
in C.S.No.492 of 2004 for D2 to D4

COMMON JUDGMENT

This Testamentary Original Suit has been filed seeking for the following reliefs:

“that the petitioner may be allowed to prove the Will in common and that Probate thereof, to have effect throughout the whole State of Tamil Nadu may be granted to him with the Will Annexed and the Will describing the 1st item instead of 22 as it is stated 22 grounds.”



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2.The averments found in the Plaint, in brief, are as follows:

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The petitioner is the daughter-in-law and the respondents are daughters of late R.Devarajan, son of P.R.Raghava Naicker, died on 18.12.2001. The writing hereto annexed and marked with letter 'A' is the last Will and testament of the said R.Devarajan and was duly executed by him at Madras on 22.05.1998 in the presence of witnesses. The petitioner is the Executer named in the said Will. The deceased Devarajan died leaving behind the respondents 1 to 5 as his legal heirs and entitled to succeed to his properties according to the Law of succession applicable to the deceased. There are no other legal heirs except the persons stated above entitled to succeed to the estate of the deceased. Further, the petitioner undertakes to duly administer the properties and credits of the said Devarajan and in any way concerning his Will by paying first his debts and then the legacies bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of probate to the petitioner and also to render to this court a true account of the said properties and credits within one year from the said date.



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3. Written statement filed by the defendants 1 and 2 is as follows:

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(a). The defendants 1 and 2 stated that their father never executed any Will alleged and goes without saying that if at all there is a Will dated 22.05.1998, it should be a fabricated one and it should have come into existence by the manipulation by the petitioner and her husband by taking advantage of the situation that their father was living with the petitioner at that time. Their father did not keep good health and very much prone to manipulation and exploitation. Therefore, it is for the plaintiff to prove the Will beyond any reasonable suspicion. The defendants 1 and 2 stated that their father was a magnanimous person, who could not give the entire share in the joint family property and his self acquired property to the plaintiff's husband alone if he had written any Will in a proper frame of mind. Therefore, the Will dated 22.05.1995 is to be disregarded by this Court will adjudicating the issue. The defendants stated that their mother R.Devaki passed away on 05.06.1968 when the 3rd defendant was born. In fact, she developed complication at the time of delivering the husband of the plaintiff in the hospital. Due to that she breathed her last on the day when the plaintiff's husband was born. It is the 1st defendant as the eldest child of R.Devarajan who took care the entire family after the demise of their mother.



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(b).In fact she acted like a mother to her brother and sisters and she even often used to worry as to what would happen to them and their family, if she got married and left the house. Her father R.Devarajan informed her that his sister wanted to marry the 2nd defendant to her son and immediately she accepted the proposal as she know that by marrying her paternal aunty's son, she could continue to live in her home by taking care of her father, brother and sisters. Fortunately, her husband and cousin, her father-in-law and mother-in-law and paternal aunty consented to the 1st defendant's proposal, to remain in her father's house even after her marriage and accordingly the defendant continued to live in her house with her father, spouse and siblings. The plaintiff got married in the year 1975 and even thereafter, the 1st defendant and her two children continued to live in her father's house and only in the year of 1992, she left her father's house to the matrimonial home along with her family members.

(c).In these circumstances, their father would have informed about the Will to the 1st defendant if he had really executed any Will, their father had a soft corner for the 1st defendant as she took care of the entire family after the demise of her mother. Therefore, it is really incomprehensible as to how their father bequeathed the entire property to the plaintiff's husband alone. Hence



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the Will dated 22.05.1998 is a fabricated one and the same should not be relied at all.

