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C.S.No.373/2013
& T.O.S.No.17/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

03.11.2025

**Reserved on
Pronounced on**

10.02.2026

CORAM:

THE HONOURABLE DR. JUSTICE R.N.MANJULA

**C.S.No.373 of 2013
and T.O.S.No.17 of 2015
(O.P.No.76 of 2014)**

C.S.No.373 of 2013

1. Smt. M.Jayanti
W/o. Megarajan
4/10, Venkatesapuram,
4th Street, Triplicane,
Chennai – 600 005
2. R.Srinivasan
S/o. Late Raghuram
3. R.Chandrakala
W/o. Ravi
Defendants 3 and 4 residing at
No.62, Lakshmipuram,
Chromepet,
Chennai – 600 044.
4. T.Radhakrishnan
No.4, Annai Anjugam Nagar,
Jeevanandham Street
G.K.M.Colony
Chennai – 600 082.

5. R.Gunasekharan

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No.26, Karikalan Street,
Chozhan Nagar, Sozhambedu
Annanur, Chennai – 600 109.

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6. R.Valli
W/o. Kannan
2/32. Annai Velankanni Nagar,
Madhavaram Milk Society,
Chennai – 600 081
7. R.Hema
No.4, Annai Anjugam Nagar,
Jeevanandam Street,
G.K.M.Colony,
Chennai – 500 082
8. R.Thirupura Sundari
W/o. Ramachandran
15/8, Iyyappa Chetty Street,
Mannady, Chennai – 600 012.
9. M.Saradha
W/o. Moorthy,
No.204 Strangs Road,
Pattalam, Chennai – 600 012.
10. M.Uma Devi
W/o. Muthukumar
5/30, Bharatha Madha Street,
New Kamaraj Nagar,
Vyasarpadi, Chennai – 600 039.

... Plaintiffs

Vs.

1. S.Krishnaveni Ammal,
W/o. Seshachari
No.6/13 Ayyappa Chetty Street,
Manadi Chennai – 600 001.



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2. S.Sriram
S/o. Y.E.Seshachari
11/6, Iyyappa Chetty Street,
Mannady, Chennai – 600 001.

3. Lalitha
W/o. Loganathan
14/29, Ayyappa Chetty Street,
Mannadi,
Chennai – 600 001.

... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 1 of C.P.C. to :

a) declare that S.Srinivasan, son of Y.E.Seshachari is not known to be alive for 30 years and more hence he has undergone a civil death;

b) pass a preliminary decree for partition declaring the plaintiffs 10/13th share in the suit properties and in consequence thereof appoint an Advocate Commissioner to divide the suit properties by metes and bounds and allot the shares of the plaintiffs through the process of court and grant a final decree for partition putting the plaintiffs in their respective allotted shares through the process of Court.

For Plaintiffs : Mr.V.Anand
for Mr.P.V.Sudakar

For Defendants : Ms.S.Shyamala for D2



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T.O.S.No.17/2015
(O.P.No.76 of 2014)

S.Sriram
S/o.Y.E.Seshachari
11/6, Iyyappa Chetty Street,
Mannady, Chennai – 600 001.

... Plaintiff / Petitioner

Vs.

1. Smt.Krishnaveni
W/o. Seshachari
11/6, Ayyappa Chetty Street,
Chennai – 600 104.
2. Smt. M.Jayanti
W/o. Megarajan
4/10, Venkatesapuram,
4th Street, Triplicane,
Chennai – 600 005.
3. R.Srinivasan
S/o. Late Raghuram
4. R.Chandrakala
W/o. Ravi
Defendants 3 and 4 residing at
No.62, Lakshmipuram,
Chromepet,
Chennai – 600 044.
5. T.Radhakrishnan
No.4, Annai Anjugam Nagar,
Jeevanandham Street
G.K.M.Colony
Chennai – 600 082.



