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A.S.No.491 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.07.2025

Pronounced on :21.07.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.491 of 2024

and

C.M.P.No.16905 of 2024

Mr.V.Venkatesan,
Son of Late Mr.Vijayaraghava Reddy
Residing at No.2/462,
1st Cross Street, Srinivasapuram,
Iyyappanthangal, Chennai 600 056. .. Appellant/2nd Plaintiff

/versus/

1.Mrs.Bhanumathi,
Wife of Mr.Ethiraju

2.Mr.E.Ravikumar,
Son of Mr.Ethiraju,
Respondents 1 and 2 are both
residing at No.247, Natesa Nagar,
Virugambakkam, Chennai 600 092.



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Mrs.Rajeswari(Deceased)
Wife of Ranganathan,
No.20, Anna Street, Madhialagan Nagar,
Saligramam, Chennai 600 093.

3.Mr.Ranganathan,

4.Mr.Srinivasan,
Son of Mr.Ranganathan

5.Ms.Padmavathy,
Daughter of Mr.Rnganathan,
The Respondents 3 to 5 are all
Residing at No.20,
Anna Salai, Madhialagan Nagar,
Saligramam, Chennai 600 093.

..Respondents/Defendants
2,4 to 7

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., read with Order 41, Rule 1 of the Civil Procedure Code, to allow the appeal by dismissing the judgment and decree in O.S.No.10989 of 2010 dated 27.03.2024 passed by the III Additional Judge(FAC), (Hon'ble II Additional City Civil Court at Chennai).

For Appellant :Mr.V.Venkatesan(P-in-P)

For Respondents :Mr.J.Senthamilarasu for R1 and R2
Mr.V.Selvam for R3 to R5



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JUDGMENT

Short fact of the case is that, one Bhakthavatchala Reddy had four daughters and few properties. He died on 04.11.2011. One of his daughter by name Mrs.Vasantha claims that her father died intestate. Whereas his grand-son born to another daughter by name Mrs.Banumathi, claims that he left a Will dated 08.09.2000, in which he has bequeathed the suit property to him. The Trial Court dismissed the suit filed for declaring the Will as illegal and the relief of partition. Hence, the appeal is filed.

2. Facts in detail:

Suit is for declaration that the Will dated 08.09.2000 executed by Bhakthavatchala Reddy in favour of Mr.E.Ravikumar (grand son of Bhakthavatchala Reddy born to his daughter Mrs.Banumathi) as illegal and not binding on the plaintiff Mrs.V. Vasantha, the daughter of Bhakthavatchala Reddy and further relief of partition to divide the suit property into 4 parts and allot $\frac{1}{4}$ share to the plaintiff.

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3. The defendants are Chandrakantham, the wife of Bhakthavatchala Reddy, Mrs.Banumathi and Mrs.Rajeswari, the two other daughters of Bhakthavatchala Reddy and E.Ravikumar grand son. Pending suit, the plaintiff, V.Vasantha died and her son Venktesan got impleaded and contested the suit. The third defendant Rajeswari died and her legal heirs were brought on record as defendants 5 to 7.

4. The case of the plaintiff is that 4 acres of agricultural land at Kunnapakkam Village held by Vijayaraghavan Reddy, the husband of the first plaintiff, Mrs.Vasantha (deceased). After the demise of Vijayaraghavan Reddy on 16.11.1985, leaving behind his wife Vasantha and son Venkatesan, (plaintiff 1 and 2), his father Bhakthavatchala Reddy sold the 4 acres land for Rs.90,000/- in the year 1990 and from the sale proceeds purchased half ground of land in the name of the first plaintiff Vasantha and another half ground of land in the name of Banumathi (2nd defendant) at Iyyapanthangal. He retained with him the balance amount of Rs.54,000/-.

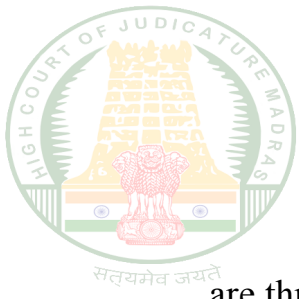


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Besides, Bhakthavatchala Reddy had a property at Senjeri Village purchased in the year 1979, in which he had constructed building and earning rental income. Baktavatsala Reddy died on 04.11.2001. During his life time, he had promised that he will bequeath his properties equally to all his four daughters. While so, when she applied for EC on 23.07.2009, she came to know that a Will of Bhakthavatchala Reddy, allegedly executed by him on 08.09.2000 registered as document No: 90 of 2000 at SRO-III, Virugambakkam bequeath the property in favour of E.Ravikumar. The will is a fabricated document. E.Ravikumar the fourth defendant in collusion with other defendants try to cheat the plaintiff.

