Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.09.2026

Pronounced on : 30-10-2026

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

TOS No. 4 of 2023

CNR:{HCMA010019852023}

S.Arumugam
S/o.Late M.Shanmugam Pillai,
New No.16, Old No.61,
Balakrishna Naicken Street,
West Mambalam, Chennai - 600 033.

..Petitioner

Vs

M.Saraswathi
D/o.Late Muthuperumal and
W/o.A.Jeevarathinam,
Door No.43 A, Kuruntheru, Kottar, Nagarcoil,
Agastheeswaram Taluk, Kanyakumari District.

..Caveator

TOS No. 4 of 2023

Petition filed under Sections 232 and 276 of the Indian Succession Act XXXIX of 1925 praying for the grant of Letters of Administration with WILL annexed to the petitioner as Son (one of the beneficiary) under the Will of deceased thereof to have effect limited to the State of Tamil Nadu to the entire property mentioned in the affidavit of asset.

For Petitioner : Mr. N.C. Thirumalai Balaji

For defendant : Mr. R.Bala Ramesh

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Judgment

This Testamentary Original Suit arises out of O.P. No.757 of 2021, originally filed under Sections 232 and 276 of the Indian Succession Act, 1925, seeking Letters of Administration with the Will annexed in respect of the last Will and Testament dated 10.10.1994 said to have been executed by late M.Shanmugam Pillai, who died on 07.12.1997. Since a caveat was entered by the defendant, the original petition was converted into a Testamentary Original Suit and renumbered as T.O.S. No.4 of 2023.

2. The case of the petitioner is that, the testator, Mr. M. Shanmugam Pillai, died on 07.12.1997, leaving behind properties situated within the State of Tamil Nadu. The testator's wife predeceased the present proceedings, and his elder son and elder daughter also died, leaving defendants 1 to 6 as their respective legal heirs.

2.1. The petitioner relies upon the registered Will dated 10.10.1994, under which the testator bequeathed his self-acquired properties equally to the petitioner and his elder son, late S. Muthuperumal. As the testator did not appoint an executor, the petitioner, being one of the beneficiaries, seeks Letters of Administration with the Will annexed. Since one of the attesting witnesses

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died on 17.01.2016, the petitioner has filed the affidavit of the surviving attesting witness in support of the petition.

2.2. The petitioner values the gross assets at Rs.2,35,43,800/- and the net assets at Rs.2,35,33,800/-. He undertakes to administer the estate in accordance with the Will, discharge the debts of the deceased, file an inventory within six months, and render accounts within one year from the date of the grant.

2.3. Regarding the delay, the petitioner states that he came to know of the Will only in 2014 and that his subsequent delay in initiating proceedings was due to his elder brother's illness and death and his own unfamiliarity with the legal procedure. He contends that the delay was neither wilful nor wanton. He further states that the movable properties had already been distributed by the testator during his lifetime.

2.4. Accordingly, the petitioner prays for the grant of Letters of Administration with the Will annexed in his favour, with the grant limited to the State of Tamil Nadu.

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3. The defendant opposes the plaintiff's request for Letters of Administration with the Will annexed, contending that the suit is not maintainable and has been instituted after an inordinate delay. She disputes the legal enforceability of the Will dated 10.10.1994 and claims that the legal heirs are entitled to their respective shares in the estate of the deceased testator.

3.1. The defendant alleges that her father executed a settlement deed in favour of her brother in respect of the property and contends that she was coerced into signing certain documents shortly before her marriage. She further relies upon the earlier partition suit in O.S. No. 5474 of 2014, instituted by the plaintiff and her father, which was subsequently dismissed. According to her, the plaintiff suppressed these material facts while initiating the present proceedings.

3.2. The defendant states that, as the property remains undivided, she demanded partition of her claimed 1/18th share by issuing a legal notice dated 11.02.2021 and subsequently instituted O.S. No. 4819 of 2021. She alleges that the plaintiff initiated the present testamentary proceedings after receiving the legal notice, in collusion with her brother, with the intention of defeating her rights in the property.

