



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.10.2025
Pronounced on	10.02.2026

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA**TOS No.18 of 2010**

N.Devaraj Naidu,
No.66, Thottikalai Kumarappa Mudali Street,
Chennai – 112.

..Plaintiff

Vs

1. C.K.Lakshmipathy Naidu (Deceased)
2. L.Rajasekaran
3. L.Kumar
4. L.Rajendran
5. L.Raj

All Are Residing At No.66,
T.K.Mudali Street,
Choolai, Chennai – 112.

..Defendants

PRAYER – This Testamentary Original Suit filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925, seeking Letters of Administration with the Will annexed may be granted to the plaintiff as the beneficiary of the said deceased having effect throughout the State of Tamil Nadu to the properties mentioned in the affidavit of assets.



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For Plaintiff:	Dr.A.Thiyagarajan, Senior Counsel for Mr.C.B.Muralikrishnan
For Defendants:	D1 – Deceased Mr.K.N.Nataraj For D2 to D5

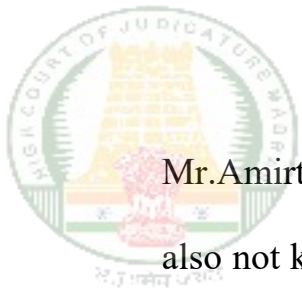
J U D G M E N T

This Testamentary Original Suit has been filed by the plaintiff seeking Letters of Administration in respect of the Will dated 25.03.1987 having effect throughout the State of Tamil Nadu to the properties mentioned in the affidavit of assets.

2. The Original Petition filed by the plaintiff has been converted into Testamentary Original Suit on the objection raised and caveat filed by the defendants.

The facts pleaded in the plaint are as follows:

3. The suit property belongs to the testatrix Rukmani Bai Ammal, who had executed a will on 25.03.1987 by bequeathing the same in favour of the plaintiff. The deceased Rukmani Bai Ammal and her husband did not have any children of their own. The plaintiff is the brother's son of the testatrix. The plaintiff has already filed Original Suit in this court in the year 1989 along with the original will in SR.No.1222 of 1989 through an Advocate



Mr.Amirthalingam. Since the advocate died and whereabouts of his council is also not known, the plaintiff could not trace out the bundle and the original will is not available for him to file this Original Petition. As the petitioner did not have any other option, he had filed a fresh Original Petition seeking Letters of Administration by annexing certified copy of the will.

Written statement filed by the second defendant and adopted by the defendants 3 to 5 in brief:

4. Earlier the plaintiff filed O.P.No.12 of 2003 for issuance of Letters of Administration in respect of the Will dated 25.03.1987, in which this court has granted Letters of Administration on 16.11.2005. When the first respondent came to know about the same, he had filed an application in A.No.6819 of 2007 in O.P.No.12 of 2003. The main ground he raised to revoke the Letters of Administration is that the plaintiff has suppressed many material facts while filing O.P.No.12 of 2003. During the pendency of the A.No.6819 of 2007, the first defendant passed away on 13.10.2007. Subsequently, the defendants 2 to 5 were added as parties to O.P.No.12 of 2003 as per the order passed in A.No.4754 of 2009 on 01.10.2009.

4.1. The subject property of the will was originally belonging to Duraisamy Naidu. He married one Rajammal, who died issueless. Then he married the testatrix Rukmani Bai Ammal as second wife and she also did not



have any issues. Duraisamy Naidu passed away leaving behind the testatrix as his sole heir to succeed his estate. Rukmani Bai Ammal acquired title to the suit property subsequent to the lifetime of her husband. As the property has been descended from her husband, all the legal heirs of her husband will be the interested parties and they ought to have been impleaded as parties.

4.2. The original will has not been produced in the probate proceedings, none of the attesting witnesses have been examined to prove the genuineness of the will. The will has been registered at Jabalpur, Madhya Pradesh. The registering authority also was not examined. The testatrix had not sued the beneficiary, her brother's son. All these will create suspicious circumstances in the cause of action of the will. According to Section 15(2)(b) of the Hindu Succession Act, 1956, any property inherited by a female Hindu from her husband shall devolve, in the absence of any son or daughter of the deceased, only upon the heirs of her husband. As the plaintiff is not a heir through her husband, he cannot have any right on the suit property. The third party who has filed an affidavit is none other than the tenant and a subsequent purchaser and he has filed the said affidavit at the instance of the plaintiff. The attesting signature is neither in English nor in Tamil, but in other vernacular language.

