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TOS NO. 61 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-01-2025

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

TOS NO. 61 of 2016

AND

SA NO. 302 of 2015

1. R. Babu,
2. R. Hari,
3. Saroja

Plaintiff(s)

Vs

Devaki
W/o.Late Siva, No.79, New No.38, Mahatma Gandhi Street,
Rajiv Gandhi Nagar, Alapakkam, Ch-116.

Respondent(s)

SA NO. 302 of 2015

R.Bhaskar
S/o Ramu Pillai, No.22, Ulagappa St, Tirplicane, Chennai
600 005 and 5 Others

Appellant(s)

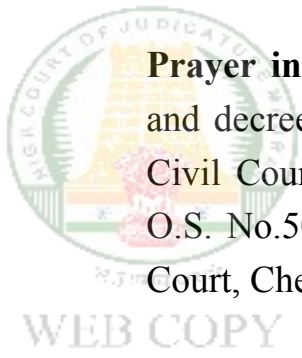
Vs

R.Devaki
S/o Ramu Pillai, No.22, Ulagappa St, Tirplicane, Chennai
600 005

Respondent(s)

Prayer in TOS : Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 for grant of the Letters of Administration with a Will annexed may be granted to petitioners as grandsons and daughter-in-law/ Legatees under the will of the deceased having effect limited to the State of Tamil Nadu and Limited to the property mentioned in Schedule 'A' of the Will. As per order dated 21.06.2016 of this Court, the Original Petition No.621 of 2009 was converted into

Testamentary Original Suit No.61 of 2016.



Prayer in Second Appeal: This Second Appeal has been filed against the judgment and decree made in A.S. No.488 of 2012 on the file of the VI Additional Judge City Civil Court, Chennai dated 17.09.2014 confirming the Judgment and decree made in O.S. No.5093 of 2008 dated 13.09.2012 on the file of VII Assistant Judge City Civil Court, Chennai.

TOS NO. 61 of 2016

For Plaintiff(s):

Mr. P.M. Subramanian -(Senior Advocate)

For M/s.T.Dhanasekaran

For Respondent(s):

Mr. M. Sriram

SA NO. 302 of 2015

For Appellant(s):

Mr. P.M. Subramanian -(Senior Advocate)

For M/s.T.Dhanasekaran

For Respondent(s):

Mr. M. Sriram

J U D G M E N T

The above Testamentary Original Suit has been filed for grant of Letters of Administration to the plaintiffs as grandsons and daughter-in-law/ Legatees under the will of the deceased having effect limited to the State of Tamil Nadu and Limited to the property mentioned in Schedule 'A' of the Will.

2. The above Second Appeal has been filed against the Judgment and decree made in A.S. No.488 of 2012 on the file of the VI Additional Judge City Civil Court, Chennai dated 17.09.2014 confirming the Judgment and decree made in O.S. No.5093 of 2008 dated 13.09.2012 on the file of VII Assistant Judge City Civil Court, Chennai.



3. The plaintiffs in the TOS are the appellants and the defendant is the respondent.

Second Appeal and as both cases are interlinked and similar and the same, they are taken up jointly for final disposal. For the sake of convenience, the parties are referred to as per the rank in TOS.

4. The brief facts of the case of the plaintiffs in TOS are as follows:

(i) Ranganayaki Ammal died on 24.07.1980 leaving behind her son ie. Ramu Pillai and daughter ie. Lokambal as her legal heirs. The Petitioners 1 & 2 and the 1st Respondent are the son of late Ramu Pillai and 3rd Petitioner is the wife of Late. Ramu Pillai who died on 30.06.2007. The 3rd Petitioner is the daughter in law of Testatrix Ranganayaki Ammal. Her daughter Smt. Lokambal passed away on 6.7.2000 and her husband Jayaraman Pillai also passed away on 3.8.2002. The Respondents 5 to 10 are the legal heirs of Lokambal. The Respondents 1 to 4 are the Grand Children of the Testatrix Ranganayaki Ammal through her son Ramu Pillai.