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6. R.Gunasekharan
No.26, Karikalan Street,
Chozhan Nagar, Sozhambedu
Annanur, Chennai – 600 109.
7. R.Valli
W/o. Kannan
2/32. Annai Velankanni Nagar,
Madhavaram Milk Society,
Chennai – 600 081
8. R.Hema
No.4, Annai Anjugam Nagar,
Jeevanandam Street,
G.K.M.Colony,
Chennai – 500 082
9. R.Thirupura Sundari
W/o. Ramachandran
15/8, Iyyappa Chetty Street,
Mannady, Chennai – 600 012.
10. M.Saradha
W/o. Moorthy,
No.204 Strahans Road,
Pattalam, Chennai – 600 012.
11. M.Uma Devi
W/o. Muthukumar
5/30, Bharatha Madha Street,
New Kamaraj Nagar,
Vyasarpadi, Chennai – 600 039.
12. L.Lalitha,
W/o. Loganathan,
14/29, Ayyapa Chetty Street,
Mannadi,
Chennai – 600 001.

... Defendants / Respondents



C.S.No.373/2015
& T.O.S.No.17/2015

Prayer: Original Petition is filed under Section 232 and 276 of Indian Succession Act XXXIX of 1925 of Issue of Letters of Administration under Order XXV Rule 5 of O.S.Rules, to grant Letters of Administration with the Will annexed to the petitioner as a son / beneficiary under the Will of the deceased Y.E.Seshachari having effect limited to the State of Tamil Nadu.

For Plaintiff : Ms.S.Shyamala

For Defendants : Mr.V.Anand

for Mr.P.V.Sudakar

COMMON JUDGMENT

Civil Suit is filed to declare that Mr.S.Srinivasan, son of Y.E.Seshachari, is not known to be alive for 30 years and hence he has undergone a civil death and to pass a preliminary decree for partition declaring the plaintiffs 10/13th share in the suit properties and in consequence thereof appoint an Advocate Commissioner to divide the suit properties by metes and bounds and allot the shares of the plaintiffs through the process of court and grant a final decree for partition putting the plaintiffs in their respective allotted shares through the process of Court.

Testamentary Original Suit is filed to grant Letters of Administration with the Will annexed to the petitioner as a son / beneficiary under the Will of the deceased Y.E.Seshachari having effect limited to the State of Tamil



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2. The facts pleaded in plaint filed by the plaintiffs in C.S.No.373/2013 in brief:

The plaintiffs are the grandchildren of late Y.E.Seshachari born through his daughter Saraswathi. Late Y.E.Seshachari had two wives. He got three daughters and one son. The eldest daughter by name Saraswathi who is the mother of the plaintiffs 1 to 3 died on 14.05.1996 by leaving the plaintiffs as her only legal heir. Her husband Raghuram pre-deceased her. The plaintiffs 4 to 7 are the husband, and children of another daughter of Y.E.Seshachari by name Seethalakshmi who died intestate on 14.07.1997. The eighth plaintiff is another daughter of Y.E.Seshachari born through his wife Rukmani. The son born to Y.E.Seshachari through Rukmani abandoned and deserted the house as a bachelor and he is not known to be alive for more than 30 years. Rukmani died on 17.10.1962. On the death of his first wife, Y.E.Seshachari married the second wife who is the first defendant herein and begot through her the plaintiffs 9 and 10 and the defendants 2 and 3. Hence, the plaintiffs and the defendants who are the legal heirs of late Y.E.Seshachari are entitled to the properties belonged to him. Y.E.Seshachari died intestate on 08.04.2008.



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2.1 The plaintiffs and the defendants lived peacefully and harmoniously in Item-1 of the suit property and the income derived from and out of the suit properties were shared among the plaintiffs and the defendants up to the year 2009. Thereafter, the defendants stopped paying rents for the reasons best known to them. Some of the plaintiffs issued a legal notice on 28.01.2011 to the defendants and demanded their share from the income derived from the suit property. On receipt of the said notice, the plaintiffs and the defendants have negotiated between themselves through a family meeting arranged on 01.06.2012. On 01.06.2012 it was agreed that the defendants would place the parties in their respective shares within a period of three months. The family arrangement was also recorded subsequently. The said family arrangement has been reduced into writing on 01.06.2012. Later, the defendants changed their mind and denied the plaintiffs' share.

