2026:MHC:4725

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-11-2026

Pronounced on : 24-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 20 of 2024

CNR:{HCMA011731402023}

AND

CMP NO. 2687 OF 2024

Case QR

R.Karunakaran
S/o. Late N. Rathinasabapathy,
New No.147, Old No.52,
Old Mambalam Road,
Saidapet, Chennai – 600 015.

..Appellant(s)

Vs

R. Saroja Ammal(deceased)

1. R. Kalavathi
W/o. Mr. L. Rajendran,
No.1, Thiruppur Kumaran Colony,
First Street, Saidapet, Chennai 600 015
also presently residing at
No.11/5 Plot No.7, IInd Floor,
Perumal Koil Street, Lashmi Kripai Apartment,
Saidapet, Chennai - 600 015.

2. D. Malarvizhi
New No.13, Old No.5, West Jones Road,
West Saidapet, Chennai – 600015.

3.R. Senthilnathan,
New No.147, Old No.52,
Old Mambalam Road,
Saidapet, Chennai 600 015.

..Respondent(s)

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OSA No. 20 of 2024

This original side appeal is preferred under Order XXXVI Rule 11 of the O.S. Rules read with Clause 15 of the Letters Patent seeking to set aside the Judgment and decree dated 25.08.2023 passed by the Hon'ble Court in T.O.S. No.23 of 2017 and pass such further orders as it deems fit and thus render justice.

For Appellant(s): Mrs.Chitra Sampath, Senior Advocate
for M/s.Gajalakshmi Karan.K

For Respondent(s): Mr.S.Udhayakumar

Judgment

N.Sathish Kumar J.

Challenging the judgment and decree of the learned single judge dated 25.08.2023 made in T.O.S.No.23 of 2017 granting Letters of Administration in respect of the Will dated 07.03.1996 executed by Rathinasabapathi Mudaliar, the present original side appeal has been filed by the sole defendant in the testamentary suit.

2.The facts of the case in brief for the disposal of the appeal are as follows:

2.1.The first plaintiff is the wife of one late Rathinasabapathy Mudaliar. Plaintiffs 2 to 4 and the defendant are the children of said Rathinasabapathy and the first plaintiff Saroja Ammal. The first plaintiff has filed O.P.No.802 of

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2010 for grant of letters of administration. The said original petition was allowed on 12.03.2013. However, the same has been later revoked on an application filed by the defendant in O.A.No.5289 of 2013. As the defendant has also filed caveat, the original petition was converted as testamentary suit in TOS No.23 of 2017. During the pendency of the suit, the first plaintiff died and therefore, plaintiffs 2 to 4 continued the suit.

2.2.The sole contesting defendant, the elder son of the first plaintiff and Rathinasabapathy filed the written statement alleging that the suit property was allotted to the share of Rathinasabapabhy Mudaliar in a partition deed. The suit properties are joint family properties. According to the defendant, the first plaintiff has already filed a suit in O.S.No.3775 of 2006 before the learned XII City Civil Judge, Chennai for the relief of partition of 1/5th share and a preliminary decree was passed on 31.03.2009. Subsequently, a final decree application was filed by the first plaintiff. In the meanwhile, she has also executed a settlement deed dated 09.09.2009 in favour of her other children excluding the defendant. Hence, according to the defendant, the first plaintiff has filed the original petition for the grant of letters of administration by suppressing the preliminary decree and the settlement deed. Though originally the letters of administration was granted, but on an application by the defendant, the letters of administration was revoked on 05.07.2017 and as against the revocation, an appeal was also filed by the said plaintiff in OSA No.80 of 2018 and the same was also dismissed. Hence, according to the defendant, when

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Saroja Ammal had waived her right under the Will and filed the suit for partition in O.S.No.3775 of 2006, she cannot now seek the letters of administration in respect of the Will. Further, it is his contention that the properties are ancestral properties which belonged to Natesa Mudaliar and therefore, all the children of late Rathinasabapathy Mudaliar have got equal rights over the ancestral property and hence, he has prayed for dismissal of the suit.

2.3.Based on the above pleadings, the following issues were framed by the learned single judge:

(i)Whether the Will executed by Late N.Rathinasabapathy Mudaliar dated 07.03.1996 and registered as Document No.30 of 1996 before the Sub Registrar Office, Saidapet is true, valid and genuine?

(ii)Whether the attesting witness, namely L.Gnanasundari was a major at the time of attestation of the Will by her and whether her signature is genuine?

(iii)Whether the suit is barred by limitation?