3. Written Statement filed by the 3rd defendant is as follows:

(a). The 3rd defendant stated that she is the 5th child of her father Devarajan. The husband of the plaintiff and the defendants 1 and 2 are her brother and sister respectively. There is one more daughter born to her father R. Devarajan and she was not a party in this case. Thus there are 5 children of their parents. The 3rd defendant stated that after the death of her father, the defendants 1 to 3 are in joint possession and enjoyment of all the suit schedule properties. In fact, when her father himself was alive he developed item 2 and 3 of the suit schedule property and constructed 2 apartments in item 2 and 10 apartments in item No.3, excepting the legal heirs of her father, no one has got any right in the suit schedule properties. The 3rd defendant stated that the husband of the plaintiff who is her elder brother who is employed in Singapore and in his absence, she and her other sister alone were taking care of the suit schedule properties which was objected to by the plaintiff and the sister -in- law of the 3rd defendant. To have a cordial atmosphere and to maintain a good relationship with their only brother they have, the 3rd defendant and the other sisters permitted the plaintiff to manage the suit



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schedule properties including collecting rents from the tenants who are induced in Item 1 to 3 of the suit schedule properties. Within a few months, the plaintiff started behaving indifferently and stopped giving the shares to the other sister in the rental income received from the tenants. The 3rd defendant waited for a few months expecting the plaintiff to change her attitude and to give the share to all the sisters including herself in proportionate to their rights.

(b).The 3rd defendant stated that to her shock and surprise, she received notice in O.P.No.354 of 2002 on the file of this Court filed by the plaintiff as if a Will was executed on 22.05.1998 by the 3rd defendant's father and according to the alleged Will, the entire schedule properties were bequeathed to the husband of the plaintiff and the plaintiff was appointed as the executor of the Will and that her father never executed any Will, much less the alleged Will dated 22.05.1998. In fact, the alleged Will shows that the plaintiff herself is one of the attesting witnesses and she is also the executor of the Will. Therefore it is very clear that her brother and his wife fabricated a Will to deny the shares of the 3rd defendant and her sisters in the suit schedule properties. with a malafide intention to grab the entire suit schedule properties. Immediately, they have filed a caveat in O.P.No.554 of 2002



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objecting to the grant of probate and no such Will dated 22.05.1998 as alleged by the plaintiff, was ever executed by her father. In fact, the 3rd defendant's father never executed any will during his life time.

c).The 3rd defendant stated that as already submitted her father died intestate leaving behind the defendants herein, another sister of the defendant and the husband of the plaintiff as legal heirs. Therefore, the alleged will which was sought to be probated by the plaintiff in the Original Petition is nothing but a bogus and fabricated one. Further, even assuming without admitting that there is a Will that is alleged by the plaintiff herein, the signature found in the Will not the signature of her father and it should have been an act of forgery.

d).In fact, the father of the 3rd defendant fell in January 1998 and from that time onwards he was not in a good health and sound mind. The 3rd defendant stated that her father was always affectionate to all his children and he never discriminated anyone. Further during his lifetime, no one know about the alleged Will said to have been executed by the father of the 3rd defendant. Apart from that if at all her father wanted to write a Will, then he could have given properties to all his children. But in the alleged Will, the



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sole beneficiary is the husband of the plaintiff and the plaintiff is also the executor and an attestor of the Will. Therefore, it is crystal clear that the alleged Will is a fabricated one. Further, another reason for rejecting the Will is a bogus one and is that it was said to have been executed on 22.05.1998 and that time, the 3rd defendant's sister Geetha was not at all married. But there was no mention about the same in the Will and there was no property was bequeathed to her. Further, the plaintiff and her husband have not only fabricated the Will but also managed to create a Settlement dated 29.01.1988 , i.e, within four months from the date of the Will in which the property bequeathed in the Will was also found place in the Settlement Deed. In their indecent hastiness in creating the Settlement Deed by exerting and undue influence on the 3rd defendant hapless father, they failed to mention anything about the Will and also the reason for settling the property when it was already bequeathed in the Will which was fabricated on 22 .05.1998. Looking at any angle the alleged Will dated 22.05.1998 is the brain child of the plaintiff and her husband and the 3rd defendant's father has nothing to do with that. Further, her sister Geetha who is a necessary party, was not made as a party in this case and the suit is bad for non joinder of necessary parties.