2.2 Item-1 of the suit property was purchased by late Y.E.Seshachari's brother Kittappa Achari through a registered sale deed dated 07.08.1939. As Kittappa Achari did not have any issues, the property was enjoyed by his sole surviving legal heir namely his wife Gnanambal Ammal and on the death of Gnanambal Ammal, the same fell into the share of Ezhumalai



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Achari who is the brother of Kittappa Achari. Y.E.Seshachari was in possession of the I Item of the suit property after the lifetime of Ezhumalai Achari until his death on 08.04.2008. Y.E.Seshachari died intestate leaving behind the plaintiffs and the defendants and one another son Srinivasan who is not known to be alive for more than 30 years. Thus Item-1 of the suit property is liable to be shared among the plaintiffs and the defendants equally.

2.3 Items 2 and 3 of the suit schedule properties fell to the share of Kittappa Achari, who had left his wife Gnanambal Ammal alone as his legal heir. Gnanambal Ammal executed a registered settlement deed with reference to Item 2 and 3 of the suit scheduled properties on 26.11.1962 creating a life interest in favour of her husband's brother Y.E.Seshachari who was brought up by Kittappa Achari and Gnanambal. In and by the above settlement deed, Gnanambal Ammal created life interest in favour of Y.E.Seshachari and absolute interest in favour of his son Srinivasan. As per the settlement, Srinivasan would get the property from the life estate holder Y.E.Seshachari on attaining the age of majority. But Srinivasan did not take possession of the properties and hence, Y.E.Seshachari continued to be in possession of Items 2 and 3 of the suit properties. Though the life estate



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created under the settlement deed was accepted and acted upon, the subsequent absolute disposition of the property in favour of Srinivasan was never accepted and acted upon by Srinivasan. Y.E.Seshachari has accepted the life estate and has been in enjoyment of the same and later, he acquired the title also in view of the voluntary abandonment right by Srinivasan.

2.4 Srinivasan was not heard for last 30 years. He never came back even once to the house during these years. Various attempts made to find out his whereabouts are in vain. Since Srinivasan is not known for more than 30 years, the properties that are likely to devolve on him after the death of Y.E.Seshachari, cannot take effect and hence a relief to declare his civil death is prayed in the suit.

2.5 As Y.E.Seshachari died on 08.04.2008 by leaving behind the plaintiffs and the defendants as his legal heirs, they are entitled to 1/13th share in the suit property. Despite there was a family meeting between the plaintiffs and the defendants and it was agreed to share the properties as per their entitlement, the defendants have stopped making any payments of the plaintiff's share of rental income derived from the suit properties. As the family arrangement has already been arrived and the defendants have not

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come forward for further negotiations, the suit has been filed for seeking the relief to declare that Srinivasan S/o. Y.E.Seshachari, is not known to be alive for 30 years and has undergone a civil death and to pass a preliminary decree for partition declaring the plaintiffs 10/13 share in the suit properties.

3. The averments made in the written statement filed by the defendants in C.S.No.373/2013 in brief:

The defendants deny the allegations made by the plaintiffs in their plaint. The relationship between the defendants and the original owner Y.E.Seshachari as alleged in the plaint is true. Y.E.Seshachari died on 08.04.2008 but he did not die intestate. He executed a holographic Will bequeathing the suit properties exclusively in favour of the second defendant. It is false to state that the plaintiffs and the defendants lived peacefully and harmoniously in Item – I of the suit property and that they share income from the suit property. Y.E.Seshachari permitted the 8th plaintiff to occupy a portion in the first floor of Item-I of the schedule mentioned property. There was a tenant by name Kuppan and court proceedings were initiated against him and later he handed over the possession to the second defendant. Before the second defendant could let out the premises to a third party, the eighth plaintiff locked the portion. The third defendant is



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constructing a house and the second defendant permitted her to reside in the same premises till the construction is over. After the death of Y.E.Seshachari, the second defendant has been collecting rents from the tenants residing in Item Nos.1, 2 and 3 of the suit schedule property.

3.1 The existence of the holographic Will executed by late Y.E.Seshachari is known to all the plaintiffs and the defendants. There were two sets of Will executed by Y.E.Seshachari in which the second defendant alone is the beneficiary. After the death of Y.E.Seshachari, the second defendant alone was collecting the rents and he did not share the rental income with anyone. The plaintiffs demanded a share for which the second defendant declined. The second defendant, out of love and affection, desired to give some amounts, but the plaintiffs demanded share in the property and hence the settlement could not be arrived. Since the plaintiffs have arrived at an unilateral agreement between themselves, that will not bind the second defendant.

