



T.O.S.No.12 of 2019 and C.S. No.33 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

T.O.S.No.12 of 2019 and C.S. No.33 of 2020

1. K.Balasubramani
2. A.Esai Selvam

... (1st Plaintiff in TOS)
(the Defendants in CS)

..Vs..

1. P.Sengalai,
2. S.Maniammal
3. T.Jayalakshmi
4. S.Bakkiyalakshmi
5. G.Vijayalakshmi
6. Lakshmi

... (Defendants in TOS)
(the Plaintiffs in CS)

T.O.S.No.12 of 2019:

This Petition has been filed under Sections 232, 255 and 276 of the Indian Succession Act XXXIX of 1925 for grant of Probate. Against this petition, a Caveat was filed by the Caveator. As per order of this Court, dated 01.04.2019, the Original Petition No.841 of 2018 has been converted into Testamentary Original Suit.

C.S.No.33 of 2020:

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) Grant a decree for partition and separate possession of the Schedule property and allot 6/8th share to the plaintiffs;

(b) To appoint a Commissioner to divide the suit property by



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metes and bounds and pass a final decree in consonance with the report of the Commissioner and put the plaintiffs in possession of the suit property in respect of their share;

(c) Grant an order of permanent injunction restraining the defendants, their men, agents, servants or any other persons authorized through them or any other persons claiming any right through them from putting up any constructions or making any alterations in the suit schedule property;

(d) Grant costs of this suit to be borne by the Defendants; and

(e) Grant such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render Justice.

For Plaintiff(s)/Defendant(s) : Mr.M. Ramesh

For Defendant(s)/Plaintiff(s) : Mr.A. Chenchurama Reddy

(In Both cases)

COMMON JUDGMENT

The Testamentary Original Suit and Civil Suit have been filed seeking for the reliefs as prayed therein.

2. The plaintiffs in C.S are the defendants in TOS and the 1st defendant in CS is the Plaintiff in TOS. For the sake of convenience, the parties are referred to as per the rank stated in the TOS.

3.Since both the cases are interlinked each other, in the plaint filed in



TOS who are the defendants in CS have reiterated the averments made in the Written Statement filed in CS. In the Written Statement filed in TOS, the defendants who are the plaintiffs in CS have reiterated the averments in the Complaint in CS.

4.The case of the Plaintiff, as set out, in the complaint in TOS is as follows:

a. The Land and then tiled building bearing door No:18, Singaragarden 3rd Lane, Old Washermanpet, Chennai-600 021 measuring 651 square feet absolutely belongs to father of the plaintiff late S.T.Kathirvel Nadar, he having got the same vide registered Partition deed dated 27-8-1963 entered between his brothers namely Arumugha Nadar, Manicka Nadar, and Kathirvel Nadar, which was duly registered as Document No: 3412 of 1963 in the office of the sub-registrar of Madras-Chengelpet.

b.The said S.T.Kathirvel Nadar has two sons namely the Petitioner herein and the seventh Respondent herein and six daughters namely, (i)K.Balasubramani (ii) K.Mohanakumar,(iii) P.Sengalai, (iv) S.Maniammal,(v) T.Jayalakshmi, (vi) S.Bakkiyalakshmi, (vii) G. Vijayalakshmi, (viii) Jothiammal (Deceased) who died on 12-11-2017. The said S.T.Kathirvel Nadar passed away on 8-11-1990 leaving behind two sons



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and six daughters named above as his heirs and legal representatives. The Petitioner herein state that their mother Mrs.K.Rajeswari also passed away on the same day i.e., 8-11-1990.

c.After the demise of the father of the Petitioner herein and his brother namely the 7th Respondent herein alone have been in absolute possession and enjoyment of the Schedule property. The beneficiaries of the Will ie., the children of the Petitioner and the 7th Respondent herein namely the Respondents 8 to 12 are also residing in the Schedule property along with the Petitioner and the 7th Respondent herein. All of a sudden, the petitioner and the 7th Respondent herein have received a legal notice dated 5-10-2017 from the Respondents 1 to 6 herein claiming undivided 6/8th share in the Schedule property followed by Court summons in O.S.No:1152 of 2018 on the file of XIXth Judge, City Civil Court, Chennai Claiming 6/8th share in the Schedule property for the hearing date 5-4-2018.

