IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2025

PRONOUNCED ON: 18.07.2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.No.2157 of 2025
in
T.O.S.No.10 of 2023

D.Rajagopal
S/o. Late Duraisamy Chettiar,
Old No.1A, New No.55/9,
Ponvizha Nagar,
Vivekanandapuram,
Beemanagar,
Thiruchirapalli District – 620 001.
Rep. by his Power Agent Mr.Partiban ... Applicant / 2nd defendant

Vs

1. S.Jeyaprakash ... Respondent / Plaintiff
2.M.Subbiah
3.S.Ashok Kumar ... Respondents / Defendants 1 & 3

PRAYER:

This Application is filed under Order XIV Rule 8 r/w Order II Rule 3 of Original Side Rules r/w Section 7 and Section 11 and Article 11(k) of Tamil

Nadu Court Fees & Valuation Act, 1955 r/w Section 151 of CPC, prayed to direct an enquiry to determine the actual market value of the Estate of the Late V.Alamelu Ammal as prevailing on the date of registration of the petition into a Suit and direct the plaintiff to pay appropriate Court fee failing which to dismiss the suit in case of non-payment of the same.

For Applicant	: Mr.S.R.Raghunathan For Mr.S.Vinod Sathya Lazar
For Respondents	: Mr.R.Thiagarajan for R1 Mr.K.V.Babu For Mr.P.Krishnan for R2

ORDER

This Application has been filed by the 2nd defendant in T.O.S.No.10 of 2023 under Order II Rule 3 of Original Side Rules read with Sections 7 and 11 and Article 11(k) of Tamil Nadu Court Fees and Suit Valuation Act, 1935 and read with Section 151 CPC seeking a direction to conduct an enquiry to determine the actual market value of the estate of late V.Alameluammal as prevailing on the date of registration of O.P.No.715 of 2013 into a Tetstamentary Original Suit in T.O.S.No.10 of 2023 and direct the plaintiff to pay appropriate Court fees, failing which to dismiss the suit in case of non-payment of such appropriate Court fees.

2.Even before examining the affidavit filed in support of the Judges Summons, it must be stated that, O.P.No.715 of 2013 had been filed by the 1st respondent herein S.Jayaprakash under Sections 232 and 276 of Indian Succession Act, 1925 seeking grant of Letters of Administration with respect to a Will dated 29.01.2010 said to have been executed by V.Alameluammal who died without any children born to her on 10.06.2011. In the Original Petition, there were initially 17 respondents. Later, respondents 18 – 56 were impleaded by order dated 27.10.2022 in A.No.1028 of 2021. Subsequently, the Original Petition was converted as a Testamentary Original Suit in T.O.S.No.10 of 2023. The applicant herein was impleaded by order dated 20.10.2023 in A.No.3280 of 2023 as the 2nd defendant. There was yet another defendant impleaded as the 3rd defendant in A.No.2437 of 2024 by order dated 11.06.2024.

3.It must also be stated that yet another Original Petition in O.P.No.377 of 2012 had been filed seeking Letters of Administration with Will dated 21.06.2024 also said to have been executed by V.Alameluammal. That Original Petition had been filed by the 2nd respondent herein, M.Subbiah. That Original Petition has been converted as T.O.S.No.44 of 2012 and the same is also pending.

4.The applicant herein had filed O.S.No.112 of 2016 before the Principal District Court at Trichy seeking a share in the property and on application made, the suit had been transferred to the file of this Court and renumbered as Tr.C.S.No.23 of 2023 and is also pending before this Court.

5.It must also be further stated that yet another suit is also pending relating to the properties for which administration is sought in C.S.No 202 of 2021 filed by the plaintiff in T.O.S.No.44 of 2013. That suit is also pending.

6.In the written statement filed by the applicant herein, he had contended that both the Wills projected in T.O.S.No.44 of 2013 and T.O.S.No.10 of 2023 dated 21.06.2004 and 29.01.2010 respectively are forged Wills and had been created by the plaintiffs therein to deprive the lawful right of the original legal representatives of V.Alameluammal to a share in her properties. Trial had also commenced in the two Civil Suits and in the two Testamentary Original Suits. At this stage, this application has been filed by the 2nd defendant in T.O.S.No.10 of 2023 seeking a direction to conduct an enquiry to determine the actual market value of the estate of late V.Alameluammal and to direct the plaintiff to pay the appropriate Court fees, failing which to dismiss the suit.