5. The said suit not probated and the claim of E.Ravikumar that he had initiated probate proceedings, is not correct, since she had not received notice in the probate proceedings. The defendants 2 and 4 are collecting the rent from the property to a tune of about Rs.10,000/- per month, but not sharing it with the first plaintiff, however getting her signature in blank papers for the past 9 years. The son and daughter of the second defendant



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are threatening with dire consequence when the plaintiff ask for account and division of property.

6. The first, second and fourth defendants had filed written statement, wherein the plaint averments are denied except the relationship of the parties. According to them, the suit property is the absolute property of Bhakthavatchala Reddy which he purchased on 05.09.1979 from his own fund and he has every right to deal with it. He had executed a Will on 08.09.2000 in respect of this property in favour of the 4th defendant E.Ravikumar and got it duly registered. It is incorrect to say that Bhakthavatchala Reddy assured to give his property equally to his 4 daughters. In fact, he during his life time, itself settled his properties to all his other 3 daughters. The only daughter, who was not given any property was the 2nd defendant Banumathi. Therefore, reciting the said fact, the suit property was bequeathed to the fourth defendant, the son of Banumathi. Suppressing these facts, the suit is filed with false averments with oblique motive.



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7. Issues framed by the Trial Court:

1. Whether the plaintiff is entitled for a declaration that the Will dated 08.09.2000 executed by the plaintiff's father in favour of 4th defendant as null and void?

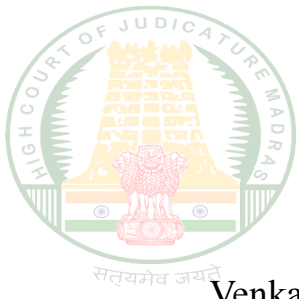
2. Whether the plaintiff is entitled for partition of $\frac{1}{4}$ share over the plaint schedule property?

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

4. Whether the plaintiff is entitled for past and future mesne profit from the defendants 2 to 4 as prayed for?

5. To what other relief the plaintiff is entitled to?

8. The defendants 1 and 3 died during trial, rest of the defendants were called absent and set exparte. The first plaintiff before her demise had filed proof affidavit in lieu of chief examination as PW-1. Through her, 9 documents were marked as Ex.A-1 to Ex.A-9. On her demise, her son



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Venkatesan got impleaded as 2nd plaintiff, he had deposed as PW-2.

Through him, Ex.A-10 and Ex.A-11 marked.

9. The trial Court dismissed the suit holding that, the plaintiffs failed to establish the Will Ex.A-8 is illegal. The suppression of facts about the property given to her by her father and alienating it, she disentitles to claim the relief sought for.

10. Being aggrieved, the second plaintiff is before this Court. He had taken out an application under Order 41, Rule 27 of C.P.C. to receive three additional documents. The same was allowed and assigned Ex.A-12 to Ex.A-14. They are the certified copy of the written statement of Defendant 2 to 5 in the original suit O.S.No.5370 of 1999, the certified copy of the judgement passed in O.S.No.5370 of 1999 and the web copy of the dismissal order of T.O.S.No.100 of 2013 in respect of the Will of Bhakthavatchala Reddy.



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11. The appellant, who appeared as party –in- person, contended that, when the alleged Will of Bhakthavatchala Reddy not probated and the attempt to get it probated also got aborted by dismissal of the probate petition and it was converted into Testamentary Original Suit on filing caveat. The Trial Court dismissal of the suit for partition is liable to be set aside.

12. According to the appellant, since the Will through which the 4th defendant claims exclusive right in the property is not probated and the property which falls within the jurisdiction of Madras High Court Original Side Territory, the property of Bhakthavatchala Reddy has to be succeeded by his legal heirs equally. Regarding the additional documents marked as Ex.A-12 to Ex.A-14, in spite of opportunity given to the respondents to cross examine him, they have not availed the opportunity. Hence, the appeal is to be allowed.



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13. Percontra, the learned counsel for the respondents submitted that, due to sudden death of the counsel, who was handling the case in T.O.S.No. 100 of 2013, the respondents were not able to pursue the case and not aware of the dismissal of it. Necessary steps taken to restore the T.O.S.No. 100 of 2013, which was dismissed for default. The plaintiff/appellant and his mother had knowledge of the Will and about the acquisition of portion of the property for Metro Rail. They got property from Bhakthavatchala Reddy during his life time and sold it. They were also aware of probate proceedings and filed caveat. Instead of contesting the probate proceeding to disprove its genuineness, suppressing several facts, filed suit for declaring the Will as illegal and attempted to get a decree in their favour. The Trial Court has rightly dismissed the suit for lack of evidence. Now, to improve the case, few documents are filed, which are the Court records and part of the suit proceedings.



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14. Point for determination in this appeal whether the plaintiff's prayer for a negative declaration of the Will marked as Ex.A8 is sustainable?