3.2 Shanbagammal, who was the absolute owner of the property, died issue less and intestate. Y.E.Seshachari as the legal heir of Shanbagammal filed an Original Petition in O.P.No.93/2001 on the file of the High Court



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seeking Letters of Administration and the same has been granted in his favour on 13.02.2001 and Y.E.Seshachari became the absolute owner of the property. The devolution of title in favour of Y.E.Seshachari in respect of Item Nos.2 and 3 as stated in the plaint is true. The second defendant is the only son of Y.E.Seshachari and he settled all his daughters in marriage. He intended that his son alone should get all the properties and therefore he executed the Will in his own handwriting, so that no one should question the bequest. So the suit for partition is not maintainable.

4. On the basis of the above pleadings, the following issues have been framed in C.S.No.373/2013 :

- i) *Whether the plaintiff is entitled for partition as prayed for ?*
- ii) *Whether the holographic Will dated 13.01.2008 in favour of the second defendant is true and genuine ?*
- iii) *To what other reliefs, the parties are entitled to ?*

5. The facts pleaded in the petition filed in O.P.No.76/2014 (TOS No.17/2015) in brief:

The petitioner is the son of the testator Y.E.Seshachari and the first respondent is the second wife of the testator. The testator and his first

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wife Rukmani had three daughters and a son. His eldest daughter Saraswathi died on 14.05.1996 leaving behind the respondents 3 to 5 as the legal heirs.

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Her husband Raghuraman predeceased her. The testator's second daughter Seethalakshmi also predeceased him. The respondents 5 to 8 are the husband, son and daughters of late Seethalakshmi. 9th respondent is the daughter of late Y.E.Seshachari and his wife Rukmani. His son Srinivasan born through the first wife Rukmani had abandoned and left home during the year 1975 itself. The petitioner is the son and respondents 10, 11, and 12 are daughters of Y.E.Seshachari through his second wife Krishnaveni who is the first respondent herein.

5.1 The deceased testator has bequeathed his properties in favour of his son S.Sriram. The respondents 2 to 11 have filed C.S.No.373/2011 for partition against the petitioners before the High Court and the same is pending. As the testator had executed a Will dated 13.01.2008 in presence of two witnesses and bequeathed the suit property in favour of the second defendant, he has filed this Original Petition seeking Letters of Administration.

5.2 As the second respondent has filed caveat, the said Original



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Petition has been converted into Testamentary Original Suit and numbered
as T.O.S.No.17/2015.

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6. The averments made in the written statement filed by the defendant in T.O.S.No.17/2015 in brief:

In the document filed for granting Letters of Administration, it is stated that it has been executed in the presence of Lord Shri.Rama and his divine consort Seetha. As such no named living mortal is mentioned who is capable of appearing before the court and stand as a witness in accordance with Sections 68 and 91 of the Indian Evidence Act. So the above document cannot be called as a “Will” falling within the parameters of Section 63 of the Indian Succession Act. The petition has been filed without the affidavit of the attestors. The property should devolve in accordance with the Hindu Succession Act as there is no valid testament falling within the scope of the Indian Succession Act. The defendant is in joint possession and enjoyment of the suit property along with the plaintiff and with the other sharers as she is residing in the suit property for several years.

6.1 Even according to the plaintiff, the Will was executed on 30.01.2008 and the testator died on 08.04.2008. However, the Original



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Petition was filed subsequent to the filing of the partition suit by the plaintiff

in C.S.No.373 of 2013. The delay in filing these proceedings by the plaintiff has not been explained in the plaint and on account of the long and inordinate delay, laches, the suit is liable to be dismissed.

7. On the basis of the above pleadings, the following issues have been framed in T.O.S.No.17/2015:

- A) Whether the Will dated 13.01.2008 is true, valid and binding on the defendant ?*
- B) Whether the plaintiff is entitled to obtain the letters of administration as prayed for, in the plaint ?*
- C) To what relief the plaintiff is entitled to ?*

8. Joint trial has been ordered and the common evidence was let in T.O.S.No.17 of 2015. On the side of the plaintiff two witness were examined as P.W.1 and P.W.2 and Exs.P1 to P8 were marked. On the side of the defendants one witness was examined as D.W.1 and no document was marked.