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3.3. The defendant further contends that the plaintiff, having admittedly acquired knowledge of the Will in 2014 but having filed the present suit only on 01.03.2021, is barred by limitation under Article 137 of the Limitation Act, 1963. She alleges suppression of material facts, misrepresentation and laches, and accordingly seeks dismissal of the suit.

4. On a consideration of the pleadings, this Court on 24.07.2023, framed the following issues:

"*1. Whether the Will dated 10.10.1994 stated to have been executed by Late.M.Shanmugam Pillai is genuine and valid?*

2. Whether the petitioner is entitled to the decree for Letters of Administration with the Will Annexed?

3. To what other relief the petitioner is entitled?"

5. The petitioner examined himself as P.W.1 and examined one S.Pitchaikannu as P.W.2, and marked the following documents:

Ex.P1 - Photocopy of the Aadhaar card of the plaintiff (compared with original).

Ex.P2 - Certified copy of the Sale Deed in Doc. No.226 of 1952 in favour of M.Shanmugam dated 12.02.1952.

Ex.P3- Original registered Will of Shanmugam Pillai dated 10.10.1994.

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Ex.P4 - Original letter written by the testator dated 24.09.1994 to the 1st attesting witness and reply letter sent by the 1st attesting witness to the testator.

Ex.P5 - Computer generated death certificate of M. Shanmugam Pillai who died on 07.12.1997.

Ex.P6 - Photocopy of the legal heirship certificate of M. Shanmugam dated 12.01.1998. (Compared with original).

Ex.P7 - Computer generated death certificate of S. Saraswathi who died on 25.02.2005.

Ex.P8 - Computer generated death certificate of M. S. Muthuperumal who died on 04.02.2016.

Ex.P9 - Printout of the guideline value of the property along with 65B affidavit.

Ex.P10 - Computer generated death certificate of V. Venkatramnan, 1st attesting witness who died on 17.01.2016.

Ex.P11 - Certified copy of the plaint in OS 5474/2014.

Ex.P12 - Certified copy of the Written statement filed by the 2nd defendant in OS 5474/2014.

Ex.P13 - Certified copy of the Written statement filed by the 1", 3rd and 4th defendants in OS 5474/2014.

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Ex.P14 - Certified copy of the memo filed by the plaintiff in OS 5474 /2014 dated 13.04.2017.

Ex.P15 - Certified copy of the Decree in OS 5474/2014 dated 11.07.2017.

Ex.P16 - Certified copy of the Judgment in OS 5474/2014 dated 11.07.2017.

Ex.P17 - Certified copy of the Plaint in OS 4819 /2021 dated 11.07.2017.

Ex.P18 - Certified copy of the Written statement filed by the defendants 1 and 2 in OS 4819/2021.

Ex.P19 - Certified copy of the Written statement filed by the defendants 3 to 7 in OS 4819/2021.

Ex.P20 - Certified copy of the petition and affidavit filed in IA No.2/2022.

Ex.P21 - Certified copy of the counter filed in IA No.2/2022.

Ex.P22 - Certified copy of the Fair Order in IA No.2/2022.

Ex.P23 - Certified copy of the Decreetal Order in IA No.2/2022.

On the side of the defendant, one Vaiyapuri was examined as D.W.1, and Ex.D1

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(certified copy of the settlement deed in Doc No.43/2011, dated 10.01.2011) was marked.

6. Mr.N.C.Thirumalai Balaji, learned counsel for the petitioner contends that the Will has been duly proved under Section 63(c) of the Indian Succession Act, read with Section 68 of the Indian Evidence Act. As regards the delay, the learned counsel contends that the original Will remained in the custody of his brother S. Muthu Perumal, one of the beneficiaries and that after his death on 04.02.2016, the original Will was handed over to the petitioner in March 2017. According to the learned counsel, the right to apply under Article 137 of the Limitation Act, did not necessarily arise on the death of the testator. To support his contention, he has relied upon the following judgments:

1. Kunvarjeet Singh Khandpur vs. Kirandeep Kaur and others reported in (2008) 8 SCC 463.

2. Krishnan Kumar Sharma vs. Rajesh Kumar Sharma, (2009) 11 SCC 537.

3. Janaki Devi vs. R. Vasanthi, 2005 (1) CTC 11.

It is further contended that even if limitation is computed from July 2017, the period from 15.03.2020 to 28.02.2022 stands excluded pursuant to the orders of the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No.3 of 2020, and therefore, the petition filed in 2021 cannot be dismissed as barred by limitation.