2.4.On the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.P.1 to P.3 documents were marked. On the side of the sole defendant, D.W.1 was examined and Exs.D.1 to D.6 were marked.

2.5.Based on the evidence and the materials available, the learned single judge though found that the petition has been filed after 8 years of the Will

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coming into force, condoned the delay after considering the fact that the first plaintiff herself withdrew the application filed for final decree proceedings in the partition suit and as the Will stands proved, the learned Single Judge had granted the letters of administration.

3.The learned senior counsel appearing for the appellant would submit that though the father of the parties had executed the Will in favour of the first plaintiff, the mother of the parties, the mother has not taken the legacy and that she has abandoned her right. In fact, she has waived her right and she has filed the suit. Though the Will was dated 07.03.1996, she has filed the suit for partition restricting her 1/5th share in the suit property and the preliminary decree was also passed in O.S.No.3775 of 2006 declaring her 1/5th share in the suit property. The learned senior counsel for the appellant would submit that the plaintiff has pleaded in the suit to the effect that the property was originally allotted in the partition to her husband. Further, she has pleaded that due to the hostile and violent acts committed by the first defendant against his parents, the Will came to be executed on compulsion. However, she also has a desire that all her children to get equal share and pleaded that the first plaintiff does not want to deprive the first defendant his share in the suit property. Therefore, she has filed the suit. Hence, according to learned senior counsel, the legatee of the Will herself has waived her right and abandoned her right and filed the suit for partition, restricting 1/5th share and the preliminary decree also reached finality.

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The final decree application was also filed, but later it was not prosecuted by the mother. Now the testamentary O.P has been prosecuted. Though it was continued by her mother, evidence has been let in by the second plaintiff after the death of the first plaintiff. Therefore, once legatee herself has not elected to take the legacy and restricted her right in respect of her 1/5th share in the suit property, the learned single judge ought not to have granted the letters of administration. It is also brought to the notice of this court that in another suit in O.S.No.3879 of 2019 filed for mandatory injunction, the matter came up to this court in S.A.No.611 of 2024. The second appeal was dismissed on 02.04.2026, wherein this court had clearly held that though the Will has been proved in the probate proceedings, in view of the partition suit, wherein the mother has restricted her claim by waiving her absolute right, the subsequent order of letter of administration would not bind the preliminary decree where the rights of the parties were already declared and the same has not been set aside. This court has held that the preliminary decree is still in force and that since the rights of the parties were declared, any of the parties to the suit proceedings is entitled to initiate final decree proceedings. Hence, the learned senior counsel would submit that the learned single judge granting letters of administration is not fair.

4.The learned counsel appearing for the respondents would submit that though the suit has been filed by the mother for restricting her 1/5th share, the original petition was also continued by her. It is his contention that the appellant

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has acted against his parents and involved in criminal case and therefore, the father has executed the Will in favour of the mother. Therefore, merely because the mother has filed the suit for partition claiming 1/5th share and preliminary decree was also passed, that will not take away the right based on the Will executed by the father. Hence, the learned counsel would submit that they are ready to even give 1/5th share to the appellant herein in the suit property. It is his contention that the mother has already executed a settlement deed in favour of the other children. Therefore, the appellant can work out his remedy in the final decree proceedings.

5.In the light of the above submissions, the point that arises for consideration in this appeal is as follows:

(i)Whether the Will executed by the father is acted upon?

(ii)Whether the legatee has disclaimed her legacy by filing the suit for partition restricting her 1/5th share in the suit property?

(iii)To what other relief, the parties are entitled to?

Issues (I) and (ii) :

6.It is relevant to note that the suit property was originally allotted to the father on partition in the year 1968. Though it is the contention of the appellant before the testamentary court that it is the joint family property and the Will could not be executed, but no evidence was produced in this regard. It is also relevant to note that it is admitted by both sides that the mother being the

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legatee under the Ex.P.1 registered Will, it is also indicated that the property came to the testator by way of partition deed dated 01.11.1968 bearing document No.2588 of 1968. Though there was no evidence to show that the property is ancestral in character or separate property, the fact remains that legatee, namely first plaintiff has filed a suit in O.S.No.3775 of 2006 for partition of her 1/5th share into the property. Though Ex.D.1 certified copy of the preliminary decree passed in partition suit in O.S.No.3775 of 2006 has been marked, the plaint copy in O.S.No.3775 of 2006 has not been exhibited before the learned single judge. However, the same is available in the typed set, which was not disputed by both sides. The mother of the parties, who is the legatee under the Will Ex.P.1 has pleaded that since the attitude of the defendant, namely the elder son is hostile and violent towards parents, the Will was executed under compulsion. Having pleaded so, she has also stated that she has desire to share the property with all children. It is also clearly pleaded in the plaint that the first plaintiff does not want to deprive the first defendant his share in the suit property as he happens to be her own son. The above suit went on trial and the following issues were framed in O.S.No.3775 of 2006:

(1)Whether the plaintiff is entitled to 1/5th share in the suit property?