4.3. There are two attesting witnesses in the Will. Both the attesting witnesses are not alive now. The plaintiff had executed the sale deed dated 21.06.2006 in favour of the third parties, namely S.Annamalai and another



A.R.Kothandaraman and that has been declared null and void by the decree and judgment of this court dated 20.02.2014. Further the sale deed dated 13.06.2012 registered as Document No.1190 of 2012 on the file of SRO, Periamet was also been declared as null and void by the judgment dated 23.04.2014 in O.S.No.1081 of 2013 on the file of the XIII Assistant City Civil Court, Chennai. The plaintiff is not entitled to any relief and the suit is barred by limitation. The plaintiff has not come with clean hands.

5. On the basis of the above pleadings, the following issues have been framed.

- “(i) Whether the Will 25.03.1987 is true and valid?”*
- “(ii) Whether C.K.Lakshmipathy Naidu, one of the sons of Krishnasamy Naidu, is a necessary party to the suit?”*
- “(iii) Whether the suit itself is barred by limitation?”*
- “(iv) To what other reliefs the plaintiff is entitled to?”*

6. During the course of the trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.P1 to P10 were marked. On the side of the defendants, 2nd defendant was examined as D.W.1 and Exs.D1 to D9 were marked.

Discussion:

7. Originally the suit property and its larger extent belonged to late Narayanasamy Naidu who died leaving behind his three sons namely



Duraisamy Naidu, Deena Dayalan Naidu and Krishnasamy Naidu. The legal heirs of Narayanasamy Naidu partitioned the properties between themselves by filing a partition suit in O.S.No.74 of 1946 on the file of Sub Judge, Chengalpattu. During the pendency of the suit, Duraisamy Naidu died and the testatrix being the wife of Duraisamy Naidu has been impleaded as a legal representative in the suit. On 31.07.1947, a preliminary decree for partition was granted and thereafter, final decree was passed in I.A.No.35 of 1948 on 08.11.1948. The testatrix got the property as per the judgment and decree and she was in absolute possession and continuous enjoyment of the property. The other two brothers of Duraisamy Naidu namely Deena Dayalan Naidu and Krishnasamy Naidu had got their shares also in accordance with the decree passed in the suit. The first respondent is one of the sons of late Krishnasamy Naidu and other respondents 2 to 5 are the grandsons of Krishnasamy Naidu.

8. The testatrix Rukmani Bai Ammal passed away on 17.01.1988 at Jabalpur. The plaintiff has originally filed probate proceedings through one advocate Amirthalingam in the year 1989. As the said Amirthalingam died during the pendency of proceedings and the original will was either mixed up with papers filed or retained by him, it couldn't be traced out. The plaintiff has filed O.P.No.12 of 2003 seeking probate and the petition was allowed on 16.11.2005. However, the first defendant filed an application stating that in the above petition, interested parties were not cited and prayed to revoke the



probate. The application was heard in Application No. 6819 of 2007 and the same was allowed on 15.04.2010. In view of that, O.P.No. 12 of 2003 has been converted into T.O.S. No. 18 of 2010. In view of Section 14(1) of the Hindu Succession Act, 1956, Rukmani Bai Ammal as legal heir of her husband Duraisamy Naidu has become the absolute owner of the property. Hence, she has got every right to dispose of the property according to her wishes. Section 15 of the Hindu Succession Act, 1956, is applicable only for intestate succession and not for testamentary disposition.

9. The defendants have admitted that the plaintiff has been a tenant in the suit property for more than 40 years and that one S.Annamalai was also a tenant for a long time. After probate was granted in O.P.No.12 of 2003, the suit property was sold by the plaintiff to one S.Annamalai and A.R.Kothandaraman and the said S.Annamalai has initiated rent control proceedings against the second defendant herein in R.C.O.P.No.2191 of 2006. The tenancy was as admitted by second defendant in his evidence. As S.Annamalai is aware of the entire transactions, he has given the third-party affidavit while filing the Original Petition. One of the attesting witnesses has been examined as P.W.2 and with his evidence, the genuineness of the will has been proved.