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7. On the other hand, Mr. R.Bala Ramesh, learned counsel for the defendant would contend that the defendant is the daughter of late S. Muthu Perumal and grand daughter of the testator. According to the defendant, the petitioner himself pleaded that he came to know about the Will in 2014, whereas in cross examination he stated that he came to know about it only after the death of his brother Muthu Perumal on 04.02.2016. The defendant, therefore, contends that the petitioner's own evidence is contradictory and that, even accepting either 2014 or 2016 as the date of knowledge, the proceedings instituted in 2021 were delayed.

8. The learned counsel for the defendant further relies upon the earlier partition suit, in O.S. No.5474 of 2014, filed jointly by the petitioner and S.Muthu Perumal, wherein, according to the defendant, the property was treated as joint or ancestral property and the petitioner claimed only a 2/6 share. It is contended that the filing of the earlier suit without disclosing the Will, despite the alleged knowledge of the Will in 2014, constitutes suppression of a material fact and is a serious suspicious circumstance. He further relies upon the settlement deed dated 10.01.2011 executed by S. Muthu Perumal in favour of M. Vaiyapuri, marked as Ex.D1, and contends that the subsequent conduct of the family members is inconsistent with the petitioner's present case. The learned counsel also challenges the due execution of the Will and contends that

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P.W.2 was not present when the Will was drafted, did not know the circumstance in which it was prepared, and learnt its contents only at the time of registration.

9. Heard Mr.N.C.Thirumalai Balaji, learned counsel for the petitioner and Mr.R.Balaramesh, learned counsel for the defendant. Records perused.

10. The petitioner relies upon the registered Will, the letter dated 24.09.1994 said to have been written by the testator to V. Venkataraman, the 1st attesting witness and scribe, and the oral evidence of P.W.2, namely, S. Pitchaikannu, the surviving attesting witness. The other attesting witness, V.Venkataraman, died and his death certificate has been marked as Ex.P10.

11. The defendant does not dispute the historical fact that the testator is said to have executed a Will dated 10.10.1994. However, she contends that the petitioner is not entitled to Letters of Administration because the proceedings were initiated nearly 24 years after the death of the testator.

12. Since the defendant has raised limitation as a threshold objection, the same requires consideration first. Article 137 of the Limitation provides a period of three years for an application for which no period of limitation is provided elsewhere, commencing when the right to apply accrues. The

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contention of the defendant that the limitation necessarily commences on 07.12.1997, the date of the death of the testator, cannot be accepted as an absolute proposition of law. The Hon'ble Supreme Court in ***Kunvarjeet Case*** held that Article 137 is applicable to a petition for Letters of Administration. At the same time, the Court emphasised that the crucial expression is "right to apply", and held that the right in testamentary proceedings is of a continuing nature. The Court accepted a situation where right to apply arose upon withdrawal of earlier probate proceedings rather than automatically on the death of the testator.

13. The same principle was reiterated by the Hon'ble Supreme Court in ***Krishnan Kumar's*** case. The Court held that Article 137 applies to the proceedings for probate of Letters of Administration but also recognised that the right to apply is a continuing right and that delay beyond three years is not, by itself, an absolute bar. Therefore, two propositions have to be kept distinct;

a) Article 137 does apply to proceedings for Letters of Administration ; but

b) the mere expiry of three years from the death of the testator does not automatically extinguish the testamentary right.