7.In the affidavit filed in support of the Judges Summons, it had been contended by the Power of Attorney agent of the 2nd defendant that the 2nd defendant is a Class-II legal heir of Veerabathran Chettiar who died intestate on 26.04.1986. Seeking partition and separate possession of the properties left behind by Veerabathran Chettiar, the applicant had filed O.S.No.112 fo 2016 before the I Additional District Court Trichy. The suit had been subsequently transferred and renumbered as Tr.C.S.No.22 of 2023 and is pending on the file of this Court. It had been further stated that the plaintiff had projected a Will dated 29.01.2010 said to have been executed by V.Alameluammal wife of Veerabathran Chettiar and since the pleadings were contentious in nature O.P.No.715 of 2013 had been converted into T.O.S.No.10 of 2023 on 02.02.2023.

8.It had been further stated that parallely the 1st defendant M.Subbiah had filed O.P.No.377 of 2012 seeking Probate of another Will dated 21.06.2004 also said to have been executed by V.Alameluammal and again that petition being contentious had been converted as T.O.S.No.44 of 2013. The applicant had been impleaded as a further defendant in T.O.S.No.10 of 2023 pending the suit.

9.The applicant contended that under Order XXV Rule 55 of the Original Side Rules of the Madras High Court, when an affidavit is filed raising objections for grant of either Probate or Letters of Administration and if it is found that the objector has a caveatable interest and has raised valid and necessary grounds, the Original Petition is converted as Testamentary Original Suit and is registered as a suit.

10.It had therefore been stated that Court fees, which is payable is under Article 11(k)(ii) of Schedule – II of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter the 'Act') and an obligation is placed on the plaintiff to pay Court fees on 1.5% of the market value of the estate as prevailing on the date of registration of the Original Petition as a suit. It had been further contended that the plaintiff had under valued the value of the properties. It had been contended that the market value of one of the properties which measures an extent of 3 grounds and 718 sq.ft., in Mylapore had been valued at Rs.1,86,83,500/- which value did not project the actual market value. It had been contended that similarly other properties had also been under valued. It had been further contended that the total value of the properties will be over Rs.100/- Crores on the date of registration of the Testamentary Original

Suit. It is under those circumstances that this application had been filed to ensure compliance with the provisio to Article 11(k)(ii) of the Act and if the plaintiff fails to comply with the said directions to dismiss the suit.

11.A counter affidavit had been filed by the 1st respondent / plaintiff wherein he had contended that the issue relating to determination of the value of the estate for the purpose of payment of Court fees is not maintainable as the procedure, as contemplated under the Original Side Rules had already been complied. It had been further stated that the deponent is a power of attorney and cannot state facts which had occurred earlier to the authority given to him to act as agent of his principal.

12.It had been further stated that when O.P.No.715 of 2013 had been filed, this Court under Order XXV Rule 4(d) of the Original Side Rules, under Form No.57 had sent notice of the application to the Collector to ascertain whether the value set forth in the affidavit of assets had been properly given or not. It was only thereafter was the Original Petition listed before the Court for hearing. It was further converted into a TOS on caveat being filed. It had been further stated that the TOS had been forwarded to the Additional Master – IV for recording evidence and PW-1 had been examined and Exs.P1 to P4 had also been marked. This application had been filed at the stage when the witness has to be cross examined.

