



WEB COPY

TOS No.30 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.12.2025
Pronounced on	30.01.2026

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

TOS No. 30 of 2023

in

OP.NO.414 of 2022

G.Kothandaraman
S/o.G.Papayya,
No.13, Anthony Street,
Park Town,
Chennai - 600 003.

..Plaintiff / Petitioner

Vs

Rajalakshmi (died)
w/o C.Vishnumurthy

Durga Prasad
S/o.Late G.Ananthakrishnan,
No.67/3, Samibathan Street,
Ramalingapuram,
Chennai - 600 012.

..Defendant / Respondent

PRAYER : Suit filed under Sections 222 and 276 of the Indian Succession Act, praying to allow the plaintiff to prove the Will in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to the plaintiff.

For Plaintiff: Mr.D.J.Adinarayanan

For Defendant: Ms.S.Meenakshi



JUDGMENT

The Testamentary Original Suit has been filed to allow the plaintiff to prove the Will in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to the plaintiff.

2. Heard Mr.D.J.Adinarayanan, learned counsel for the plaintiff and Ms.S.Meenakshi, learned counsel for the defendant and perused the materials available on record.

3. The short facts pleaded in the plaint are as follows:

The suit property belonged to the testatrix by name Rukmani Amma. She had two sons and one daughter. The plaintiff and one G.Ananthakrishnan are the two sons of late Rukmani Amma. The first defendant is the daughter of late Rukmani Amma. The second defendant is the son of late G.Ananthakrishnan and paternal grandson of late Rukmani Amma. Thus the plaintiff, defendants 1 & 2 are the class I legal heirs of the deceased Rukmani Amma. The plaintiff has been appointed as an executor of the Will. The granddaughter of the deceased Rukmani Amma, is said to be the only beneficiary of the Will. The said beneficiary is the daughter of the first defendant. Rukmani Amma died on 25.07.2004 at Isabella Hospital, Chennai. Before her death, she had written her last Will dated 13.07.1998 and it is a registered Will. As the original Will was lost and not traceable, the certified copy of the same has been filed. Subsequent to the death of Rukmani Amma, the petitioner has filed this Original Petition for seeking probate of the



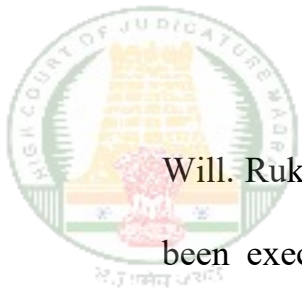
Will. As the second respondent has filed caveat, the Original Petition has been converted into Testamentary Original Suit.

WEB COPY

4. The averments made in the written statement filed by the defendant is as follows:

Rukmani Amma has executed a settlement deed in favour of her daughter one Rajalakshmi on 04.11.1967 through a registered settlement deed. In the said settlement deed, Rajalakshmi was given with life interest and the absolute interest over the property was given in favour of the children of Rajalakshmi by name Sathyanarayanan and Ramadevi @ Rebecca. Subsequently, the said settlement deed was revoked by way of deed of Revocation dated 18.01.1984. The said Rajalakshmi also expired on 25.12.2022. The beneficiary of the Will by name Ramadevi was converted to Christianity. The Will has been executed by playing fraud upon the testatrix who has got no proficiency in English and who had an intention to divide the property equally between her legal heirs. That is the exact reason why she had revoked the earlier settlement deed dated 04.11.1967 also. Rukmani Amma did not have any intention to bequeath the property to the legatee who herself had got converted to Christianity.

4.1. During the year 2019, the defendant's father, Rajalakshmi and the plaintiff intended to develop the suit schedule property by entering into a joint venture agreement with the builder. But it has not been fructified. Due to Covid -19 pandemic, the whole plan was dropped. After the normalcy returned and after the demise of the defendant's father, the plaintiff had come out with the subject



Will. Rukmani Amma was 83 years old at the time when the will was said to have been executed and it has not been executed by her when she was in a sound disposing state of mind. Hence, the Testamentary Original Suit should be dismissed.

5. On the basis of the above pleadings, the following issues are framed for consideration:

- "(i) Whether the Will dated 13.07.1998 is true and valid?
(ii) To what relief?"*

6. During the course of the trial, on the side of the plaintiff, the plaintiff has been examined as P.W.1 and one of the attesting witness of the Will has been examined as P.W.2 and Exs.P1 to P5 were marked. On the side of the defendant, the defendant has been examined as D.W.1 and Exs.D1 to D3 were marked.