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4.This Civil Suit has been filed seeking for the following reliefs:

- a)for partition and separate possession of the suit schedule properties by metes and bounds by allotting her 6/20 share in Item - I to Item III and by allotting her 1/5 share in Item - IV and Item V of the suit schedule property
- b)for the costs of the suit and
- c)pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

5.The averments found in the Plaint, in brief, are as follows:

(a)The plaintiff is the 5th child of her father late R.Devarajan. The defendants 1 and 2 to 4 are her brother and sisters, respectively. Thus, they are the five children of their parents R.Devarajan and D.Devaki. The 2nd defendant who is the eldest children got married on 26.01.1975. The 1st defendant is the second child and got married in the year 1990. The 3rd and 4th defendants are twin sisters of the plaintiff and they got married on 19.08.1983 and 07.07.1999, respectively. The plaintiff is the last child and got married on 04.03.1994. All the marriages were celebrated when their father was alive. Out of which items 1 to 3 are joint family properties and items 4 and 5 are self earned properties. After the death of her father on 18.12.2001, the plaintiff and the defendants are in joint possession and enjoyment of all the suit



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schedule properties. In fact when her father himself was alive, he developed items 2 and 3 of the suit schedule properties and constructed 2 apartments in items 2 and 10 apartments in item No.3, excepting the plaintiff and the defendants, no one has got any right in the suit schedule properties. The 1st defendant who is her elder brother is employed in Singapore and in his absence, the plaintiff and defendants 2 to 4 alone were taking care of the suit schedule properties which was objected by the wife of 1st defendant and the sister -in- law of the plaintiff. To have a cordial atmosphere and to maintain a good relationship with their only brother they have, the plaintiff and the defendants 2 to 4, permitted the wife of 1st defendant to manage the suit schedule properties including collecting rents from the tenants who are inducted to items 1 to 3 of the suit schedule properties. Within a few months, the wife of 1st started behaving indifferently and stopped giving the share of the plaintiff and the defendants 1 to 4 in the rental income. The plaintiff waited for a few months expecting the wife of the 1st defendant to give the share to all the sisters in proportionate to their rights.

b).The plaintiff received a notice in O.P.No.554 of 2002 on the file of this Court filed by the wife of the 1st defendant as if a Will was executed on 22.05.1998 by the plaintiff's father and according to the alleged will, the entire schedule properties were bequeathed to the 1st defendant and the 1st



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defendant wife was appointed as the executor of the Will and her father never executed any Will dated 22.05.1998. In fact the alleged Will shows that the 1st defendant's wife is one of the attesting witnesses and she is also the executor of the Will. Therefore, it is very clear that the 1st defendant and his wife fabricated a Will to deny the due shares of the plaintiff and her sisters in the suit schedule properties with a malafide intention to grab the entire suit schedule properties. Therefore, the plaintiff and the defendants 2 and 3 objected to grant the probate and contested the matter. Thereafter, when the 1st defendant visited Chennai from Singapore, the plaintiff and the other sisters took up this matter with him and advised him to settle the matter amicably. But the same was in vain. Hence, the plaintiff was forced to file a suit for partition and separate possession. The plaintiff stated that her father died intestate leaving behind the plaintiff and defendants as his legal heirs. The plaintiff's mother predeceased her father in 1968. Items 1 to 3 of the suit schedule properties are the joint family properties and items 4 and 5 are the self acquired properties of her father.

6. Written Statement filed by the 1st defendant is as follows:

a). The 1st defendant stated that one late Raghava Naicker had acquired immovable properties and the said Raghava Naicker had two sons are,