(ii) The deceased at the time of her death possessed immovable property at door No.14, Kasim Ali 2nd Street, Triplicane, Chennai 600 005, and door No.22, Ulagappa eChetty Street, Triplicane, Chennai 600 005 described in the Will as A & B Schedule properties respectively. The said property are within the Jurisdiction of this Hon'ble



(iii) That the writing annexed now shown to the Petitioners and marked with

is the last Will and Testament of Smt. Ranganayaki Ammal, and the Will was duly

executed by the deceased at Triplicane, Chennai on 30.05.1979 and registered as

Doc.No.27/1979 S.R.O Triplicane, Chennai 600 005 in the presence of Two Witnesses

whose names appear at the foot thereof i.e. Jayaraman Pillai and Shanmugam. The

deceased has not appointed any Executor under the said will dated 30.05.1979. The

Testatrix has fixed her left thumb impression in all the pages of the Will. The Testatrix

at the time of the execution of the Will was in a sound and disposing state of mind.

(iv)The Petitioners state that 'B' Schedule property is allotted under the Will to Smt.

Lokambal and she was not coming forward to join proceedings. Therefore the

Petitioners are seeking the Letters of Administration in respect of 'A' Schedule property

of the Will in respect of their property only. The Petitioners hereby undertake to duly

administer the 'A' Schedule Property of the Will and credits of the said Ranganayaki

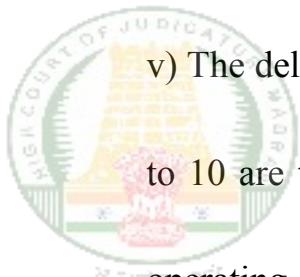
Ammal in any way concerning her will by paying first her debts and then the legacies

therein bequeathed so far as the Assets will extend and to make a full and true inventory

thereof and exhibit the same in this Court within six Months from the date of grant of

letters of Administration with the Will annexed to the Petitioners and also to render this

Court a true account of the said property and credit within one year from the said date.



v) The delay in filing this Letters of Administration is due to the fact that Resp

to 10 are the beneficiaries in respect of 'B' Schedule Property of the Will was not co-

operating to join the proceedings. The amounts of assets which are likely to come into

the Petitioners hand does not exceeds in the aggregate the sum of Rs.10,00,000/- and the

net amount of the said assets after deducting all items which the Petitioners are by law

allowed to deduct is only of the value of Rs.9,99,000/-.

vi) The Petitioners submit that Late. Ranganayaki Ammal bequeathed 'A' Schedule

property of the Will in favour of the Petitioners 1 & 2 absolutely after giving life estate

to her son Ramu Pillai and the 3rd Petitioner and she bequeathed 'B' Schedule property

of the Will in favour of her daughter Smt. Lokambal. Thus, the Petitioners pray that the

Letters of Administration with a Will annexed may be granted to them as grandsons and

daughter-in-law/ Legatees under the will of the deceased having effect limited to the

State of Tamil Nadu and Limited to the property mentioned in Schedule 'A' of the Will.

5. Written statement filed by the defendants in TOS is as follows:

(i) The defendant submits that the third petitioner Saroja, Mother of petitioners 1 and 2

expired at Chennai on 27.9.2017 and the plaintiffs have not taken steps and therefore,

the above Suit is liable to be dismissed. This defendant states that the respondents 5 to



10 are not necessary and proper parties in the O.P since B schedule property

settled to their mother and therefore, the O.P. as framed is liable to be dismissed. She

had filed a suit in O.S.No. 5093 of 2008 on the file of the VII Assistant City Civil Court,

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Chennai praying for a partition of the Suit property and allotting 1/6th share and for

other reliefs against the petitioners herein and other respondents. The said Suit was

contested by the defendants therein more particularly by the plaintiffs herein stating that

they have filed the above O.P. for grant of Letters of Administration and therefore the