15. The suit for partition filed with the negative prayer preventing the fourth defendant from exclusive right over the property based on the Will marked as Ex.A8. Apparently in this case though the defendants have filed their written statement, they did not participate in the trial. The Will which is sought to be declared as illegal, been subject matter of T.O.S.No.100 of 2013. It is stated by the learned counsel appearing for the respondents that necessary steps have been taken for restoring T.O.S.No.100 of 2013 which was dismissed for default on 13.07.2024. Though no material placed before this Court to indicate that T.O.S.No.100 of 2013 is restored, being a Will in respect of the property within the Chennai city, the probate proceedings been initiated by the fourth defendant, the suit with the prayer to declare it as an illegal and consequential partition amounts to parallel proceedings.

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Having filed caveat in the proceedings, the parallel suit with the negative prayer with the same effect is not sustainable. Since the pendency of the probate proceedings not brought to the notice of the Court below, the Court below has proceeded with the trial, however, has rightly dismissed the suit. After losing the suit, the plaintiff as the appellant has taken out an application to introduce certain facts through additional documents. Those facts the appellant had knowledge even at the time filing the suit. However, this Court has allowed the application and received the additional documents for proper adjudication of the dispute.

16. The perusal of the decree passed in O.S.No.5370 of 1999, which is marked as Ex.A13 and one of the additional documents, the Court finds that it is the suit for specific performance filed by one Ramesh against Bhakthavatchala Reddy. On the death of Bhakthavatchala Reddy, his four daughters have brought on record as defendants 2 to 5. The said suit was dismissed on 29.11.2005.

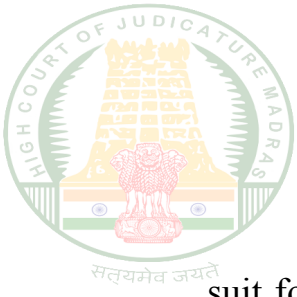


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17. The content of the appellant is that since the property in the earlier suit filed for specific performance was considered as joint property of all four daughters of Bhakthavatchala Reddy and contested by the mother of the appellant as well as the mother of the second respondent and the written statement which is marked as Ex.A12, indicates that the statement of Bhakthavatchala Reddy, which has been adopted by his daughters, after his demise, clearly shows that the Will which is now propounded by the second respondent has not been mentioned in the earlier proceedings.

18 The above said condition of the appellanat, based on presumption, on the reading of the judgment in O.S.No.10989 of 2010, we find after filing the written statement, Bhakthavatchala Reddy died and the suit has been contested by his four daughters. The earlier suit in O.S.No.5370 of 1999 for specific performance been filed by one of the tenant in the building claiming that he has entered into a sale agreement with Bhakthavatchala Reddy. The necessity to disclose about the Will by Bhakthavatchala Reddy, did not arise in that suit. Therefore, failure to refer about the Will in the



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suit for specific performance initiated by the third party, is not a ground to presume that the Will of Bhakthavatchala Reddy marked as Ex.A8, is an illegal document. Admittedly, after the demise of Bhakthavatchala Reddy, the suit property is continuously in possession of the second respondent herein/fourth defendant. Also, the mother of the appellant been given another property at Iyyappanthangal by Bhakthavatchala Reddy during his lifetime and she had sold the property during her lifetime. A strange plea taken by the deceased first plaintiff(Vasantha) claiming that the property given to her by her father was purchased by using the sale proceeds of her husband's property. However, to prove the averment, no evidence has been placed before the Court.

19. In the above said circumstances, the prayer sought for by the appellant before the lower Court cannot be granted without properly testing of the Will allegedly executed by Bhakthavatchala Reddy in favour of his grandson E.Ravikumar, the second respondent herein. However, as on date, T.O.S.No.100 of 2013 filed by E.Ravikumar appears to have been dismissed



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for default and the restoration application is yet to be taken up for consideration.

20. In such circumstances, since the pleadings and evidence on record is not sufficient for this Court to pronounce judgment, the appropriate course of action should be to set aside the judgment and decree passed in O.S.No.10989 of 2010 and order retrial. Hence, the suit is remanded back to the trial Court for fresh appreciation of evidence including the additional documents filed by conducting retrial. For the said purpose, the respondents herein should be permitted to participate in the trial with a right to file additional written statement, if any in respect of the additional documents. On completion of pleadings, the trial Court has to proceed further. In case T.O.S.No.100 of 2013 is restored on file, the trial Court shall stay the proceedings in O.S.No.10989 of 2010 till the disposal of T.O.S.No.100 of 2013 and proceed after T.O.S.No.100 of 2013 reaches finality.



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21. The Registry is directed to intimate the parties to appear before the II Additional City Civil Court, Chennai, on 28.08.2025. The records to be sent back to the Court below within one week from today.

22. In the result, *this Appeal Suit is allowed and the matter is remitted back to the trial Court for fresh appreciation of evidence, including the additional documents filed.* Consequently, connected Miscellaneous Petition is closed. No order as to costs.

21.07.2025

Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The II Additional City Civil Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.

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DR.G.JAYACHANDRAN,J.

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delivery judgment made in
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