(2)Whether the plaintiff is entitled to partition and allotment of 1/5 share to her?

(3)Whether the plaintiff is entitled to injunction as prayed for?

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(4)To what relief is the plaintiff entitled?

7.The plaintiff was examined as P.W.1 and Ex.A.1 was marked. There was no oral or documentary evidence on the side of the defendants. Based on her evidence, the trial court came to the conclusion that since the plaintiff herself has not relied on the Will and it is yet to be probated, the trial court had granted preliminary decree and declared her 1/5th share. In the above suit, defendant nos.2 to 4 who were impleaded as plaintiffs in the testamentary suit after the death of their mother, first plaintiff, have also given consent for the grant of preliminary decree. This fact clearly shows that despite the registered Will in favour of the mother, first plaintiff in the testamentary suit, she has never elected to accept the Will at the earlier point of time and in fact, she has disclaimed her absolute right in the Will. Therefore, the legacy has not been acted upon, the legatee has disclaimed her right in the Will and has filed the suit for preliminary decree of partition for declaring her 1/5th share and even she has gone to the extent of final decree proceedings, but later she withdrew that application and pursued the original O.P which was filed for the grant of letters of administration in O.P.No.802 of 2010.

8.It is relevant to note that this original petition has been filed before the court for the first time in the year 2007 after filing of the suit for partition. The suit for partition has been filed in the year 2006. However, the O.P was numbered and taken on file only in the year 2010 and there was delay in

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pursuing the matter. But, she has filed the suit for partition restricting her right and continued with the said suit and the first plaintiff in the testamentary suit has given evidence in the partition suit and the suit has been decreed on 31.03.2009. It is relevant to note that only after the preliminary decree was passed on 31.03.2009, the original petition which was presented in the year 2007 was pursued and numbered in the year 2010. This fact clearly shows that in fact, the legatee under the Will has waived her right and abandoned the benefit of the Will, while she has restricted her right only to 1/5th share. It is also relevant to note that pursuant to the preliminary decree, the first plaintiff in the testamentary suit has also filed an application in I.A.No.9468 of 2013 for passing the final decree. Later, it appears that on 11.02.2015, the final decree application has been withdrawn by her.

9.When the final decree application has also been filed by the mother to pursue with the final decree, the O.P got numbered in the year 2010 and an ex parte order was passed, wherein the letters of administration was granted by order dated 12.03.2013. Later, on an application filed by the appellant herein in O.A.No.5289 of 2013, the letters of administration granted originally was revoked by this court by order dated 05.07.2017. The withdrawal of the final decree proceedings may be due to the grant of letters of administration in the ex parte order dated 12.03.2013. Only after the letters of administration was granted, an application has been filed to withdraw the final decree proceedings

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in the year 2015 as indicated above, be that as it may. Even in the appeal before this court challenging the revocation, this court dismissed the appeal. Later, the original petition was converted as testamentary suit and continued. In the meanwhile, even before any evidence is let in, the beneficiary, namely the first plaintiff died and plaintiffs 2 to 4 were impleaded. It is to be noted that plaintiffs 2 to 4 in the testamentary suit who were made as defendants in the earlier partition suit, they have given their no objection for passing the preliminary decree of declaring 1/5th share of their mother. Having participated in the suit and admitted their mother's right of 1/5th share, they continued the letters of administration proceedings after the death of the mother and the second plaintiff was examined as P.W.1. P.W.1 has filed proof affidavit and her cross examination was commenced on 05.07.2019. In the meanwhile, much water has been flown.

10.In view of the above, an important question arises as to the effect of such Will when the legatee herself disclaimed her legacy. In this regard, it is worth to refer old English judgments. In the decision of the King's Bench in ***Townson Vs. Tickell [106 E.R. 575]***, the Chief Justice Abott had observed as follows:

> 'The law certainly is not so absurd as to force a man to take an estate against his will. *Prima facie*, every estate, whether given by will or otherwise, is supposed to be beneficial to the party to whom it is so given. Of that, however, he is the best Judge, and if it turn out that the party to whom the gift is made does not consider it

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beneficial, the law will certainly by some mode or other, allow him to renounce or refuse the gift.'