10. In the earlier suit proceedings itself it has been brought to the notice of the court that the original will has been lost and if sufficient reasons are shown, non-production of original will alone cannot be the reason to reject the



probate. The defendants did not dispute the competency and genuineness of the will. The plaintiff has proved that the will has been executed by the testatrix in a sound disposing state of mind and hence, he is entitled to the relief as prayed.

11. The defendants 2 to 5 are the legal heirs of the late C.K.Lakshmipathy Naidu/ one of the next kins of the testatrix's husband Duraisamy Naidu and hence, they are entitled to succeed the suit property under Section 15(2)(b) of the Hindu Succession Act, 1956. Letters of Administration has been obtained in O.P.No.12 of 2003 by suppression of facts and later, it has been revoked through the order of the court dated 15.04.2010 in Application No.6819 of 2007. The compatibility and the genuineness of the will ought to have been proved in accordance with the Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 respectively. Mere registration of the will does not dispense with the proof of execution and attestation. No secondary evidence under Section 69 of the Evidence Act, 1872 was adduced, though the attesting witness was said to have died. The testatrix died in the year 1988 and O.P. has been filed in the year 2003. Any unexplained delay will create suspicion. Inordinate delay ought to have been explained satisfactorily, otherwise, it will cause doubt on the will. The plaintiff has approached the court with unclean hands.

12. As C.K.Lakshmipathy Naidu has remained as a party to the proceedings after the O.P. has been converted as T.O.S.No.18 of 2010 and he



subsequently died and his legal representatives have been brought on record as defendants 2 to 5, hence the **issue No.(ii) has become infructuous.**

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13. Issue No.(iii) Whether the suit itself is barred by limitation – It is submitted that the Original Petition has been filed 14 years after the death of testatrix and hence, the suit is barred by limitation. Even during the argument of the defendants, it is admitted that the Indian Succession Act does not prescribe any limitation. As held by the Hon'ble Supreme Court of India in *Indu Bala Bose and Others Vs. Manindra Chandra Bose and others (1982) 1 SCC 20*, any unexplained delay will create doubt. Hence, it has to be seen whether the delay is suitably explained and it creates suspicion on the genuineness of the will. Hence the **issue No.(iii) is also unnecessary** and answered accordingly.

14. Now the remaining issues which are to be dealt are whether the Will is true and valid [issue No.(i)] and about the entitlement of the other reliefs for the plaintiff [issue No.(iv)]. The suit property originally belonged to Duraisamy Naidu, who is the husband of the testatrix. The said fact was not denied by the defendants also. The only contention of the defendants is that the testatrix inherited the suit property from her husband and hence, on her death, the suit property devolved upon the legal heirs of the husband and not on the plaintiff. The plaintiff is the brother's son of the testatrix. It is needless to state that Section 15 of the Hindu Succession Act, 1956, is applicable only when a Hindu woman dies intestate. Since the very suit itself is a testamentary suit based upon



an alleged will executed by the deceased testatrix, dealing with the question about the applicability of Section 15 and Hindu Succession Act will not arise.

As the suit property has been given as the share of the husband of the deceased testatrix without any restrictions, she had acquired absolute interest over the suit property. So the entitlement of the testatrix to execute the Will is not questionable.

15. With regard to the compatibility of the Will, Ex.P1, the original Will is not available for perusal. However, the will is a registered will and it has been registered under Sub-Registrar Office, Jabalpur. The said fact has not been denied. It has been the contention of the plaintiff during the various proceedings connecting the suit property that the original will has been entrusted to one Advocate for initiating probate proceedings and the Advocate died and thereafter, he was not able to trace the original Will. So the plaintiff could only produce the certified copy of the will. The non-production of the original will cannot be the reason to reject the relief, provided, the plaintiff has given plausible explanation as to the non-production of the will.

16. In fact, the plaintiff has been given with the relief of Letters of Administration already in O.P.No.12 of 2003, which has been subsequently revoked. The only contention that has been raised while revoking the probate already granted is due to the omission on behalf of the plaintiff to cite the legal heirs of the husband of the testatrix as parties to the proceedings. The plaintiff



has been consistently making his submission even during the revocation proceedings in A.No.6819 of 2007 in O.P.No.12 of 2003 that the original will was lost as his counsel with whom he entrusted the matter died. So O.P. has been converted as T.O.S. only on the entitlement of the defendants to be impleaded as parties and their capacity as interested parties. By holding that they are the legal heirs of the husband of the deceased, this court has already revoked the Letters of Administration. As the production of the original will is beyond the control of the plaintiff and they have been saying the very same reasons of having it lost, I do not feel that alone can be the reason to deny the relief.