Partition Suit is not maintainable. The said Suit was pending for more than 4 years and

by a Decree and Judgment dated 30.9.2012, the Learned VII Assistant City Civil Court

was pleased to decree the Suit. Aggrieved by the same, the plaintiffs herein filed

A.S.No. 488 of 2012 on the file of the VI Additional City Civil Court, Chennai. At the

time of filing the First Appeal on 27.11.2012 itself, the above referred O.P was

dismissed for non- prosecution and the fact was known to the plaintiffs and despite the

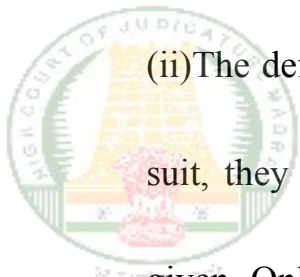
same, they have not taken any steps to restore the above O.P. The First Appeal in

A.S.No. 488 of 2012 was also dismissed on 17.9.2014. As against the same, a Second

Appeal in S.A.No. 302 of 2015 is filed and the same is pending now. This Defendant

had filed a final Decree application and an Advocate Commissioner was appointed,

enquiry conducted and Report was also filed.



(ii) The defendant submits that in the Written Statement filed by Plaintiffs her

suit, they have not chosen to give the number of O.P. and only a diary number was given. Only during the course of trial, it was brought to the notice that the above O.P.

has been filed. It is submitted that even during the trial which was then taking place during the year 2012, the O.P. was dismissed by the Hon'ble Court and despite the same, it was represented to the Court that the O.P. was pending.

(iii). It is incorrect to state that the Smt. Ranganayagi Ammal died on 24.2.1980 and the name of her son is Raman Pillai. The correct date of death is 24.7.1980 and her son's name is Ramu Pillai. The Plaintiffs 1 and 2 are the sons of Late Ramu Pillai and the Grandsons of the Testatrix Smt. Ranganayagi Ammal. The Respondents in O.P.No. 621 of 2009 are the grand children of the Testatrix of Smt. Ranganayagi Ammal born through her son Ramu Pillai. The said Ramu Pillai died on 30.6.2007. The said Smt. Ranganayagi Ammal during her life time had settled the property mentioned in the B Schedule i.e. Door No.22, Ulgappa Chetty Street, Triplicane, Chennai-5 in favour of her daughter Logambal and in as much as the petitioners are seeking Letters of Administration in respect of "A" schedule property alone, the inclusion of Respondents 5 to 10 are only with a view to protract the issue and defeat the rights of the defendant herein. The said Smt. Ranganayagi Ammal was not in a free and sound state of mind at



the time of executing the Will. One of the attesting witnesses viz., Jayarama P.

son-in-law of the said Smt.Ranganayagi Ammal and as per the alleged Will the property

mentioned in "B" schedule was allotted to Logambal, who is the wife of attesting

witness. As a matter of fact not contended with the bequeathment of the property to his

(Jayarama Pillai) wife Logambal, the said Jayarama Pillai obtained a Settlement Deed in

favour of his wife thereafter. The said Jayarama Pillai who played a dominant role and

influenced Smt.Ranganayagi Ammal to execute the Will. Smt. Ranganayagi Ammal

during her last days, was not in a sound state of mind and using undue influence and

coercion, the said Will came to be executed.

iv).This defendant states that since one of the two properties was settled in favour of the

daughter, there is no necessity to right the Will in respect of the other property which is

obviously meant to be inherited by her son. Therefore, there is no reason to bequeath the

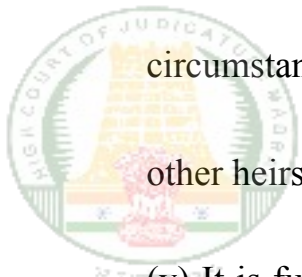
property in favour of the grandsons when the son was alive. It is pertinent to note that

out of the three grandsons, the Smt.Ranganayagi Ammal had given the property only in

favour of the two grandsons viz., the Plaintiffs/petitioners 1 and 2 herein. There are no

valid reasons given for bequeathing the property in favour of two minor grandsons

leaving out another minor grandson. Thus, the Will has been executed in suspicious



circumstances and there is no explanation offered for executing the Will except other heirs.