7. The learned counsel for the plaintiff submitted that the first respondent by name Rajalakshmi has been impleaded as a party in the Original Petition. But, she has not filed any caveat. The testatrix was aware of the conversion of the legatee into Christianity and that was not the reason to deprive the legatee from getting the benefits of the Will. There is no doubtful circumstances surrounding the Will. The father of Rukmani Amma by name KalahasthiAchari had executed a registered settlement deed in favour of three children of Rukmani Amma and had given life interest to them. The legatee Ramadevi @ Rebecca was not born at the time when the settlement deed was executed by the father of Rukmani Amma and hence,



Rukmani Amma had bequeathed the suit property in favour of Ramadevi @ Rebecca. No fraud has been played and Rukmani Amma was aware of what she was doing and she has executed the Will only after understanding the averments made therein. One of the attesting witnesses has been examined as P.W.2 and his evidence would prove the execution of the Will. The plaintiff has complied with the essential requirement of Section 68 of the Evidence Act and the Will is compatible with Section 63 of the Indian Succession Act. Section 26 of the Act is not applicable to the testamentary succession and hence, the legatee's conversion to other religion will not affect her right. So, the right provision applicable to the case is Section 30 of the Hindu Succession Act.

8. The learned counsel for the defendant submitted that the original Will has not been produced. The Will has been executed at the residence of the plaintiff and that fact was not denied. The attesting witness P.W.2 has stated in his evidence that at the time when the Will was executed, no third party was present. But the plaintiff who has been examined as P.W.1 has stated in his evidence that himself, his wife, the legatee and Advocate Bhuvaneshwari were present at the time when the Will was executed by Rukmani Amma. The testatrix is not proficient in English and she has signed the will in Telugu. The recitals in the Will do not conform with the contents of the Will, which has been read out to the testatrix. The first attesting witness is the cousin brother of the plaintiff. The second attesting witness is the wife of the executor/ plaintiff. This will shows the doubtful circumstances surrounding the Will. The testatrix would have never intended to see



that the property being enjoyed by a person who got converted from Hindu to Christianity. At the time when the Will was executed, the defendant was under the care and custody of his father. The plaintiff has not proved that the testatrix was in a sound and disposing state of mind at the time when the will was executed.

9. The suit property belonged to one Rukmani Amma who is the grandmother of the defendant and the mother of the plaintiff. The defendant's father, who is also one of the sons of Rukmani Amma, had died. The plaintiff is the second son of Rukmani Amma. The will is said to have been executed on 13.07.1998 by Rukmani Amma and she died on 28.07.2004. The will is a registered will in which the plaintiff has been appointed as executor of the will. As per the recitals of the will, the suit property is bequeathed by the testatrix in favour of her grand daughter Ramadevi @ Rebecca. The mother of the legatee, Rajalakshmi, is the daughter of the testatrix.

10. PW.2 is one of the attesting witnesses to the Will. Even though the Will is a registered one, the defendant raised suspicious circumstances and claimed that the Will is forged and has not been executed by the testatrix as claimed by the plaintiff.

11. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court in the case of **SHIVAKUMAR & ORS. Vs. NSHARANABASAPPA & ORS., reported in (2021) 11 SCC 277**. The relevant paragraph of the above judgment is extracted as under:



“11. For what has been noticed herein above, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:—

1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.
2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.
3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.
4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.



5. *If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.*

6. *A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’*

7. *As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*



8. *The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?*

9. *In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.*

12. By having the above parameters as the guiding light, it can be now examined whether there are suspicious circumstances surrounding the will and whether the plaintiff could prove the compatibility and genuineness of the Will. The plaintiff, who claims himself as the executor of the Will, is not aware of the availability of the original Will. He has stated in his evidence that the original of Ex. P1 (the will), after its execution, was kept with the testatrix's sister. It is not known how the plaintiff, who claims to be the executor of the Will, came to know about the existence of the very Will itself.

13. PW.2 has been examined as an attester of the Will. He has stated in his evidence that another attesting witness, Saraswathy Ammal, was also present. He further stated that when the Will was prepared by an advocate, it was read over to Rukmani Amma. PW.2 proceeded along with PW.1 and the other attesting witness,



Ramadevi @ Rebecca. However, the plaintiff, who examined himself as PW.1, did not state in his evidence that he was present at the time when the Will was executed. The combined reading of the evidence of PW.1 and PW.2 shows that no one other than PW.1, PW.2, the wife of PW.2, the legatee, the testatrix, and the advocate who drafted the Will could have known about the existence of the Will.