17. Since acceptable explanation has been given for non-production of the original will, the validity of the Will cannot be held negatively only due to the non availability of the original Will. The defendants have raised a contention that the testatrix has inherited the suit property as the only legal heir of her husband Duraisamy Naidu in a suit for partition. According to the defendants, they have a better entitlement over the suit property than the testatrix, since they are the next kin of the husband of the deceased.

18. It has been already held that the share allotted to Duraisamy Naidu in a partition suit is without any restrictions and the testatrix on her inheritance of the suit property from her husband will become its absolute owner and she has executed a registered will on 25.03.1987 and the certified copy of the same has



been marked as Ex.P1. The defendants claim for entitlement over the suit property of the husband of the Rukmani Bai Ammal will arise only if the defendants could prove that the will is not genuine.

19. So far as the compatibility of the will under Section 63 of the Indian Succession Act, 1925 is concerned, the will satisfies the essential requirements contemplated under Section 63 of the Indian Succession Act, 1925. The testatrix has assigned her signature not only on the Will, but also got it registered before the Sub-Registrar Office and it has been attested by two witnesses. The testatrix, being the lawful owner of the suit property, has chosen to make a testamentary arrangement by executing a Will.

20. When the document of title is registered, initial presumption is that the document has been executed and registered in a manner stated thereunder. Anything contrary to this can be proved by producing any rebuttable evidence. It is not the contention of the defendants that some impersonation has been done or that the testatrix was not in a sound disposing state of mind at the time when the will was executed. In fact, the plaintiff is the brother's son of the testatrix and hence, it is quite possible for the testatrix to have an interest on him. Even according to the submission of the defendants, the plaintiff has been in a possession of the suit property as a tenant for many years and after getting Letters of Administration on the earlier instances, the plaintiff has sold the suit property in favour of another tenant by name S.R.Annamalai. However, the



sale deed executed in favour of S.R.Annamalai also got set aside subsequent to the revocation of the Letters of Administration granted in respect of the will, on the earlier instance.

21. It is not the contention of the defendants that the testatrix was under the influence of the plaintiff and she did not execute the will on her own volition. Unless the defendants refute the initial presumption by showing that the testatrix did not have the testamentary capacity due to her illness or any other circumstances, there cannot be any doubt as to the registration of the will dated 25.03.1987 [Ex.P1]. Since Section 63 of the Indian Succession Act, 1925 mandates that the will has to be attested by two witnesses, the genuineness of the will can be proved by examining these attesters. In fact, Section 68 of the Indian Evidence Act, 1872 states that except will, any other document which is registered under the provisions of the Indian Registration Act does not require the examination of the attesting witnesses for proving the said document. By the production of the very registered document itself the execution of the document can be proved. But in the case of the Will, its execution has to be proved by examining one of the attesting witnesses.

22. The plaintiff has examined P.W.2, who claims herself as the attesting witness of Ex.P1, Will. He has deposed in his evidence that his name is Shyamji Patel and he is known to the testatrix as he was staying at her house. He has stated that on 25.03.1987, he was asked by the testatrix to come to Register



Office, Mauza Panagar, Jabalpur and was informed that she was going to execute the will in favour of the plaintiff. P.W.2 has accepted and gone to the Registrar Office. The will has been typed on the instruction given by the testatrix and was read over to her by an Advocate in the presence of two witnesses and they have affixed their signatures at the same time at the foot of the will.

23. The attesting witnesses were examined through video conference. The cross examination of P.W.2 did not prove anything adverse to what he has stated in the chief examination. It is neither proved before the Court that P.W.2 Shyamji Patel is not the person who has attested the will, but it has been submitted that at the time when the Original Petition was filed, an affidavit has been given by one S.Annamalai and not the attester. In fact, at the time when the Original Petition was filed, there was no citation of the parties. So the Letters of Administration has been granted without any caveat. When the defendants have contested the matter by raising objection to the grant of Letters of Administration, the defendants have to trace out the attestors. But the plaintiff has deposed in his evidence that the attesting witnesses are not alive. Only citing the said reason, the third parties' affidavit has been obtained and filed along with the Original Petition. However, during cross-examination of P.W.1, he has not confronted his earlier deposition with regard to the death of the testators.