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(v) It is further submitted that Smt. Ranganayagi Ammal used to sign her name and the fact that she has affixed her Left Thumb impression will go to show that she was not in a sound state of mind at the time of executing the Will. The Testatrix Smt. Ranganayagi Ammal was an illiterate and who was not conversant with English language. But the disputed Will is written in English which would go to show that she was not aware of the contents of the Will and hence, the above T.O.S. is liable to be dismissed. Merely because the Will was registered one will not prove that the contents were explained to the testatrix before executing the same.

vi) It is submitted that the Letters of Administration is being sought for in respect of "A" Schedule property only and in such an event the impleadment of Respondents 5 to 10 who were no way connected with the said property, is nothing but a delaying tactics to protract the proceedings. It is a matter of fact that the respondents 5 to 10 are the legal heirs of Logambal who was already being settled with the said property and therefore the question of their co-operation in filing the O.P. is not necessary and the O.P. is filed beyond the period of Limitation and therefore, the above O.P. is liable to be dismissed with cost. Admittedly the Will was executed on 30.5.1979 and the Testatrix expired on



24.7.1980 and the present O.P. was filed on September, 2009 nearly after a period of 29 years. Therefore, the O.P. is barred under the Law of Limitation.

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vii) The defendant submits that the plaintiffs are guilty of suppression of facts. The defendant has filed a Suit in O.S.No. 5093 of 2008 as referred to above and there is no reference in the O.P. about the filing of the Partition Suit filed by the Defendant. Further, The O.P. has not been properly valued and the property is measuring an extent of around 2,242 Sq.Ft. situate at Triplicane, Chennai-5 and the valuation as claimed in O.P. is not correct and the property will fetch a minimum of Rs.1 Crore during the year 2009. On this ground also the O.P. is liable to be dismissed.

viii). The defendant submits that the above O.P. has been filed as a Counterblast to the Suit filed for Partition by her and there is no bonafides in filing the Suit after a period of 29 years after the death of the Testatrix Smt.Ranganayagi Ammal. Hence, the above T.O.S is an abuse of process of law and there is absolutely no merits or bonafides in filing the O.P. and prays that the same dismissed with exemplary cost.

6. Upon hearing both sides and perusing the pleadings, the following issues are framed for consideration in TOS:



1) *Whether the Will dated 30.05.1979 is true and valid?*

2) *Whether the Testatrix, Ranganayaki Ammal was in sound and disposing state of mind at the time of execution of the Will?*

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3. *Whether the plaintiff is entitled to Letters of Administration with the copy of the Will annexed?*

4. *To what other reliefs the parties are entitled?*

7. On the side of the Plaintiffs, Ex.P1 to Ex.P9 were marked and PW.1 and P.W.2 were examined. On the side of the Defendant, Ex.D1 & Ex.D2 were marked and DW.1 was examined.

8. The summary of facts leading to the Second appeal are as follows:

The defendant in TOS has filed the suit in O.S. No.5093 of 2008 seeking for partition of the suit property and succeeded in the suit by Judgment dated 13.09.2012. Being aggrieved, the plaintiffs in TOS filed A.S. No.488 of 2012 thereby the Judgment of the Trial Court has been confirmed by Judgment dated 17.09.2014. Hence, they have filed the present Second appeal to set aside the Judgment and Decree dated 17.09.2014.

9 In the Second Appeal, the following substantial questions of law is framed



“On the face of the fact that the Probate proceedings are pending, the Lower Court was in error in decreeing the suit for partition?”

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10. Heard both sides and perused the materials available on record.