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9. Issue No.1 in C.S.373/2013:

The relationship between the parties is not in dispute. The testator by name Y.E.Seshachari had two wives by name Rukmani and Krishnaveni Ammal who is the first defendant. Y.E.Seshachari had three daughters and one son through his first wife Rukmani. The plaintiffs 1 to 3 are the legal heirs of one of the daughters Saraswathi. The fourth plaintiff is the husband of one of the daughters by name Seethalakshmi and the plaintiffs 5 to 7 are the sons and daughters of Seethalakshmi. The two daughters by name Saraswathi and Seethalakshmi are no more. The 8th plaintiff is one of the daughters of Y.E.Seshachari. The only son born through the first wife by name Srinivasan has abandoned his home when he was a minor and his whereabouts are not known for nearly 30 years. The first wife of Y.E.Seshachari died on 17.10.1962 and thereafter he married the first defendant and through the first defendant Y.E.Seshachari had three daughters and one son who are the plaintiffs and defendants 2 and 3.

10. So far as Item-1 of the suit property is concerned, there is no dispute with regard to the title of the testator Y.E.Seshachari. The suit properties are originally belonged to Kittapa Achari who is the father's brother of Y.E.Seshachari, and he did not have any issues. Item-1 of the suit



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property was purchased by Kittappa Achari through a sale deed dated 07.08.1939. In a family partition, Item-1 of the suit property was allotted to Ezhumalai Achari who is the father of Y.E.Seshachari. So far as Item-1 of the suit property is concerned, both the plaintiffs and defendants did not have any dispute to trace the title of Y.E.Seshachari. But their only dispute is about the disposition of Item No.1 of the suit property done by Y.E.Seshachari. While the plaintiffs in C.S.No.373/2013 claims that Y.E.Seshachari died intestate, the plaintiff in T.O.S.No.17/2015 who is the second defendant in C.S.No.373/2013, claims that Y.E.Seshachari did not die intestate but he executed the Will during his lifetime.

11. So far as Item Nos.2 and 3 of the suit property are concerned, they are also the properties fell to the share of Kittappa Achari. As he did not have any issues, his wife Gnanambal Ammal had inherited the said properties subsequent to his lifetime. The said Gnanambal Ammal had executed a settlement deed in respect of Item Nos.2 and 3 of the suit properties on 26.11.1962 by creating life interest in favour of Y.E.Seshachari and the absolute interest in favour of another son Srinivasan. As per the settlement deed, Srinivasan has to get the property from the life estate holder Y.E.Seshachari after the age of attaining majority. As Srinivasan is not



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known for several years, he did not take possession of Item Nos.2 and 3 of the suit properties and the properties continued to be enjoyed by Y.E.Seshachari. Even the second defendant who is the plaintiff in T.O.S.No.17/2015 also accepted the factum of execution of settlement deed by Gnanambal by giving life interest to Y.E.Seshachari and absolute interest in favour of Srinivasan and he also did not deny that Srinivasan was missing for several years.

12. Either of the parties have not initiated any proceedings till the filing of the suit in C.S.No.343/2013 to declare the civil death of Srinivasan on account of his abscondance / missing. It is claimed by the second defendant Sriram that by virtue of being in possession of Items 2 and 3, Srinivasan had acquired title and he has the absolute interest in respect of Item Nos.2 and 3 also to execute the will.

13. A Will is said to have been executed by Srinivasan on 13.01.2008. Prior to the said date, Y.E.Seshachari did not file any suit to declare that he is the absolute owner of the suit property by virtue of his alleged long uninterrupted possession. Even though Srinivasan did not turn up to his family for all these years, the title in respect of Item Nos.2 and 3 cannot be



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conferred on Y.E.Seshachari unless he could establish that the title has been transferred in his name or he has been in uninterrupted possession over the same.