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14. The decision in ***Kunvarjeet case*** is particularly important because the Hon'ble Supreme Court itself rejected the proposition that the application necessarily becomes barred merely because it was filed several years after the testator's death. Therefore, where a Will is propounded after a long period, the Court is entitled to require an explanation for the delay. This Court in ***Janaki Devi's case*** considered the effect of delay under Order XXV Rule 9 of the Original Side Rules. The decision recognises that delay is a relevant circumstance requiring explanation and that the Court must examine the effect of such delay in assessing the testamentary claim. The Hon'ble Supreme Court in ***Krishnan Kumar's case*** also referred to the principle that delay beyond three years may arouse suspicion, but clarified that it cannot be equated with an absolute bar of limitation and that once execution and attestation are satisfactorily proved, the delay does not by itself invalidate the testamentary claim. Thus, the defendant is correct to the extent that the petitioner must explain the delay. However, the defendant is not correct in contending that the mere lapse of three years automatically extinguishes the right to seek Letters of Administration.

15. The petitioner has given two explanations. First, he contends that he came to know of the Will in 2014, Secondly, he states in his evidence that he came to know of the Will after the death of his brother Muthu Perumal on 04.02.2016. The apparent discrepancy requires consideration. This Court finds

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that the discrepancy between the year 2014 pleaded in the petition and the statement in the cross examination that the petitioner came to know of the Will after the death of Muthu Perumal is not, by itself, sufficient to hold that the entire testamentary claim is false. The more significant evidence is that the original Will admittedly remain in the custody of S. Muthu Perumal, one of the beneficiaries.

16. D.W.1, M. Vaiyapuri, has admitted that the original Will was in custody of his father and that, after his father's death, the same was handed over to the petitioner in March 2017. This is an important circumstance. The possession of the original testamentary document by one of the beneficiaries, followed by its delivery to the petitioner after the death of that beneficiary, provides an evidentiary explanation for why the petitioner did not immediately institute the testamentary proceedings. The defendant has not established that the petitioner was in possession of the original Will throughout the period from 1997 onwards.

17. The earlier partition suit, in O.S. 5474 of 2014 undoubtedly requires consideration. The plaint in that suit has been marked as Ex.P11. The petitioner and S. Muthu Perumal jointly instituted the said suit. The existence of that proceeding demonstrates that the parties were asserting rights in the property through a partition action. However, the mere institution of a partition

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suit does not conclusively establish that the petitioner had rejected or abandoned the Will. More importantly, the present proceeding is not concerned with deciding the correctness of every pleading or position taken by the petitioner in the earlier suit. The withdrawal of the earlier suit is also not, by itself, prove that the Will is fabricated. The explanation that the testamentary document was absolutely brought to the petitioner's possession and that he thereafter pursued the testamentary remedy is supported, atleast in material particulars, by evidence of D.W.1.

18. There is an additional circumstance, which cannot be overlooked. The Hon'ble Supreme Court in **In Re: Congnizance for Extension of Limitation,** Suo Motu W.P. (C) No.3 of 2020, by order dated 10.01.2022, directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of limitation under general and special laws in respect of judicial and quasi judicial proceedings. The Court further directed that where limitation would have expired during that excluded period, a minimum period of 90 days from 01.03.2022 would be available. Consequently, if the right to apply is taken to have accrued in 2017, a three year period would have extended into 2020. The date on which such period would otherwise have expired falls within the period covered by the Hon'ble Supreme Court's exclusion order. The petition having been instituted in 2021, the limitation objection cannot therefore succeed merely by mechanically calculating three years from the death of the testator or from a

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2017 event.

19. This Court therefore holds that, Article 137 applies to the testamentary proceedings, but the period does not necessarily commences from the date of death of the testator. The right to apply is continuing right and the delay has to be explained. On the evidence available, the petitioner has furnished sufficient explanation regarding the custody and subsequent delivery of the original Will, particularly in view of the evidence of D.W.1. Further, the period covered by the Hon'ble Supreme Court's COVID limitation orders has to be excluded. Accordingly, the petition cannot be dismissed as barred by limitation.