d. The petitioner and his brother had accidental met R.Vasudevan in the month of March 2018 and informed him during the course of their conversation that their sisters have filed Partition suit against them with respect to the schedule property. At that time, R. Vasudevan informed that



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S.T.Kathirvel Nadar had executed a Registered Will with respect to the schedule property in the year 1988 and further informed that the said Will may be in the bero of the deceased. The Petitioner and the 7th Respondent herein thereafter thoroughly searched the bero of their father late S.T.Kathirvel Nadar and found to their surprise and happiness that their father had executed a registered Will with respect to the Schedule property dated 21-4-1988 whereby he bequeathed the schedule property in favour of his sons namely the Petitioner and the 7th Respondent herein for their life and absolutely in favour of their children. As per the above Will, his sons namely the Petitioner and the 7th Respondent herein shall have life interest in the schedule property without any power to alienate the same and absolutely to their heirs, namely the Respondents 8 to 12 herein who are the beneficiaries of the Will. The said Will was registered as Document No:26 of 1988, Book-3 in the office of the Sub-Registrar of Royapuram, Chennai. The writing hereunto annexed, now shown to the Petitioner and marked with letter A is the Last Will and testament of the said S.T.Kathirvel Nadar and was duly executed by him at Chennai on 21 day of April 1988 in the presence of the witnesses whose names appear at the foot thereof.

e). The Petitioner and the 7th Respondent herein came to know of the



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existence of the Will only through R.Vasudevan, after receiving the court summons from the Respondents 1 to 6 in O.S.No: 1152 of 2018 claiming share in the schedule property for the hearing date 5-4-2018 and immediately approached their counsel entered appearance in the above suit on 5-4-2018 pending on the file of XIXth Judge, City Civil Court Chennai, Sundarraaj used to assist the deceased during 1985 till his demise.

f).There is no delay in filing this Petition for grant of Probate since he and the 7th Respondent came to know of the existence of the WILL only in the month of March 2018 and hence this Petition. Since the Respondents 1 to 5 are the sisters of the Petitioner herein and the 6th Respondent herein is the sole heir of their deceased sister Jothi, they are made as Respondents 1 to 6 in this Petition. The deceased S.T.Kathirvel Nadar at the time of his death had left immovable property morefully mentioned in the Schedule hereunder which absolutely belonged to S.T.Kathirvel Nadar. The Schedule property morefully mentioned hereunder is within the jurisdiction of this Honourable Court.

g).That the amount of assets which is likely to come to the Petitioner and the 7th Respondent hand does not exceed in the aggregate the sum of Rs.50,00,000/- and the net amount of the said asset after deducting all items by



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which the Petitioner and the 7th Respondent are by law allowed to deduct is of the value of Rs.50,00,000/-. That the Petitioner have impleaded all the next of kin or other persons interested as party/respondents. There is no next of kin or other person interested to be impleaded. Thus, he seeks this Court to grant probate in favour of the 1st defendant and plaintiff in TOS and dismiss the suit seeking for the partition in the suit property. Hence, this Testamentary Original suit.

5.Written statement filed by the defendants 1 to 6 in TOS which are averments in the plaint of CS is as follows:

a).The plaintiffs submit that the house property measuring an extent of 651 sq.ft comprised in Old Survey No.2085, at present New S.No.1017/107, situated at Old No. 8, New No. 15, Singarathottam, 3rd Lane, Royapuram, Chennai-600 013, namely the suit property was originally allotted to S.T.Kadhirvel Nadar namely the plaintiffs' father by way of a registered Partition Deed dated 27.8.1963 and registered as Document No.3412 of 1963 in the office of the Sub Registrar, Royapuram.

b)The plaintiff submits that Mr. S.T. Kathirvel Nadar namely their father died intestate on 08.11.1990 leaving behind his 7 daughters and