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Thiruvengadam and R.Devarajan. The said Thirvengadam had two sons, Dr.Chandrasekar and Jayaprakash. The 1st defendant is the only sons of R.Devarajan. The said persons alone constituted the HUF of Raghava Naicker. Item 1 of the Complaint schedule mentioned property originally belonged to the HUF of Raghava Naicker. After demise of Raghava Naicker the properties were in joint possession of the coparceners. The Raghava Naicker pertaining to this property entered into a Deed of Partition dated 15.05.1998 registered as Doc.No.372/1998 registered in the office of the Registrar, Central, Madras. In and by the said partition the item 1 of the Complaint schedule properties was allotted to the share of the defendant's father and D.Kannan by a Deed of Partition dated 03.09.1998 registered as Doc.No.663 of 1998 in the office of Sub Registrar, Central, Chennai. The 1st defendant and his father had partitioned the said property by a Deed of Settlement dated 21.09.1998 registered as Doc. No. 686 of 1998 registered in the office of the Sub Registrar, Central, Madras. The 1st defendant's father had setted his share in favour of him. Therefore, the Item -1 of the schedule mentioned property is the separate property of the 1st defendant. Hence, the claim for partition is untenable.

b).The item 2 of the schedule mentioned property adjoining the lands in Ekkattuthangal Village, originally belonged to the HUF of Raghava Naicker.



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In 1987 the coparceners of the aforesaid HUF decided to partition the properties situate in Ekkattuthangal Village. It was desired to allot lands in Ekkattuthangal Village to the female children of Mr.Thiruvengadam and a family arrangement was entered into on 16.07.1987 registered as Doc.No.2362 of 1987, in the registered office at Madras South. In the said Family Arrangement, the plaintiff was allotted 2408 ½ sq.ft. of lands in T.S.No.148 in No.121, Ekkattuthangal Village. The 1st defendant was allotted 5230 sq.ft. comprised in T.S.No. 116 (part) in No. 121, Ekkattuthangal Village. The 2nd defendant was allotted 2399 1/2 sq.ft. of land in T.S.No. 148 in Ekkattuthangal Village. The 3rd defendant was allotted 2408 3/4 sq.ft. in T.S.No.148 in the same Village. The 4th defendant was allotted 2409 sq.ft. in T.S.No. 148 in the same Village and Late R.Devarajan was allotted 2441 sq.ft. of land in T.S.No. 148 in Ekkattuthangal Village.

c).The item 2 of the plaintiff schedule was the absolute property of the 1st defendant's father and he was in possession and enjoyment of him and he passed away on 18.12.2001. Thereafter, the 1st defendant is in possession and enjoyment of the said property and the 1st defendant's father Devarajan had executed a last Will dated 22.5.1998 registered as Doc. No.38 of 1998 registered in the office of the Registrar, South Chennai. Therefore, the Item 2 of the plaintiff schedule property was the absolute property of the 1st defendant's



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father and his father executed a Will in favour of the 1st defendant. Therefore, the claim for partition of the said property is untenable. The Item No.3 of the plaint schedule property belonged to Thiruveegadan and Devarajan and they were in possession and enjoyment of the said property. In the proceedings before the Settlement Officer dated 16.12.1967, it has been found that Thiruvengadism and Devarajan are entitled ryotwari patta. Therefore, the father of the 1st defendant was in possession and enjoyment of the property and promoted the said land and put up 8 flats to his share and there are only 8 flats in the said property and not 10 flats as stated by the plaintiff. During the lifetime of R.Devarajan, the aforesaid 50% undivided share owned and possessed by him in the land comprised in T.S.No.44 was bequeathed in the aforesaid Will to the 1st defendant. The item No.3 of the plaint schedule property has been in possession and enjoyment of this defendant's father and his brother and the 1st defendant's father had by the aforesaid will bequeathed the said property in favour of the 1st defendant. Hence, the claim for partition of the said property is untenable.

d).The lands comprised in Survey No:11/2 (part) measuring 71 cents in Vadakupet hamlet of Medavakkam Village belonged to the HUF of late Ragava Naicker. The said property was in joint possession and enjoyment of Thiruvengadam and the father of the 1st defendant. To the HUF properties,



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the coparceners entered into a Deed of Partition dated 18.5.1998 registered as