14. So far as the claim of the plaintiffs in C.S.No.373/2015 is concerned, Item Nos.2 and 3 of the properties belong to Srinivasan and in the event of declaring his civil death, those properties should be construed as the property available to the plaintiffs through intestate succession.

15. It was not the claim of the second defendant Sriram that Srinivasan, at some point of time, had transferred his title in favour of Y.E.Seshachari. It is not open to the second defendant Sriram to deny the coming into force of the settlement deed executed by Gnanambal on 26.11.1962 partly against the absolute interest of Srinivasan and accepted partly against the life estate interest of his father. If the second defendant claims that his father had been in possession and enjoyment of the suit property in pursuant to the settlement deed dated 26.11.1962, he has to accept the fact that his father could acquire only life interest through the above settlement deed. The very possession and enjoyment of the plaintiff's father over the suit property itself is sufficient to come to the conclusion that



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the settlement deed dated 26.11.1962 has been acted upon.

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16. The continual possession of Y.E.Seshachari cannot be construed as his absolute right unless it is either given by the absolute owner Srinivasan or through a decree of a court on the basis of his alleged possession. Even though Srinivasan did not take possession of the suit property, the fact remains that he has the title in the suit property as vested on him. It is upto him to turn back and take possession of the suit Items 2 and 3 of the suit properties at any point of time. The possibility gets closed only if Srinivasan is declared to be dead by a decree of the Court or due to his natural death. Even in such case, suit Items 2 and 3 can be considered as properties available for intestate succession by the legal heirs of Srinivasan and not the absolute property belonged to Y.E.Seshachari in order to enable him to make any testamentary disposition in respect of the same.

17. As stated already, Srinivasan did not transfer his title in respect of Items No.2 and 3 exclusively in favour of Y.E.Seshachari. Even if it is presumed that the plaintiff's father has got any declaration as to the civil death of Srinivasan, by virtue of such a decree alone, Y.E.Seshachari cannot claim absolute right in respect of Items No.2 and 3. So long as



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Y.E.Seshachari had not prescribed any title in respect of Items 2 and 3 by

adverse possession hostile to anyone who is interested in the suit property, Srinivasan cannot be considered as the owner of suit Items 2 and 3. Even if Srinivasan was unheard for several years, the fact remains that he is the absolute owner of the suit property by virtue of the settlement deed dated 26.11.1962.

18. Since Y.E.Seshachari had already died in the year 2008 and the suit to declare the civil death of Srinivasan has been filed only in the year 2008, the decree passed declaring the civil death of Srinivasan will only convey an inference that Y.E.Seshachari had predeceased him. In other words, Y.E.Seshachari who died on 01.04.2008 before passing the decree for declaring the civil death of Srinivasan, can be construed that he predeceased Srinivasan. Hence the properties for which Srinivasan had title could be inherited only by his legal heirs who are available on the date of the decree for declaration of his death.

19. The second defendant who was examined as P.W.1 has admitted in his evidence that he did not file any suit to declare the civil death of Srinivasan. In such a case, the second defendant's father Y.E.Seshachari



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cannot have any absolute interest in respect of Item Nos.2 and 3 to execute a Will touching upon those properties. Even if such a Will has been executed by Y.E.Seshachari in respect of Items 2 and 3 that will not affect the right of inheritance on the other legal heirs of Srinivasan. In other words, the second defendant's father Y.E.Seshachari cannot execute a Will in respect of suit Items 2 and 3 which belonged to Srinivasan, who has not been declared as dead. So the plaintiffs in C.S.No.373/2013 are entitled to their respective share in Item Nos.2 and 3 and as claimed by them, disregard of their mention in the suit Will – Ex.P1. Thus, **Issue No.1 in C.S.No.373/2013 is answered in favour of the plaintiffs.**

20. Issue Nos.2 and 3 in C.S.No.373/2013 & Issue No.1 of T.O.S.No.17/2015:

So far as Item No.1 of the suit property in concerned, it fell to the share of Y.E.Seshachari's father Ezhumalai Acharai in a family partition. The plaintiffs in C.S.No.373/2013 have claimed that Y.E.Seshachari died intestate. But the plaintiff in T.O.S.No.17/2015 who has been examined as P.W.1 has claimed that Y.E.Seshachari had executed the Will dated 13.01.2008 during his lifetime and bequeathed the suit property in his