In a concurring judgment, Justice Holroyd noted:

> 'I think that an estate cannot be forced on a man. A devise, however, being prima facie for the devisee's benefit, he is supposed to assent to it, until he does some act to show his dissent. The law presumes that he will assent until the contrary be proved; when the contrary, however, is proved, it shows that he never did assent to devise, and, consequently, that the estate never was in him.'

11.Above judgments makes it clear that a beneficiary / legatee under the Will may disclaim her legacy in which case, the legacy would never vest in her and would continue to form a part of the estate of deceased. The same principle was affirmed in Re Scott (1975) I W.L.R. 1260, wherein it is held as follows:

> 'Disclaimer is a refusal to accept an interest As the old year book had it, nobody can put an estate upon another in spite of his teeth, and here Col. Scott and Miss Scott have shown their teeth by executing deed of disclaimer. Now what effect does that have? It seems to me that it leaves the executor of the will of the deceased still holding the interest attempted to be disposed of under the statute, and still holding it as part of the estate of the deceased. If somebody refuses to accept a slice of the estate of the deceased, then it still remains, in my judgment, part of the estate of the deceased.'

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12.Above principles have been recognised in India by a Division Bench of this Court in ***V.Lakshmamma Vs. V.Ratnamma*** reported in ***(1913) 25 MLJ 556***, wherein it is stated as follows:

> 'But in In re Hotchkys-Freeke v. Calmady (1886) 32 Ch. 408 there are references to the acceptance of the legacy as essential, which are inconsistent with its vesting in the legatee against his will. And at p. 84, Williams Law of Real Property 20th Edn. Nicholson v. Wordsworth (1818) 2 Swanston 365 s.c. 31 E.R. 655 is referred to, and it is said " an heir at law is the only person in whom the Law of England vested property whether be would or not. If I make a conveyance of land to a person in my life time or leave him any property by my will, he may, if he pleases, disclaim taking it, and in such case it will not vest in him against his will ". Though this principle is not formally stated in the Indian Law it is reasonable and there is nothing repugnant to it therein or in Indian decisions. It may, therefore legitimately be adopted. The result is that the 2nd and 3rd plaintiffs' legacy did not vest in them completely or indefeasibly and that, as far as it vested at all, it would be divested by their disclaimer. Being undisposed of Seethammal's interest must go as the plaintiffs contend that it should, to the 1st plaintiff and to the 1st defendant in equal shares.'
>
> [*Emphasis supplied*]

13.Above judgments make it clear that legatee can disclaim her legacy. In this case, legatee herself disowned Will and filed a suit for partition which was decreed. Further, it is also relevant to note that the other suit has also been filed

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in O.S.No.3879 of 2019 and it is also in relation to the same subject matter, of course for different relief. The said suit also culminated in the second appeal in S.A.No.611 of 2024. This court by its judgment dated 02.04.2026 dismissed the second appeal. While dismissing the second appeal, this court in paragraph 28 has held that though the Will executed by Rathinasabapabhy Mudaliar was proved and letters of administration was granted, in view of the partition suit, the plaintiff restricted her claim by waiving her absolute right, the subsequent order of letters of administration would not bind the preliminary decree, where the rights of parties were already declared and the same has not been set aside. By holding so, it was also held that any of the parties to the suit is entitled to initiate final decree proceedings and since the application for final decree is still pending, the Limitation Act is not applicable taking note of the judgment of the Hon'ble Supreme Court in ***Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others*** reported in ***(2007) 2 SCC 355***. Considering this aspect, we are of the view that when the legatee herself has restricted her claim to 1/5th share in the suit property and waived / abandoned her right in respect of the entire property, the letters of administration granted based on the said Will for the entire property cannot be valid in the eye of law. The testamentary court cannot decide the right of the parties.

14.When the rights of the parties were already declared in the civil suit and the legatee has also waived or disclaimed her right and has not elected to

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take the benefit of the Will, the legal representatives of the legatee cannot take a different stand to take the entire benefit under the Will, particularly when the Legatee herself has disclaimed her right by filing the suit independently. Therefore, we are of the view that the letters of administration granted by the learned single judge in respect of the entire suit property cannot be valid and even assuming that the Will stands proved, that will cover only in respect of 1/5th share of the mother alone. Accordingly, the issues are answered.

15.In the light of the above, the judgment and decree of the learned single judge made in T.O.S.No.23 of 2017, dated 25.08.2023 are set aside. This original side appeal is allowed. No costs. Consequently connected miscellaneous petition is also closed.

(N.S.K.,J.) (G.K.M.,J.)
24-11-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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