Document No: 1973/1998, RO Madras South and by the said Deed of Partition 35.5 cents of the aforesaid land was allotted to the share of the 1st defendant's father. The said property has been arrayed as item 4 in the schedule to the plaint and his father has by the aforesaid last Will bequeathed the aforesaid property in favour of the 1st defendant. Hence, the claim for partition of the said property is untenable. During the life time of his father along with two others, out of his self acquisition, purchased the land comprised in Survey Nos. 131/3, 139, 140, 206/2 in all measuring 48.16 acres in Kannankottai Village. In and by the aforesaid Will, this property has been bequeathed to the share of this defendant. The said property has been arrayed as Item No.5 in the Plaint Schedule. Hence, the claim for partition of the said property is untenable. Further, the plaintiff is the sixth child of late R.Devarajan. The marriages of the daughters of Late R.Devarajan were conducted during his lifetime. This defendant had also substantially paid for the marriage of the plaintiff and the defendants and also providing them with sufficient properties as Sridhanam.



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7. Written Statement filed by the defendants 2 to 4 is as follows:

a). The defendants 2 to 4 stated that their father has not executed any

Will as alleged and it goes without saying that if at all there is a Will dated 22.05.1998, it should be a fabricated one and it should have come into existence by the manipulation of the 1st defendant and his wife by taking advantage of the situation that their father was living with the wife of the 1st defendant at that time. Further, their father could not keep good health and was very much prone to manipulation and exploitation. Hence, it is for the 1st defendant to prove the Will any beyond suspicion. The defendants stated that their father was a magnanimous person, who could not give the entire share in the joint family property and his self acquired property to the 1st defendant alone if he had written any Will in a proper frame of mind. Therefore, the Will dated 22.05.1998 is to be disregarded by this Court while adjudicating the issue. The defendants stated that their mother R.Devaki passed away on 05.06.1968 when the plaintiff was born. In fact, she developed complication at the time of delivering the plaintiff in the hospital. Due to that she breathed her last on the day when the plaintiff was born. It is the 2nd defendant as the eldest child of R.Devarajan who took care of the entire family after the demise of their mother. In fact she acted like a mother to her brother and sisters and she even often used to worry as to what would happen to them and their family, if



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she got married and left the house. Her father R.Devarajan informed her that his sister wanted to marry the 2nd defendant to her son and immediately, she accepted the proposal as she know that by marrying her paternal aunty's son, she could continue to live in her house by taking care of her father, brother and sisters. Fortunately, her husband and cousin, her father-in-law and mother-in-law and paternal aunty consented to the 2nd defendant's proposal, to remain in her father's house even after her marriage and accordingly, the 2nd defendant continued to live in her house with her father, spouse and siblings. The 1st defedant got married in the year 1975 and even thereafter, the 2nd defendant and her two children continued to live in her father's house and only in the year of 1992, she left her father's house to the matrimonial home along with her family members.

b).In these circumstances, their father would have informed about the Will to the 2nd defendant if he had really executed any Will. Further, their father had a soft comer for the 2nd defendant as she took care of the entire family after the demise of her mother. Therefore, it is really incomprehensible as to how their father bequeathed the entire property to the 1st defendant alone. Hence the Will dated 22.05.1998 is a fabricated one and the same should not be relied at all.



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c).The defendants stated that an attempt was made to settle the matter among themselves without intervention of anyone. In fact, a compromise was arrived at, but the same could not be implemented due to the adamant behaviour of the 1st defendant and his wife. Hence, the defendants are entitled to the share of the suit properties.

8.Based on the above said pleadings, the following issues were framed:

"(1)Whether the suit properties are separate property of late R.Devarajan?

(2)Whether the suit properties are separate property of the 1st defendant?

3)Whether the alleged Will date 22.05.1998 is true, genuine and valid?

4)Whether the plaintiff is entitled to 6/20 share in Item Nos.1 to 3 of the suit properties and 1/5 share in Item Nos.4 and 5 of the suit properties?

5)Whether the Partition Deed dated 15.05.1998 is valid and binding the plaintiff, who is not a party to the Partiton Deed?

6)Whether the Settlement Deed dated 21.09.1998 executed in favour of the 1st defendant is valid, accepted and acted upon?

7)To what other reliefs the plaintiff is entitled to?



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9. Heard both sides and perused the material available on record.