13.It had been stated that the Court fees that would be payable would be 1/2 of the value as set forth in the value of assets and as per the valuation report, if any, received from the Collector under Order XXV Rule 4(d) of the Original Side Rules. It had been stated that therefore it was not appropriate on the part of the applicant to raise the issue at this stage. It had been further stated that the suit cannot be dismissed under Order II Rule 3 of the Original Side Rules as claimed by the applicant as the ground of under valuation would fall under Order VII Rule 11 Clause (b) and (c) of CPC which clauses do not apply to Chartered High Court as per Order XLIX Rule 3 of CPC. It had been stated that payment of Court fees is as set out in Schedule (II) Article 11(k)(ii)(3) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

14.Further, the Collector to whom a copy of the application had been sent under Section 55(2) of the said Act accompanied by the valuation of the estate, which had been done under Section 59(1) of the Act. It had been stated that the deponent of the affidavit had not been served with any notice or report filed by the Collector to state that there was an under valuation of the assets. It had thus been claimed that there has been no infirmity in the payment of the Court fees and that therefore, the application must be dismissed.

15.Heard arguments advanced by Mr.S.R.Raghunathan learned counsel for the applicant and Mr.R.Thiagarajan, learned counsel for the 1st respondent and Mr.K.V.Babu, learned counsel for the 2nd respondent.

16.It is the contention of Mr.S.R.Raghunathan that the moment the Original Petition is converted as a Testamentary Original Suit, it is registered as a suit. Once it is registered as a suit, then the plaintiff would be liable to pay the Court fees as determined in Schedule (II) Article 11(k)(ii)(3) of the Act which provides that the Court fees should be 1/2 of the scale of fee as prescribed in

Article 1 of Schedule 1 on the market value of the estate. The learned counsel pointed out that under Article 1 of Schedule 1 of the Act, the Court fees payable on a plaint had been provided as 3% of the value of the subject matter in dispute. The learned counsel read both the provisions together and stated that therefore, when an Original Petition had been converted as a TOS, then an obligation is placed on the plaintiff to pay Court fees at 1 and 1/2 percent which is 1/2 of 3% as stipulated in Article 1 Schedule 1 of the Act on the subject matter in dispute which had been further explained as the market value of the estate in Article 11(k)(ii)(3) of Schedule (II) of the Act.

17.The learned counsel pointed out that under Order II Rule 3 of the Original Side Rules, the plaint should contain a statement of valuation and when it appears that the suit is under valued, then the Registry should require the plaintiff to pay the deficit Court fees within a time period fixed by him. It had been further stated that if default is made, the Registry shall post the plaint before the Court for orders under Order VII Rule 11(b) and (c) of CPC. If it is found that the suit had been under valued or that the stamps affixed are insufficient then the Court may grant further time to the plaintiff to rectify that defect and in default must dismiss the suit.

18.Placing reliance on the aforementioned provisions, Mr.S.R.Raghunathan stated that in the instant case, the value of the properties at Mylapore in Chennai would be far more than what had been stated by the plaintiff and therefore urged that the valuation must be referred for an enquiry to be conducted to determine the market value of the estate and direct the plaintiff / 1st respondent to pay Court fees as determined under Article 11(k)(ii)(3) of Schedule – II of the Act.

19.Mr.K.V.Babu learned counsel for the 2nd respondent, however disputed the contentions raised by Mr.S.R.Raghunathan and contended that the Court fee provisions with respect to Original Petitions and the Testamentary Original Suit are different from the provisions relating to Court fees on Civil Suit. It is contended that on the Original Petition being filed, notice thereof is forwarded to the Collector under Order XXV Rule 4(d) of the Original Side

Rules under Form – 57 and the Collector has a right to oppose the grant if it is found that there is under valuation of the value of the assets. It had been contended that this formality had been completed and no objection had been raised regarding the value as determined by the plaintiff in the affidavit of assets filed in support of the Original Petition. It had therefore been contended that the applicant is deliberately protracting the proceedings to avoid cross examination of the witness, who had already been examined. The learned counsel contended that the application should be dismissed.

20.Mr.R.Thiayarajan, learned counsel for the 1st respondent also argued that it is not open to the applicant to raise this issue after the matter had already been referred to the Collector as contemplated under the provisions of the Original Side Rules. The learned counsel was emphatic in his submission that the aim of the applicant was only to drag on the proceedings and to deny the plaintiff to be given an opportunity to prove the Will in manner known to law. The learned counsel stated that the application has to be dismissed.

21.I have carefully considered the arguments advanced and perused the materials on record.