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two sons. Out of 7 daughters, K.Radha died as Minor. Mrs. Rajeswari Ammal namely, the wife of Kadhivel Nadar died on 08.11.1990. One of the daughter namely P. Jothiammal died on 12.11.2017 leaving behind Lakshmi namely the 6th plaintiff herein as her legal heir. Jothiammal's husband Ponnaiyan predeceased her. Therefore the plaintiffs and the defendants are entitled to the suit property as legal heirs of S.T. Kadhivel Nadar to succeed to his estate.

c).After the death of Mr.S.T.Kadhivel Nadar, they requested the defendants to divide the suit property by metes and bounds and to allot 1/8th share each in the suit property. But the defendants refused to partition the property. Thereafter the plaintiffs sent a legal notice on 20.09.2017 to the defendants requesting them to divide the property by metes and bounds and to allot 1/8th share each equally. The defendants received the above notice. The 1st defendant has not chosen to send any reply. But the 2nd defendant sent a reply on 16.10.2017 in which he has admitted that the plaintiffs are entitled to 1/8th share each equally and stated that amicable settlement talks have already commenced and the dispute will be settled amicably without approaching the Court of law. Therefore the plaintiffs approached the defendants several times and requested them to divide the suit property by metes and bounds or to sell the property and pay their share by way of money. But the defendants refused



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6. Based on the above said pleadings in both TOS and CS, the

following issues were framed separately:

in TOS. No.33 of 2020:

"1. Whether the Will dated 21.04.1988 is true and valid?

2. Whether the testator S.T.Kathirvelu Nadar, was in sound disposing state of mind at the time of execution of the Will?

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

In C.S. No.33 of 2020:

(i). Whether the plaintiffs are entitled for grant of decree for partition and separate possession of the schedule property and allot 6/8th share to the plaintiffs.

(ii) Whether the plaintiffs are entitled for grant of permanent injunction restraining the defendants, their men, agents, servants or any other persons authorised through them or any other persons claiming any right through them from putting up any constructions or making any alterations in the suit schedule property.

(iii) To what other reliefs the plaintiffs are entitled to?

7. On the side of the Plaintiffs, Ex.P1 to Ex.P7 were marked and



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PW.1 and P.W.2 were examined. On the side of the Defendants, Ex.D1 to Ex.D7 were marked and DW.1 to DW.3 were examined.

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

Issue Nos.1 to 3 in TOS:

9.The learned counsel for the plaintiff submitted that the defendants had filed a partition suit O.S.No:1152 of 2018 with respect to the suit property against the 1st plaintiff who is their brothers after a period of 28 years from the date of the death of their father T.S.Kathirvel Nadar who died on 8-11-1990. While the 1st plaintiff and his brother met R.Vasudevan, they came to know that their father had executed a Will in their favour. Immediately, the defendants thoroughly searched the bero of their father and found out the registered will in the said bero. Soon after finding the Will, the defendants have filed O.P. No.841 of 2018. If the defendants were aware of the same, the above O.P. would have been filed soon after the demise of their father namely the Testator since they are the beneficiaries under the above Will.

10. It has been further submitted that the whereabouts of the



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attesting witnesses ie. (i) M.Ramachandra Prasad and (ii) P.Shankar could not be found out despite best efforts taken by the defendants Since R. Vasudevan passed away during the pendancy of the above T.O.S, the other witness namely G.Sundarraaj have deposed evidence in the above T.O.S. as P.W.2 and identified the signature of the Testator in Ex.P1 and also spoken about the fact of two attesting witnesses who have signed in it. The Petitioner was examined as P.W.1 and he identified the signature of his father namely the Testator found in Ex.P1. Thus the Petitioner has proved the will under section 69 of the Evidence Act. Hence, he seeks to dismiss the TOS and the relief as prayed in CS.