Issue Nos.1 to 4

11. The learned counsel for the plaintiffs/appellants has submitted that nowhere in the Pleadings, the Defendant had raised any doubts of the LTI of the Testatrix, and had admitted the execution of the Will. Once Will is admitted by the Defendant, as in this case, the issue of Thumb Impression does not arise. Further, out of 13 persons (grandchildren of the Testatrix and 1 daughter in law of the Testatrix), only one person, viz. Mr. Devaki (daughter of Ramu Pillai and grand daughter of the Testatrix) alone, being the Sole Defendant opposes the grant of Probate, questioning the genuineness of the Will. The same will show that when the entire extended family are in agreement with the genuineness of the Will, only one person had questioned the same, with vested interest and agenda.

12. It has been further submitted that there is no question to leave R. Bhaskar, who is one of the grandson in the said Will while he had along with Plaintiff 1 and 2 jointly filed



the Written Statement in the Suit O.S.No. 5093 of 2008. He is a party in hand

Appellants in A.S.No. 488 of 2012, and is also a party along with the Plaintiffs in the

S.A.No. 302 of 2015. His stand is categorical by his conduct. When he had not

questioned the genuineness of the Will, this Defendant cannot raise the point that the

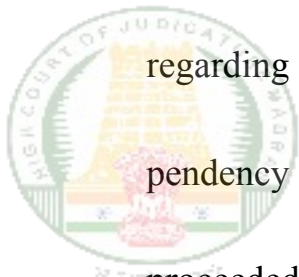
bequeathment in the Will, being done to his exclusion, causes the point of the Will

being executed in suspicious circumstances.

13. The learned counsel for the plaintiffs/appellants has further submitted that during the pendency of O.P. Proceedings, the Lower Courts erred in holding that there was no Will and hence no probate proceedings were pending before the Hon'ble Madras High Court, when in fact the Will was filed to be probated and numbered as O.P. No.621 of 2009 and thereafter, the same was converted into as TOS No.61 of 2016. Further, the Lower Courts ought to have taken into account that the defendant/respondent had made false statements in her pleadings that her claim was based upon an alleged settlement deed when no such settlement deed was filed during the suit trial.

14.It has been further submitted that the Lower Courts erred in pronouncing that Ramu Pillai died intestate and hence all the legal heirs are entitled to equal share in the

property, when in fact the Probate proceedings were pending in O.P. No.621 of 2009



regarding the suit property. Further, the Lower Courts were appraised of the

pendency of the Probate proceedings and hence the lower courts should not have

proceeded with the suit and first appeal and should have awaited the final outcome of

the probate proceedings. Since the plaintiffs has proved the Will by way of oral and

documentary evidence, he seeks for grant of letter of Administration in favour of the

plaintiffs.

15.The learned counsel for the respondent has submitted that the defendant is one of the

daughters of Ramu Pillai. The defendant as early as in the year 2008 had filed a Suit in

O.S.No. 5093 of 2008 on the file of the VII Assistant City Civil Court, Chennai, praying

for Partition of the suit property and seeking for allotment of 1/6th share and for other

reliefs. The said Suit was decreed on 30.9.2012 and the Appeal in A.S.No. 488 of 2012

filed by the Plaintiffs in the above T.O.S. also came to be dismissed on 17.9.2014 and as

against the same, the above said Second Appeal in S.A.No. 302 of 2015 is filed and the

same is pending.

16.It has been further submitted that the defendant had filed a final decree application



and Advocate Commissioner was appointed and a report has also been filed i

Suit. Though in the Written Statement filed in the suit in O.S.No. 5093 of 2008 it was

stated that a O.P. for grant of Letters of Administration was filed, while the O.P was

not numbered and after numbering, the plaintiff in the T.O.S. had allowed the O.P. to go

for default and restored the same after a long gap. As and when the notice in the above

O.P. was served, this defendant has filed her objections and only in the year 2016 the

said O.P. was converted into a Testamentary Suit.