22.The 1st respondent had initially filed O.P.No.715 of 2013 under Sections 232 and 276 of the Indian Succession Act, 1925 seeking grant of Letters of Administration with respect to a Will dated 29.01.2010 said to have been executed by V.Alameluammal who died on 10.06.2011. Subsequently, on caveat being presented, by some of the respondents, the Original Petition was converted as Testamentary Original Suit in T.O.S.No.10 of 2023. The applicant was not a party to the proceedings. He was then impleaded by order dated 20.10.2023 in A.No.3280 of 2023. The pleadings had been completed and issues had been framed. The 1st respondent / plaintiff had grazed the witness box and also tendered evidence and Exs.P1 to P4 had also been marked. At this stage, this Application has been filed seeking a direction to determine the value of the assets as stated in the affidavit of assets and to direct the 1st respondent / plaintiff to pay necessary Court fees as stipulated under Article 11(k)(ii)(3) of Schedule – II of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

23.It must be pointed out that in the Tamil Nadu Court Fees and Suit Valuation Act 1955, Chapter – VI specifically exclusively deals with Probates, Letters of Administration and Certificate of Administration. The procedure contemplated therein is a separate distinct procedure. Section 55 of the Act, deals with the application seeking Probate or Letters of Administration. Such application should be accompanied by a valuation of the estate in the form as set forth in Part – I of Schedule III of the Act. In Part – I of Schedule III under Section 55 of the Act, the form of valuation of the estate had been given. In that particular form, Annexure - A deals with valuation of movable and immovable properties of the deceased. The description of the properties had been given and in the case of immovable property the market value on the date of death of the deceased or on the date of application as the case may be must be given.

24.Section 55(2) of the Act further provides that on receipt of such application, the Court shall send a copy thereof and of the valuation to the

Collector of the District in which the estate is situated. This is also provided under Order XXV of the Original Side Rules of the Madras High Court which specifically deals with Testamentary and Intestate matters. Under Order XXV Rule 4 of the Original Side Rules, it had been provided that an application for probate shall be made by an application as provided under Form – 55 and must be accompanied by, as stipulated under Order XXV Rule 4(c), a notice to the Collector under Section 55 of the Act in accordance with Form No.57 and signed by the applicant or his advocate.

25.Further under Order XXV Rule 4(d) of the Original Side Rules of the Madras High Court, the petition must also be accompanied by an affidavit of assets as prescribed by Section 55 of the Madras Act, 14 of 1955 which in effect is the Tamil Nadu Court Fees and Suit Valuation Act 1955. It had been further provided under Order XXV Rule 4 of the Original Side Rules of the Madras High Court that the notice, as soon as it is admitted, must be signed by the Registrar and sent by the Registrar to the Collector. A copy of the affidavit of assets shall also be sent by the Registrar to the Collector. It had been further stated that the affidavit of assets shall give the particulars as provided under Annexure -A, Part – I Schedule – III of the Act and shall also include the rent of the lands or houses that had accrued since the date of death of the deceased and also of the debts with the names of the creditors and the dates of the debts.

26.Once this notice is received by the Collector, then, under Section 59 of the Act, the Collector must conduct an enquiry as to the correctness of the valuation of the property which is situated in his District and under Section 59 (3) of the Act, if the Collector is of the opinion that the applicant had under estimated the value of the property he could require the attendance of the applicant either in person or by agent, take evidence, enquire into the matter and if he is still of the opinion that the value of the property is under estimated he can direct the applicant to amend the valuation and to file a copy of the amended valuation into the Court. If it is found that less fee had been paid than was payable according to the true value of the asset, the Collector shall then proceed further under Section 61 of the Act. A time period of six months could be granted to make good the deficit fee, if it is found that there was no intention of fraud or to delay the payment of proper Court fees. If the Court fees is not paid, then the Collector shall forfeit a sum equal to five times the deficit value.

27.Under Section 61(3) of the Act, if the Collector was of the opinion that it was not a bonafide mistake he shall cause the Probate or Letters to be duly stamped only on payment of deficit fee together with penalty not exceeding five times the deficit.

28.This is the procedure contemplated with respect to Probates, Letters of Administration and Certificates of Administration.