11.The learned counsel for the plaintiff further submitted that the plaintiffs have mischievously pleaded that the Testator had affected with cancer and he was not conscious and in sound state of mind. However, they have not filed any document to substantiate their allegations regarding the health of the Testator. Further, during the cross examination of P.W.I, he had stated that his father was never hospitalized and he was hale and healthy. In this regard, the defendants have no serious objections in the cross examination. Further, P.W.2 G.Sundarraaj had filed proof affidavit in the above T.O.S. and deposed evidence by stating that the Testator was very



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active and he had signed the will in the presence of the attesting witnesses and in the presence of R. Vasudevan and himself and the contents of the will was read out and explained to him in Tamil by one of the attesting witness and the will was signed by the Testator in the presence of the attesting witnesses. Further, the attesting witnesses also signed in the presence of the Testator. Thus, the defendants have proved the Will by way of oral and documentary evidence. Hence, he seeks to dismiss the Civil Suit and the relief as prayed in TOS.

12. The learned counsel for the defendants submitted that the said late S.T. Kathirvel Nadar died intestate on 08.11.1990 leaving behind his 7 daughters and two sons as legal heirs. He was an illiterate. He cannot read and write in English and Tamil nor he can put his signature in English or Tamil. Normally, he used to affix his thumb impression only in all documents. Further, he was suffering from blood cancer for a long period of time and also was admitted in Stanley Hospital for a very long period of time for treatment of several health issues. Many medicines including steroids and pain killers made him numb and he was oblivious to the surroundings. Under such circumstances, it is the bounden duty of the defendants to produce the medical records of the Testator of WILL. In other words, the defendants have



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have filed the present suit seeking for partition of 1/8th share each equally.

Hence, he seeks to dismiss the TOS and the relief as prayed in CS.

14. On perusal of the records, it is seen that the the alleged Testator has got the suit property by virtue of the registered Partition Deed dated 27.08.1963 vide Ex.P3 entered between his brothers. It is seen that the alleged Testator and his wife died on 08.11.1990 and Ex.P1 is said to have been executed by S.T. Kathirvel Nadar in favour of his two sons for their life and absolutely in favour of their children.

15. On the side of the defendants, they have raised doubts in the signature of the alleged Testator found in the said Will which may be done by impersonation. On going through of Ex.P3, the alleged Testator had signed in Tamil as Kathirvel therein. But, in the alleged Will, it is seen to be signed in Tamil as Kathirvel Nadar. This aspect has not been clarified. Further, on perusal of the Will, there is no address found of the two Attesting Witnesses and their father name in the Will.

16. It is well settled law that the proof of execution of a Will has



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to be attested at least by two witnesses. At least one attesting witness has to be examined to prove the execution and attestation of the Will. Further, it is to be proved that the Executant had signed and/or given his thumb impression in the presence of at least two attesting witnesses and the attesting witnesses had put their signatures in the presence of Executant. On perusal of the said Will, the Two Attesting Witnesses (i) M.Ramachandra Prasad and (ii) P.Shankar have signed therein. However, to prove the attestation of the said Will, they have not been examined on the side of the plaintiff since the two attesting witnesses were not found in their address. On the other hand, to prove the attestation of the said Will, affidavits of one R.Vasudevan and G.Sundarraaj have been filed as they witnessed at the time of the execution of the Will. Since R.Vasudevan died during the pendency of the TOS, G.Sundaraj was examined as P.W.2. One G.Sundarraaj was examined as P.W.2 as he was at the time of the execution of the said Will even though he is not at all related to the said Will and further, he would not identify the signature of the Attesting Witnesses. On the question of regarding the Two attesting witnesses that how do you know Ramachandran Prasad and Shankar, he answered as he did know about the said two attesting witnesses. In view of the above, it makes clear that the plaintiff has not complied with the Section 69 of the Indian Evidence Act.

17. In the cross examination of P.W2, on the question of



inclusion of some contents and the date in the Will in writing, he answered that he did not know about it. Furthermore, in the proof affidavit of P.W2, he deposed that the Testator signed the Will in the house of the Testator. However, per contra in the cross examination, he deposed that the Testator signed the Will in the shop. While asking in the cross examination who drafted the Will, the P.W2 answered, he did not know.

18. In the cross examination of P.W1, he deposed that he knew the execution of the Will in the year 2017. While being so, why he has not taken any steps to probate the Will in the prescribed limitation of period. Even though the Will was executed in the year 1988 and the Testator died in the year 1990, the plaintiff has filed the Original petition in the year 2018, after 28 years of the demise of the Testator. The reason for the delay that the Will was found in the bero of the Testator, after coming know through one R. Vasudevan who was part time worker in the Cycle shop of the Testator. It is beyond comprehension of any individual that a bero will remain unopened or unseen till the discussion with R.Vasudevan even he was one of the worker in the shop. Hence, the reasons for inordinate delay of filing the O.P, is not acceptable one.