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24. The evidence of P.W.2, the attesting witness itself has been challenged by the defendants by stating that it is unbelievable. The plaintiffs had been a tenant in the suit property for a very long time. When the 1st defendant had died, it is obligatory on the part of the plaintiff to show that he is related to the deceased Rukmani Bai Ammal or that he is the testatrix's brother's son. None of the relatives of the testatrix has been examined to show his relationship with the testatrix. On the earlier instance when the plaintiff was examined on 02.09.2005, he has stated that the attesting witness was not alive. Now, all of a sudden, he has brought P.W.2 as one of the witnesses by stating that his name is Shyamji Patel and he only stood as the witness. Even along with the Original Petition, the attesting witnesses' affidavit has not been filed.

25. The plaintiff has taken two diametrically opposite stand by stating that on 02.09.2005 the attesting witnesses are not alive and now, has produced P.W.2 as one of the attesting witnesses. This conduct on the part of the plaintiff, no doubt, raises a strong suspicion on the claim of the execution of the Will. The original Will is also not produced. In the absence of the original will and in the absence of examination of the attesting witnesses at the earliest instance, it would have been appropriate if the plaintiff had examined the Registering Officer as one of the witnesses to prove that Rukmani Bai Ammal



came to the Register Office and got the will executed. Immediately after the Letters of Administration was granted at the earlier instance, the plaintiff had sold the property in favour of S.Annamalai, who has filed the third party affidavit along with the Original Petition. Subsequent to the revocation of the will, the sale deed executed in favour of S.Annamalai is also declared as null and void. Though in normal circumstances, the Registering Officer need not be examined as a witness in all cases where the documents are registered. The material discrepancies in the evidence of P.W.1 even as to the existence of the attesting witness would mandate the examination of the Registration Officer.

26. In *G. Kothandaraman v. Rajalakshmi & Anr.*, (TOS No.30 of 2023), this Court has held, when the propounder is unable to account for the custody of the original Will, offers inconsistent explanations regarding its loss or does not take steps to lodge a police complaint, or causes inordinate delay in coming to the court, such circumstances will constitute strong suspicion surrounding the genuineness of the Will. In such cases, mere production of a certified copy of a registered Will would not cure such defects.

27. Disinheritance of the legal heirs or unequal distribution of the property among the legal heirs or even the delay in filing the Original Petition seeking Letters of Administration cannot be the sole reason to doubt the genuineness of the will when the will is tainted with other strange



circumstances. The factors stated already would assume more significance and intensify doubts surrounding the will.

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28. Firstly, the plaintiff could not produce the original will. Even if it is accepted that the plaintiff has given plausible explanation for not producing the original will, it has to be seen whether he has proved the genuineness of the will in a manner known to law and dispel other doubtful circumstances. The plaintiff has not offered any explanation as to why he had chosen to initiate the proceedings only in the year 2003, when the testatrix had died in the year 1988 itself. He did not offer any explanation, much less an acceptable explanation. In the absence of any acceptable reason for the inordinate delay in filing the proceedings for Letters of Administration, it is inevitable that the delay should also be seen as a suspicious circumstance.

29. Coupled with these factors, the 1st defendant did not prove his relationship with the deceased and he has not produced any evidence to show that he is the brother's son of the deceased and the plaintiff himself has admitted that he has been a tenant in the suit property. Rukmani Bai Ammal was living alone subsequent to the death of her husband as she did not have any issues and S.Annamalai, who filed an affidavit along with the petition, had been a tenant in the suit property. The plaintiff who was examined as P.W.1 could not even tell about the family history of husband of the testatrix, Rukmani Bai Ammal, which also creates suspicion about the relationship of the deceased. The non-



production of the original will along with non-examination of the Registration Officer and failure to prove the relationship between the deceased Rukmani Bai Ammal and the plaintiff and the contradictory statements of the plaintiff himself about the existence of the attesting witnesses and the subsequent conduct to call the P.W.1 and the attesting witness and the inordinate delay in filing the proceedings would all cumulatively render the subject Will dated 25.03.1987 as not proved to be genuine and valid. Hence, the **issue No.(i) is answered against the plaintiff.**

30. As the plaintiff has failed to prove the will he is not entitled to any other relief as prayed for, **issue No.(iv) is also answered against him.**

31. In the result, the **Testamentary Original Suit is dismissed.**

10-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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DR.R.N.MANJULA, J.

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