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favour. The Will which has been marked as Ex.P1 is said to be a holographic Will and it is claimed by P.W.1 that it has been written by Y.E.Seshachari with his own handwriting. The defendants' family denied that Y.E.Seshachari did not execute Ex.P1 – Will and it is not genuine. On perusal of Ex.P1, it is seen that it is hand written and unregistered. It is dated 13.01.2008. But it appears like a letter and starts with words “மதிப்பிற்குரிய ஐயா”. There is an overwriting in mentioning the year in the date “13.01.2008”. The starting three lines of the Will dated 13.01.2008 are extracted hereunder:

“ தமிழ்நாடு அரசாங்கம் அறிய எழுதிய மடல்

விபரம். என்குமாரருக்காக நான்’ எழுதிய உயில். மதிப்பிற்குரிய ஐயா”

21. The above lines of the Will would show that the second line is an insertion. The second line appears to be an insertion between the first and third line and the document is said to have been signed by the testator. But there are overwriting in the signature and it concludes as though it has been written to someone.

22. In the body of Ex.P1 it has been written stating that the Universe is the witness. As per Section 63 of the Indian Succession Act, (i) the testator

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shall sign or affix his mark on the Will and it shall be signed by some other person in his presence and by his direction; (ii) the signature or the mark of the testator shall be placed by giving an appearance that it was intended to give effect to the writing as a Will; (iii) the Will shall be attested by two or more witnesses, each of whom had seen the testator signing and affixing his mark to the Will in the presence and by direction of the testator and the witness shall sign the Will in the presence of the testator.

23. From the contents of Ex.P1- Will, it is only seen that the testator has written the Will not in the presence of any human being but in the presence of 'Panja Bootham' (Universe) as a witness. Had the Will been executed in the presence of a human beings who could attest the same, the testator would have mentioned about their names as the witnesses for the Will. But it is not mentioned so in the Will. Even if it is presumed that there were some human stood as witnesses to the Will, they should have attested the Will by affixing their signatures. The plaintiff has not chosen to examine any of the contesting witnesses and he has examined only P.W.2 who claims to be the son of one of the witnesses by name Kandasamy Achari. P.W.2 has stated in his evidence that his father has been suffering lack of vision for 20 years and hence he has given evidence to identify the signatures of his father



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in Ex.P1. During the cross-examination of P.W.2, he has stated that he has not identified his father's signature by comparing it with the signature in Ex.P1. It is claimed by the plaintiff that P.W.2 is a person who is conversant with the signatures of his father and hence there is no necessity for him to compare the signature in Ex.P1 with any of the signature of his father. Prior to allowing P.W.2 to identify the signature of Kandasamy Achari, it should be proved that P.W.2 is the son of Kandasamy Achari and that he has confirmed the signature on the Will with the knowledge of his father's signature in some other documents. Because any interested witness can come and see the signature and say that it is his father's signature and with that it cannot be concluded that the witnesses have rightly identified the signature.

24. P.W.2 has stated that he did not produce any Identity Card to show that he is the son of Kandasamy Achari and that his father is capable of doing activities except walking. In such case, the plaintiff could have examined Kandasamy Achari himself about the manner in which the Will has been executed. Even though it might not have been possible for him to identify the signature, he might be able to state how the Will was executed in his presence and whether he has signed as an attester for the Will. Despite



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Kandasamy Achari was alive and was capable of speaking on this aspect, such a best witness has not been examined on the side of the plaintiff. Even if the plaintiff has not chosen to examine Kandasamy Achari, he could have examined other attesting witness in order to know whether Ex.P1- Will has been written in the own handwriting of Y.E.Seshachari, while he was in a sound and disposing state of mind by being aware of the contents of the same.

25. With regard to the other witness P.W.1, he stated that Haribabu who is the co-brother of P.W.1, has met with an accident and thereafter he could not identify persons. In order to prove the same, he has produced Ex.P8 - discharge summary of Haribabu dated 17.08.2021. On perusal of Ex.P8 it is seen that Haribabu was conscious, alert, mobility present on his forelimbs, tolerated normal diet and mobilized out of bed on regular physiotherapy. It is not the contention of P.W.1 that subsequent to the discharge, the condition of Haribabu had deteriorated further. In fact, the surgical intervention for Haribabu was done during the year 2001 itself.