19. In view of the aforesaid discussion, it makes clear that the



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plaintiff has not proved the said Will dated 21.04.1988 which has been executed without any suspicious circumstances, by way of oral and documentary evidence. In the suspicious circumstances revolves around the Will, the Will dated 21.04.1988 cannot be considered as True and valid. Accordingly, issue No.1 in TOS is answered.

20. On perusal of the DW1 and DW2 proof affidavit and evidence, it is seen that the alleged Testator had suffered various health issues taking many medicines and also was admitted in the Hospital for treatment. Under such circumstances, it is the bounden duty of the plaintiff to produce the medical records of the Executant of the Will proving that he was hale and healthy during the execution of the Will. However, there is no medical records submitted before this Court to prove the stable of mind and health condition of the Testator. Accordingly, Issue No.2 in TOS is answered.

21. The Will dated 21.04.1988 is alleged to have been executed by S.T. Kathirvel Nadar, has not been proved by the plaintiff by way of oral and documentary evidence in the manner known to law, the plaintiff is not entitled to grant of Probate in the suit property as per the terms of the said Will and not entitled to any other relief therein. Accordingly, issue No.3 in TOS is



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answered.

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Issue No.1 to 3 in CS

22. On perusal of Ex.P3, as the suit property was registered in favour of S.T. Kathirvel Nadar by way of Settlement Deed between the brothers and the Will dated 21.04.1988 is alleged to have been executed by S.T. Kathirvel Nadar, has not been proved by the plaintiff in the manner known to law, the daughters and sons of S.T. Kathirvel Nadar are entitled for partition of 1/8th share each equally in the suit property. Hence, the defendants are entitled for grant of preliminary decree for partition and separate possession of the schedule property and allot 6/8th share to the defendants. Accordingly, Issue Nos.1 and 3 in CS are answered.

23.As the defendants and plaintiff are jointly entitled to the aforesaid extent, the defendants are entitled for grant of permanent injunction restraining the defendants, their men, agents, servants or any other persons authorised through them or any other persons claiming any right through them from putting up any constructions or making any alterations in the suit schedule property. According Issue No.2 in CS is answered.

24. In the result, the Preliminary Decree is passed in the suit in



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C.S. No.33 of 2020 to the aforesaid extent and as a sequel, the Testamentary

Original Suit in TOS No.12 of 2019 is dismissed. No costs.

14.02.2025

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

Lbm

List of witnesses examined in TOS and CS:

PW1 - Mr.R. Balasubramani
PW2 - Mr. G. Sundarraj

DW1 - Mrs.G. Vijayalakshmi
DW2 - Mrs. S. Maniammal
DW3 -Mr.K. Mohanakumar @Mohan

DW1 - Mr.R. Balasubramani (In CS)
DW2 - Mr.K. Mohanakumar @Mohan(In CS)

List of documents marked on the side of the plaintiff:

Ex.P1 is is the original Registered Will Doc. No.26/1998 date: 21.4.1988 (Will is safety custody)

Ex.P2 is the Online print out copy of Death Certificate o S.P.Kathirvel Nadar (Certificate under section 65B is filed)

Ex.P3 is the original Partition Deed dated 27.08.1963 bearing Doc.No.3412 of 1963.

Ex.P4 is the online print out copy of Death Certificate of Jothi D/o.Kathirvel (Certificate under section 65B is filed)



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Ex.P5 is the office copy of the lawyer notice dated 05.10.2017.

Ex.P6 is the office copy of the plaint filed by the respondent in O 1152/2018 against petitioner herein and his brother.

Ex.P7 is the online print out copy of legal heirship certificate of Kathirvel to died on 08.11.1990 (Certificate under section 65B is filed)

List of documents marked on the side of the defendants:

No documents are marked.

14.02.2025

A.A. NAKKIRAN, J,



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