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Issue Nos. 3:

10. The learned counsel for the plaintiff in TOS and 1st defendant in CS would submit that the Item Nos.1 to 3 were absolute property of grandfather of the plaintiff's husband, and Item Nos.4 and 5 are self acquired properties of father of the plaintiff's husband. The properties described in items 2 to 5 of the suit for partition are all separate property of the deceased R.Devaraj. However, Item No.1 of the partition suit has already been settled during the life time of the Testator in favour of his son vide Settlement Deed dated 21.09.1998 Registered as Document No.686 of 1998.

11. It has been further submitted by the learned counsel that the last Will and testament dated 22.05.1998 was executed by the Testator ie. R.Devarajan bequeathing all properties (Item Nos.1 to 5) to his son and appointing his Daughter-in-Law as Executor in the presence of witnesses and registered the same as Document No.38 of 1998 on the file of the District Registrar Chennai South. Hence, the plaintiff undertakes to duly administer the properties and credits of the said Devarajan and in any way concerning his Will by paying first his debts and then the legacies bequeathed so far as the



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assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of probate to the petitioner and also to render to this court a true account of the said properties and credits within one year from the said date. Hence, he seeks to probate the Will.

12.The learned counsel for the plaintiff in CS and 3rd defendant in TOS and the learned counsel for the defendants 1 and 2 in TOS and 2 to 4 in CS would submit that the parties in the suit are the legal heirs of Late R.Devarajan who had one son and four daughters. Since the son of Late R.Devarajan, ie. 1st defendant, is employed in Singapore, the suit properties were taken care by the daughters of Late. R.Devarajan. Since it was objected by the plaintiff in TOS who is the wife of the 1st Defendant in CS, the daughters of Late.R.Devarajan, permitted her to have a cordial relationship with their only brother to manage the suit schedule properties including collecting rent from the tenants, who are inducted in Item Nos. 1 to 3 of the suit schedule properties. Within a few months, their Sister-in-law started indifferently and stopped giving the share of the daughters of Late.R.Devarajan.



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13.It has been further submitted by the learned counsel that to shock and surprise, the plaintiff and the defendants 2 to 4 in CS have received a notice in O.P. No.554 of 2002 filed by their Sister-in-law, as if, a Will dated 22.05.1998 was executed by the father of the plaintiff in CS, bequeathing the entire suit schedule properties to his son. Their father was a magnanimous person, who could not give the entire share in the joint family property and his self acquired property to the 1st defendant alone if he had written any Will in a proper frame of mind. Therefore, the Will dated 22.05.1998 is to be disregarded by this Court will adjudicating the issue. Further, their father did not inform about the Will to them.

14.It has been further submitted that if at all there is a Will date 22.05.1998, it should be a fabricated one and it should have come into existence by the manipulation of the 1st defendant and his wife by taking advantage of the situation that their father was living with the wife of the 1st defendant at that time and their father could not keep good health. Hence the Will dated 22.05.1998 is a fabricated one and the same should not be relied at all. Thus, they seek their respective share in the suit property and to dismiss the TOS as prayed for.



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15. It is admitted fact that there is no dispute in the relationship between the plaintiff and the defendants who are the legal heirs of Late R.Devarajan who died on 18.12.2001 and his wife predeceased in the year 1968. It is said that the Item Nos.1 to 3 of the suit schedule properties are inherited properties from their grand father and not self acquired properties and Item Nos.4 and 5 are self acquired property of their Father ie. Late.R.Devarajan.

16. In so far as Will dated 22.05.1998 is concerned, it is seen that the daughter-in-law of the Testator is the one of the attesting witnesses and executor of the said Will. On a perusal of the cross examination of D.W.3, who is one of the attesting witness of the Will, it is seen that while he averred in the proof affidavit that the Executant and other attesting witnesses signed in the house of the Testator, per contra, in the cross examination, he deposed that the Executant and other attesting witnesses signed at the Sub-Registrar's office. Further, it creates suspicion that the entire property ie. Item Nos.1 to 5, were executed in favour of the Plaintiff's Husband whereas some of the properties are said to have been entered into two partition deed and a settlement Deed. Further, the plaintiff in TOS has not produced any



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documentary evidence to prove that the partition and settlement deed were executed among the parties.