17. The learned counsel for the respondent has further submitted that the Plaintiffs have

not given any valid or acceptable reason for not applying for Letters of Administration

after the death of the Ranganayagi Ammal, but has approached this Hon'ble Court after

a long delay of 29 years. The said Will dated 30.5.1979 came to be executed by undue

influence and coercion exerted by one Jayaram Pillai, who is the son-in-law of the

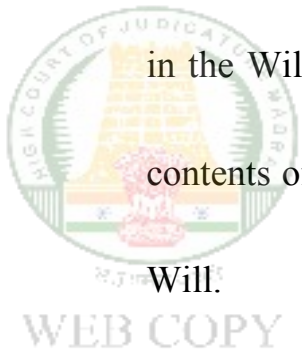
Testatrix. Though the Will refers two properties, one of the properties was given to the

daughter Logambal by way of Settlement deed dated 30.8.1979 and therefore, the said

Ranganayagi Ammal had not gone through the contents of the Will nor she was aware

of the recital in the Will. Admittedly the said Ranganayagi Ammal is an illiterate lady,

but used to sign in Tamil. The disputed Will is written in English and there is no recital



in the Will stating that the Testatrix though not conversant with English language, the contents of the same was read over and explained to her at the time of executing the Will.

18. It has been further submitted that in so far as the delay in filing the O.P. is concerned, the plaintiffs have stated that the other beneficiaries viz., Logambal was not co-operating and therefore, the O.P. was filed belatedly. In this context, it is to be noted that the Ranganayagiammal had already settled the property in favour of Logambal and therefore, there is no necessity for her (Logambal) or the legal heirs to apply for grant of Letters of Administration. Therefore, the reason given for the delay is false. The Plaintiffs have filed a Reply Statement reiterating the same allegations contained in the O.P. and they have not refuted the specific allegations about the reason for approaching the court belatedly. In the Reply Statement it is admitted that the O.P. was dismissed for default and thereafter it was restored.

19. It has been further submitted that it is also to be noted that the disputed Will contained two schedule of properties, but B-Schedule property viz., Ulgappa Chetty Street property was settled by the Testatrix in favour of her daughter Logambal. If this



fact was brought to the notice of the Testatrix then the Testatrix would

executed the Will containing the same property in favour of her daughter. Therefore, it

is clear that the contents of the Will was not made known to her before executing the

same.

20. It has been further submitted that the Testatrix had given one property absolutely to her daughter but in the same Will she has given life estate to her son. She would have given some plausible explanation for restricting the right to the son in respect of the other property. There is no reasoning set out in the Will as to why only a limited right of enjoyment alone was given to the son. Further, it is also to be noted that the Testatrix had three grandsons at the time of her executing the alleged Will. In the said Will only two minor Grandsons were given absolute right thereby excluding third grandson without any reason. There is no explanation or reasoning given by the Testatrix for excluding one of the 3 grandsons to inherit the property. Therefore, it is crystal clear that the Testatrix was not aware of what is written in the disputed Will.

21) It has been further submitted that there is a recital in the disputed Will that all the



children of Ramu Pillai will jointly "incur necessary expenditure for the m

Ramu Pillai's daughter Kasthuri". The Plaintiffs have not chosen to divulge whether the

marriage expenditure was borne by the plaintiffs. This fact is being urged before this

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Hon'ble Court to state that the Will was not acted upon assuming that the Will is a genuine one. It is further a fact that all the grandsons and daughters were not the beneficiaries of the alleged WILL. If that being so the clause stating that all the children should jointly incur the marriage expenditure of Kasthuri does not make any sense.

22. It has been further submitted that it is to be noted that the Will was written on 30th May, 1979, but the same was registered on 1st September, 1979. The attesting Witnesses are none other than the son-in-law of Testatrix i.e Jayaram Pillai and another Witness is Shanmugam who is son-in-law of Jayaram Pillai. Since they are close relatives, the document is clouded with suspicion. Further, it is necessary to submit that the WILL though registered, whether the testatrix had understood the contents and executed the same with full knowledge and consent.