29.If the petition is converted as a Testamentary Original Suit then, the Court fee payable is under Article 11(k)(ii)(3) of Schedule – II of the Act, which in turn is 1/2 of the fee leviable under Article 1 Schedule I of the Act. Under Article 1 Schedule I of the Act, the fee leviable is 3% of the subject matter of the suit. Under Article 11(k)(ii)(3) of the Act, the Court fee is 1/2 of

3% of the market value. This market value is cross verified by the Collector and not by the Registrar of the High Court. A Civil Suit is presented before the Registrar and the Registrar is authorized to examine whether the suit had been properly valued and Court fees has been paid as provided under Article 1 Schedule I of the Act on such valuation.

30.The procedure contemplated further provides if on the value determined by the Registrar, the deficit Court fees is not paid, then further proceedings under Order II Rule 3 of the Original Side Rules of the Madras High Court could be brought into play. It must also be pointed out that Order II Rule 1 of the Original Side Rules of the Madras High Court relates to a suit which shall be commenced by presenting a plaint to the Court or such officer as the Chief Justice appoints in this behalf. The procedure which follows is specific applying only to Civil Suits.

31.Order XXV of the Original Side Rules of the Madras High Court relates to the Testamentary and Intestate matters. If an Original Petition is converted into a Testamentary and Original Suit, still the governing provisions so far as the Court fees is concerned shall be only as contemplated under Chapter – VI of the Act where instead of the Registrar who determines the correctness of the value of the subject matter, the obligation is placed on the Collector of the District. This is because a Civil Suit more often determines a right inpersonam, whereas a Probate or Letters of Administration give a right in rem and a person to who Probate or Letters of Administration is granted can exercise such right against anybody either within the country or within the State of Tamil Nadu as the case may be. Therefore, in order to determine the value of the subject matter it is the Revenue Department which has been entrusted with the responsibility to determine the correctness of the value of the assets of the deceased. It is not vested with the Registrar of the Court.

32.The Registration of a Testamentary Original Suit in the Suit Register is a procedure contemplated since the High Court is a Court of Records. The Suit Register is a permanent Register and gives details of the suit right from its inception till it is finally concluded.

33.In the instant case, the procedure as contemplated under Order XXV Rule 4(d) of the Original Side Rules of the Madras High Court had been followed. A notice had been forwarded to the Collector. The Collector had not raised any objection and thereafter, on conversion of the Original Petition into a Testamentary Original Suit, the value of the assets which had been given in the affidavit of assets, and over which no protest had been raised by the Collector, had been determined as the value of assets and on value, the 1st respondent had paid the Court fees namely, 1/2 of 3% of the market value, which value had not been objected to by the Collector.

34.The applicant has misdirected himself in stating that when an Original Petition converted into a Testamentary Original Suit, it takes the form of a regular Civil Suit. It does not. The procedure for examination of witnesses alone is that of a suit were the parties are termed as plaintiff and as defendant and issues are framed and trial is conducted and the Court has an obligation to answer each and every issue framed for consideration. But the provision for levy of Court fees is as provided under Chapter -VI of the Tamil Nadu Court

Fees and Suits Valuation Act, 1955 and the procedure for determination of such value flows from Order XXV Rule 4(d) of the Original Side Rules, wherein the affidavit of assets has to be forwarded to the Collector to determine the Court fees.

35.Both the learned counsels had placed reliance on an order passed by me in an earlier case reported in ***(2021) 6 MLJ 26, B.Nitish Harihar V. P.Sivanandam and Others.*** The facts therein are distinguishable. That was an Original Petition presented before the District Court wherein, it was directed that it should be converted into an Original Suit and attracted Article 11(k)(ii)(2) of Schedule II of the Act. The Original Side Rules governing the procedure in the Madras High Court is not applicable to an Original Suit or any Original Petition presented in the Districts. The Original Side Rules is specific to the Original Side of the Madras High Court and not to the proceedings or suits pending before any other Court. Further, Article 11(k)(ii)(2) of Schedule II is not the appropriate provision. Even in the earlier case cited across the Bar, it had been held that when a petition for grant of Letters of Administration or Probate becomes contentious and it is to be tried in the form of a regular Suit then according to the Code of Civil Procedure, it cannot be considered as a Suit in the strict sense of the term and therefore, a*d valorem* Court fee was not payable.