17. On a perusal of the Will, it creates suspicion that once the Will was drafted by the Testator, there is no need to explain the contention of the Will, in Tamil to the Testator. Further, the Testator has signed in the will in English Version under the caption “drafted by”, however, in the cross examination of P.W.3, he deposed that his advocate had drafted the Will. Further, as the plaintiff in TOS acts upon as the Executor and one of the attesting Witnesses in the said Will dated 22.05.1998 and there are contra evidence in drafting the Will, it shows that the plaintiff in TOS has not proved in the manner known to law. Further, the Plaintiff in TOS has not produced any individual witnesses other than the attesting witness in the Box to prove the execution of Will dated 22.05.1998. Hence, the Issue No.3 is answered against the plaintiff in TOS.

Issue No.1 & 2:

18. Whereas Item Nos. 1 to 3 are said to have derived from the grand father of the parties and Item No.4 and 5 are said to have purchased by the father of the parties, the entire properties are separate property of Late.



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R.Devarajan and not to the 1st defendant in CS. Further, the 1st defendant has not produced any valid documents to prove that the suit properties are separate property of him. Accordingly, Issue Nos.1 is answered in favour of the plaintiff in CS and the Issue No.2 is answered against the defendant.

Issue Nos.5 & 6:

19. Despite it has been stated on the side of the defendants that some of the properties were said to have been entered into partition deed dated 15.05.1998 and settlement deed dated 21.09.1998, they have not produced the aforesaid documents to prove the same. Accordingly, Issue No.5 & 6 are answered against the defendants.

Issue No.4 and 7

20.Since the plaintiff in TOS failed to prove her Will dated 22.05.1989 and the settlement Deed dated 21.09.1998 and partition deed dated 15.05.1998 are not proved in the manner known to law, considering the oral and documentary evidence, this Court feels that the suit Schedule properties are belonged to father of the parties. Hence, the plaintiff and the defendants in CS are legal heirs of Late. R.Devarajan, they are entitled to equal share in the entire suit property. Hence, the plaintiff is entitled to 1/5th share in the items No.1 to 5 of the suit schedule properties. Accordingly, Issue Nos.4 and 7 are answered in favour of the plaintiff in C.S.No.492 of 2007.



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21.In the result, the Testamentary Original Suit in TOS No.15 of

2004 is dismissed and the Civil Suit in C.S. No.492 of 2007 is partly decreed to the aforesaid extent. No costs.

20.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps/Lbm

List of witnesses examined on the side of the plaintiff:

PW1 - Mrs.B.Premla

List of documents marked on the side of the plaintiff:

Ex.P1 23.08.2002 Notice in O.P.No.554 of 2002 in Original

Ex.P2 27.09.2002 Copy of the Caveat petition

Ex.P3 26.09.2002 Copy of the affidavit of the respondent
in O.P.No.554 of 2004

Ex.P4 30.09.3004 Notice in T.O.S.No.15 of 2004 in original

List of witnesses examined on the side of the defendants:

DW1 - Mrs.D.Shanthi

DW2 - Shylaja

DW3- Mr.T.Venkatachalam

DW4 – D.Kannan

List of documents marked on the side of the defendants:



T.O.S.No.15 of 2004

Ex.D.1 18.12.2001 Death Certificate of my father-in-law
R.Devarajan

WEB COPY

Ex.D.2 22.05.1998 Original last Will and Testament executed
by Mr.R.Devarajan in favour of Mr.Kannan
Ex.D.3 -- Affidavit of attesting witness
Ex.D.4 -- Affidavit of attesting witness of
T.Venkatachalam

20.03.2024



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T.O.S.No.15 of 2004

A.A. NAKKIRAN, J,

mps/Lbm

Pre-Delivery Judgments in
T.O.S.No.15 of 2004
and
C.S.No.492 of 2007

20.03.2024