23. It has been further submitted that the attesting witnesses are the same in respect of



the Settlement deed dated 30.8.1979 which also creates suspicion over the fre

free mind of the Testatrix. It is not out of place to mention that the first attesting witness

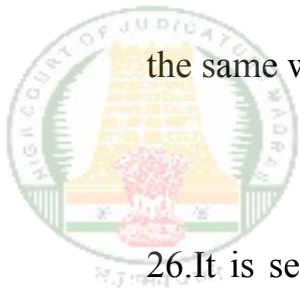
I.e. Jayaram Pillai's wife was given a property in the said WILL. Further, the Will

though dated 30th May, 1979 registered only on 1st September, 1979 and not on 30th

May, 1979. This fact will go to show that the attesting Witness is not speaking the truth

24. It has been further submitted that the existence of Will said to have been executed in the year 1979 was came to light only after this defendant filed a Suit for Partition demanding her 1/6th share. Therefore, there is absolutely no bonafides in prosecuting the Will when this defendant is entitled for her share in the property. Hence, he prays to dismiss the above T.O.S.No. 61 of 2016 and also dismiss the above S.A.No. 302 of 2015.

25. On perusal of the records, it is admitted that that the Testatrix was an illiterate lady and did not know English whereas the contents of the Will are in English. Further, there is no recital in the Will to show that the Testatrix was read over and explained about the contents of the Will before she had executed the same. It is necessary to submit that the WILL though registered, whether the testatrix had understood the contents and executed



the same with full knowledge and consent.



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26. It is seen from the records that while the Will was executed in the year 1979, the plaintiffs have filed the O.P in the year 2009 only after the defendant filed the Suit in the year 2008 for partition in O.S.No. 5093 of 2008 before the VII Assistant City Civil Court. While it is stated that O.P. was pending before this Court, the plaintiffs have not taken any steps to conduct joint trial along with O.P. It is also seen from the records that after filing the present O.P, the plaintiffs have not proceeded the case and remained absent. Hence, this Court dismissed the O.P. for non-prosecution by order dated 22.03.2011. After dismissal of the said OP, the Plaintiffs have not taken any steps to restore the same. In such circumstances, the Trial Court passed the Judgment and preliminary decree dated 13.09.2012. Being aggrieved, the plaintiffs have filed A.S. No.488 of 2012 before VI Additional Judge, City Civil Court, Chennai. The same has been dismissed by Judgment dated 17.09.2014 confirming the Trial Court Judgment dated 13.09.2012. Thereafter, the plaintiffs have filed S.A. No.302 of 2015 before this Court against the Judgment dated 17.09.2014. During the pendency of the present Second Appeal, the plaintiffs have filed an application No.934 of 2016 to restore the present O.P and the same is allowed on 29.03.2016. After filing the objection on the



side of the defendant, the O.P. was converted into TOS. The reason stated

plaintiff for the delay of filing the O.P. after 28 years is not acceptable while the Will

was executed in the year 1979. The Judgment dated 13.09.2012 in O.S. No.5093 of

2008 only was decreed after the dismissal the O.P. No.621 of 2009 on 22.03.2011.

Hence, the Substantial question of Law for admitting the second appeal does not arise.

27. In the cross examination of PW1, in so far B schedule property, there is no explanation for the purpose of executing the Will in favour of her daughter, while it was already settled to her daughter. Therefore, it is clear that the contents of the Will was not made known to the Testatrix before executing the same. Further, there is no proper reasons stated and proved by the plaintiffs that when the absolute right was given to her daughter in the B schedule property, so far A schedule property, there is no reasoning set out in the Will as to why only a limited right of enjoyment alone was given to her son. A reading of the Will shows that while the Testatrix had three grandsons at the time of her executing the alleged Will, in the said Will only two minor Grandsons were given absolute right there by excluding third grandson without any reason. In this regard, the Testatrix have not made any statement for excluding third grandson.