36.In the judgment reported in ***(2001) 2 LW 318 : (2001) 2 CTC 713 : (2001) 2 Mad LJ 417*** , ***R.Ramachandran V. G.Hariharan***, a Division Bench of this Court had held as follows with respect to the valuation of the affidavit of assets:

> *"43. The learned counsel then contended that the respondent filed untrue affidavit of assets and that the properties are of very substantial value and he has purposely undervalued the house value. As pointed out in the ruling of this Court reported in* ***1990 I L.W. 27 (Vyjayanthimaala Bali v. Rattan Chaman Bali)****, the* ***under-valuation of the estate is a matter left to the concern of the Revenue Authority by the Legislature****. The provisions of Sections 55 to 59 of the Tamil Nadu Court Fees and Suits Valuation Act contain the necessary safeguards.* ***It is not for the Court to worry about the same****. This decision is also applicable to the case on hand and will be an answer to the contentions raised by the appellant relating to the valuation of the property."*

(Emphasis Supplied)

37.In ***Vyjayanthimaala Bali v. Rattan Chaman Bali, 1990 I L.W. 27***, referred supra, this Court had held as follows:

> ***16.*** *I agree with learned counsel for the plaintiff that the scope of the suit is very limited as defined in* ***M.K. Sowbhagiammal and another v. Komalangi Ammal and another (1928) 54 MLJ 382*** *and the three issues viz., issue Nos. 7, 11 and 13 as framed travel beyond the scope of the suit. However, I am inclined to accept one of the contentions urged by learned counsel for the defendant that non-disclosure of assets left by the deceased should be considered while discussing his case that it is a part of a scheme of fraud played by the plaintiff in execution of which, the will was brought into existence, though it is not necessary to make it subject matter of an issue, as ordinarily any evidence pertaining to the alleged fraud and the alleged nondisclosure of assets in the will as well as the petition has to be considered when the genuineness of the will is decided. But, the issue having been framed already and*

remaining unchallenged for quite some time until neerly 3/4th of the evidence has been recorded, I do not think it necessary to strike off the same as prayed for by the plaintiff. ***I would recast the issue in the following manner: "Whether the plaintiff has correctly disclosed and valued the assets left by the deceased?"*** *The second part of the issue as framed originally is, in my view, beyond the scope of the suit and it is, therefore, left out. Incidentally, it has to be pointed out that there is no question of concealment or undervaluation with a view to defeat the payment of Estate Duty, as it has been abolished during the relevant period.* ***Under-valuation of the estate is a matter left to the concern of the Revenue Authority by the Legislature.*** *The provisions of Ss. 55 to 59 of the Tamil Nadu Court-fees and Suits Valuation Act contain the necessary safeguards. It is not for this Court to worry about the same. The argument of learned counsel for the defendant that the proceeding not being a suit, there cannot be an application for striking off issues is untenable.*

Even though the proceeding is not a suit in the strict sense of the term after it becomes contentious, it shall take the form of a regular suit, as nearly as may be, according to the provisions of the Code of Civil Procedure. (Vide S. 295 of the Indian Succession Act). (Emphasis Supplied)

38.The issue raised by the applicant herein could be addressed by framing an issue for determination by the Court, which issue can be determined on the basis of oral and documentary evidence produced and adduced.

39.As pointed out by the learned Single Judge, *"under valuation of the estate is a matter left to the concern of the Revenue Authority by the Legislature. The provisions of Sections 55 to 59 of the Act contains the necessary safeguards. It is not for this Court to worry about the same."*

40.The above reasoning gives a conclusive finding on the issues raised by the applicant. It is not for the Court to worry. It is left to the Revenue

Authorities. The Legislature had deemed it fit that it is for the Revenue to take a decision on under valuation, if any. The Collector represents the Revenue and papers had been forwarded to him. This Application stands dismissed, however providing liberty to the applicant to seek framing of an additional issue, if so advised. No costs.

18.07.2025

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

C.V.KARTHIKEYAN J.

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