20. The next and more important question is whether the Will has been duly proved. Section 63(c) of the Indian Succession Act requires attestation by two or more witnesses. Section 68 of the Indian Evidence Act requires examination of atleast one attesting witness where the document is required by law to be attested. A Will occupies a special position. The proviso to Section 68 does not dispense with proof of a Will merely because it is registered. The decisions in ***H. Venkatachala Iyengar vs. B.N. Thimmajamma AIR 1959 SC 443***, ***Janki Narayan Bhoir vs. Narayan Namdeo Kadam, (2003) 2 SCC 9***, and ***Ramesh Verma vs. Lajesh Saxena, (2017) 1 SCC 257***, emphasise the requirement of proof execution and attestation of a Will with the statutory

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requirements.

21. In the present case, P.W.2, S. Pitchai Kannu, is admittedly an attesting witness. He has deposed that the testator called him at the time of execution and that he signed the Will at the Sub Registrar's office. He has identified the other attesting witness, V. Venkataraman, as a family friend of the testator. The fact that P.W.2 did not see the actual drafting of the Will is not, by itself, fatal to its validity. An attesting witness is required to attest the execution of the testamentary instrument. The law does not require every attesting witness to have been present during the drafting or preparation of the Will. Similarly, the fact that P.W.2 came to know the contents of the Will at the time of registration does not by itself invalidate his attestation. The evidence has to be considered with reference to the statutory requirement of Section 63(c). P.W.2 has spoken to the testator's execution and to his own attestation. The other attesting witness is admittedly dead. His death certificate is Ex.P10. Therefore, the petitioner has complied with the statutory requirement of producing an attesting witness capable of giving evidence.

22. Further, the defendant contends that there is no independent medical evidence establishing the soundness of the testator's mind. Medical evidence, however, is not invariably necessary for proving testamentary capacity. The Court must consider the entire evidence concerning the testator's physical and

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mental condition, the circumstances of execution, the nature of the disposition and the evidence of the attesting witness. The Will is a registered document. The petitioner has also produced Ex.P4, the letter dated 24.09.1994 said to have been written by the testator to V. Venkataraman, the scribe and the attesting witness. The document predates the Will by about 16 days and provides corroborative evidence that the testator has consciously contemplated the testamentary disposition. There is no medical evidence or other convincing evidence on the side of the defendant establishing that the testator was incapable of understanding the nature and effect of the disposition. Accordingly, the allegation regarding want of testamentary capacity remains unsubstantiated.

23. The defendant has not entered the witness box to substantiate the allegations regarding incapacity, coercion or undue influence and any suspicious circumstance. Further, the mere exclusion of the testator's daughters is not by itself sufficient to invalidate a Will. A testator is legally entitled to prefer one heir over another, subject to the testamentary instrument satisfying the statutory requirements. The fact that the beneficiaries are two sons and the daughters have been excluded may constitute a circumstance requiring examination, but it does not automatically amount to a suspicious circumstance. In the present case, no evidence has been produced to establish that the exclusion was brought about by coercion or undue influence. Therefore, this Court is unable to treat the exclusion of the daughters standing alone, as

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sufficient to reject the Will.

24. Further, the defendant's case is not that the Will is a fabricated document. Her principal case is that it has lost legal enforceability owing to delay, which contention has already been considered and rejected.

25. For the foregoing reasons, the objection of the defendant that the proceedings are barred by limitation under Article 137 of the Limitation Act is rejected. This Court further holds that the Will dated 10.10.1994 has been duly proved in accordance with law.

26. Accordingly,

i. The Suit is decreed. Letters of Administration with the Will annexed dated 10.10.1994, having effect limited to the State of Tamil Nadu, shall be issued to the petitioner in respect of the estate of the deceased M.Shanmugam Pillai.
ii. The petitioner shall execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras, and comply with all other statutory and procedural requirements.
iii. The petitioner shall duly administer the estate and credits of the deceased

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more fully described in the suit schedule in accordance with the provisions of the Indian Succession Act, 1925 and the terms of the Will.

iv. The petitioner shall file a true and full inventory of the properties and credits of the deceased before this Court within a period of six months from the date of grant of Letters of Administration and shall render a true account of the property and credits of the testator, within one year from the date of obtaining the grant.

v. There shall be no order as to costs.

30-10-2026

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

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K.GOVINDARAJAN THILAKAVADI J.

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Pre delivery judgment in
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