28. It is seen that the attesting Witnesses are none other than the son-in-law of Testatrix



i.e Jayaram Pillai and another Witness is Shanmugam who is son-in-law of

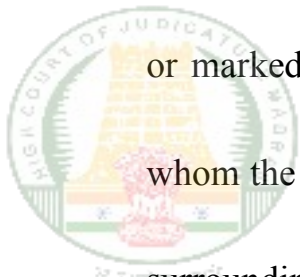
Pillai. Since they are close relatives, the document is clouded with suspicion. In so far as

the Proof of the alleged Will is concerned,-Shanmugam the second attesting Witness

was examined as P.W.-2 and in the Chief Examination, he categorically stated that on 30.5.1979 he was present together with Jayaram Pillai at the Sub Registrar's Office, Triplicane and attested the disputed Will. In the original Will, it is seen that the Will was executed on 30.05.1979 and the same has been registered on 01.09.1979 which after four month of execution of the Will. The reason for the delay of registration has not been explained on the side of the plaintiffs. In so far as the Cross-examination of the Attesting Witness PW-2 is concerned in answer to Question No.2, he has specifically stated that he does not know how to read and write in English. To the question No.26, the PW2 has categorically admitted that he does not know the contents of the Proof affidavit. It is seen that P.W2 has signed in his proof affidavit without knowing the contents therein. Hence, the deposition of P.W2 cannot be considered as true and genuine.

29. It is seen from the records that even though it is stated on the side of the plaintiffs,

<https://www.mhco.org.in/> the consent affidavits have been obtained from the other Legal heirs, they have not filed



or marked in the present proceedings. Further, the plaintiffs have not whisp

whom the Will was obtained. In such circumstances, there are suspicious circumstances

surrounding the execution of the Will and therefore, the plaintiffs are bound to dispel

the same. However, they have failed to prove the Will by way of oral and documentary

evidence. Accordingly Issue No.1 is answered against the plaintiffs. Since the Issue

No.1 is answered against the plaintiffs, other issues do not arise.

30. In view of the above, having considered the consonance findings of both Courts, the

second appeal filed by the plaintiffs herein are liable to be dismissed by confirming the

Judgment dated 13.09.2012 in O.S.No.5093 of 2008.

31. In the result, TOS stands dismissed. Since TOS is dismissed, the Second Appeal

filed by the plaintiffs herein is also dismissed in the aforesaid terms. No costs.

08-01-2025

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

Lbm



List of witnesses examined in TOS:

PW1 - Mr.R. Babu

PW2 - Mr. M. Shanmugam

DW1 - Mr. S. Dhanraj

List of documents marked on the side of the plaintiffs:

Ex.P1 is the Original Will executed by Ranganayaki Ammal dated 30.05.1979. (in safe custody)

Ex.P2 is the Death certificate of Ranganayaki Ammal dated 24.07.1980.

Ex.P3 is the Death certificate of Logambal dated 06.07.2000.

Ex.P4 is the Death certificate of Jayaram Pillai dated 03.08.2002.

Ex.P5 is the Death certificate of Ramu Pillai dated 30.06.2007.

Ex.P6 is the Corporation tax dated 21.02.2008.

Ex.P7 is the photocopy of the Aadhaar card of Mr.Shanmugam (PW2)

Ex.P8 is the second signature found in the third page of Ex.P1 Will as attester.

Ex.P9 is the second signature found in the reverse page of first page of Ex.P1 Will as attester

List of documents marked on the side of the defendant:

Ex.D.1 is the certified copy of the settlement deed dated 30.08.1979

Ex.D.2 is the original authorization letter dated 23.08.2023.

08.01.2025



WEB COPY



A.A. NAKKIRAN, J.

Lbm

Pre-Delivery Judgments in
T.O.S.No.61 of 2016
and
S.A. No.302 of 2015