26. The testator died on 08.04.2008, just after three months from the date of the Will. The plaintiff claims that Ex.P1 is in the own handwriting of



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the testator. In that case, it would have been appropriate for the plaintiff to compare the same with the admitted handwriting of the attesor, as there is change of handwriting and line space in Ex.P1. Even if it is presumed to be in the own handwriting of the deceased, it is not proved before the Court with acceptable evidence that the signatures of the attestors have been made at the request of the testator in his presence and that the attestors have seen the testator affixing his signature on Ex.P1 – Will.

27. No doubt the holographic will has got the best presumptive value as to its genuineness, if it is proved that the whole of the Will is in the handwriting of the testator. The defendants stoutly deny the handwriting in Ex.P1. When the handwriting in Ex.P1 is not admitted and there are difference seen in the handwriting of Ex.P1, it cannot attract the same positive presumption which the holographic Wills used to have. Only when the holographic Will does not appear to be suspicious, on the face of it, it can get the benefit of the best presumption. In the instant case, the Will not only raises doubt about the presence of the witnesses, but it also lacks the proof of it. Hence, the suit Will fails both in terms of the validity and genuineness.



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28. The judgments cited by the learned counsel for the plaintiff which are relevant to the holographic Will are not applicable due to the distinct facts of the case on hand. Hence, Issue Nos.2 & 3 in C.S.No.373/2013 are answered in favour of the plaintiff in C.S.No. 373/2013 and Issue No.1 in T.O.S.17 of 2015 are answered against the plaintiff in T.O.S.No.17/2015.

29. Consequently, the plaintiff in T.O.S.No.17/2015 is not entitled to obtain the Letters of Administration as prayed and thus the Issue Nos.2 & 3 of T.O.S.No.17/2015 is answered against the plaintiff in T.O.S.No.17/2015.

30. Since the validity and genuineness of the Will dated 13.01.2008 have not been proved, that will not bind the defendants in T.O.S.No.17/2015 and the plaintiffs in C.S.No.37/2013. Hence the plaintiffs in C.S.No.37/2013 are entitled to the relief of partition as prayed. As the plaintiff in T.O.S. No.17/2015 did not prove the testamentary disposition in respect of the Item 1 of the suit property and the Plaintiff in C.S.No. 37/2013 has proved that the plaintiffs in C.S. No. 37/2013 alone are entitled to get 10/13th share in the suit property. Hence the plaintiff is entitled to the relief as prayed for.



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31. In the result, the Civil Suit in C.S.No.373/2013 is allowed and the preliminary decree is passed in favour of the plaintiffs declaring the plaintiffs' 10/13th share in the suit properties and the suit in T.O.S.No.17/2015 is dismissed. No costs.

10.02.2026

Index : Yes/No
Speaking Order : Yes / No
Netural Citation : Yes / No
bkn



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Annexure

Plaintiff's side witness:

1. P.W.1 – Mr.S.Sriram
2. P.W.2 – Mr.Muthuvel

Defendant's side witness:

- 1.D.W.1 – M.Jayanthi

List of Documents:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description</i>
1	Ex.P1	Original Will dated 13.01.2008 executed by late Y.E.Seshachari
2	Ex.P2	Original Death Certificate dated 08.04.2008
3	Ex.P3	Original Legal heirship certificate dated 24.12.2009
4	Ex.P4	(Series)(4 sheets) are the original Corporation Tax Receipt
5	Ex.P5	Original Letter written by Testator to his daughter (learned counsel for the defendant Ex.P5 with subject to objection)
6	Ex.P6	Original Letter written by Testator to Corporation (learned counsel for the defendant Ex.P6 with subject to objection)
7	Ex.P7	AHC Medical Summary of Apollo Preventive Health Screening marked with subject to objection, proof and relevancy.
8	Ex.P8	Discharge summary of Mr.Haribabu issued by the Apollo Hospital dated 17.08.2021 marked with subject to objection, proof and relevancy.

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R.N.MANJULA, J.,

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