14. According to PW.1, the Will was checked by his mother, and everything was lost subsequently. The Will was executed on 13.07.1998, and the testatrix died on 25.07.2004. The plaintiff, who was also present at the time when the Will was executed, could have been aware that he had been appointed as executor of the Will. Though the testatrix died as early as in 2004, the plaintiff, as executor of the Will, did not take any steps to announce the execution of the Will to the other legal heirs of the deceased, Rukmani Amma. Instead, an unacceptable explanation was called for the delay of nearly 20 years in filing the suit seeking probate of the Will.

15. It is not the contention of the plaintiff that he was not present at the time when the Will was executed or that he know about his role as executor only through someone other than his family members. However, a comprehensive reading of the chief in affidavit of PW.1 would reveal that he did not provide any acceptable explanation for the 20-years delay in filing the suit seeking probate of the Will. Further, he himself has accepted that the testatrix was ill for some time. Despite knowing about the loss of the Will, he did not file any police complaint after knowing that the Will had been lost.



16. In fact, PW.1 himself has stated in his evidence that he was physically present when the Will was executed. Hence he could have been aware of the Will at the time when it was executed. However, he has given self-contradictory evidence on this while he was examined as a witness. At one point he said that he learnt about the Will two or three years later. Elsewhere he has stated that he was present at the time of execution. PW.2 also confirmed PW.1's presence during the execution of the Will. The application seeking probate of the Will was not filed until 2023. As noted earlier, no satisfactory explanation has been given for this significant delay. The contents of the Will were written in English, but the testatrix did not know English and she had affixed her signature only in Telugu.

17. Therefore, the plaintiff must prove that the Will was executed by the testatrix after she had understood its contents. PW.1 has stated that Rukmani Amma studied only up to the 8th standard and she had no proficiency in English. When asked pertinent questions, PW.1 did not provide direct answers. For example, when asked whether the testatrix signed the Will at the registered office or at home, he said he did not remember. The attestors of the Will were the wife of PW.1 and his cousin, PW.2. Even in the proof affidavit filed by PW.1, he did not state whether the Will had been lost or misused.

18. Despite PW.1 has stated in his evidence that he was present when the Will was executed, he also claimed that he came to know about the Will only two or three years after its execution. Given that he was present at the time of execution and that the attesting witnesses were his cousin and his wife, it is unnatural for him



to say he learnt about the Will years later. This self-contradictory nature makes PW.1's evidence unreliable.

WEB COPY

19. PW.2, an attesting witness, has clearly stated that the testatrix did not know how to read or write in English and was about 60 to 65 years old when the Will was executed. However, the Will records Rukmani Amma's age as 83. It is unbelievable and doubtful that an 83-year-old woman had executed a Will in a language she did not understand. Notably, her signature on the Will is only in Telugu. PW.2's evidence reveals that after the Will was executed, the plaintiff, the two attesting witnesses, and the advocate went to the registration office for registration. When he was specifically asked if Rukmani Amma accompanied them to the registration office, PW.2 has stated that she did not accompany to the registration office. Hence the Will was registered without the testatrix's presence. And this would raise a doubt whether the will was registered by impersonation at the registration office. The plaintiff has not proved that the Will was executed by Rukmani Amma after she had understood its contents. The Will was in English, while Rukmani Amma was conversant only in Telugu. The plaintiff filed the suit seeking probate nearly 19 years after the testatrix's death. The above aspects surrounding the Will revealed during the trial, will only make it doubtful.

20. Additionally, the testatrix had already executed a settlement deed dated 4.11.1957 in favour of Rajalakshmi, the mother of the legatee Ramadevi @ Rebecca, which was later revoked by a revocation deed dated 18.1.1984. If the testatrix intended that only her daughter and her descendants should inherit the suit



property, there would have been any necessity to revoke the settlement deed already executed.

WEB COPY

21. In fact, the Will itself states that by the settlement deed dated 4.11.1957, the testatrix granted life interest to her daughter Rajalakshmi and absolute rights in favour of her grandchildren born through Rajalakshmi. Rajalakshmi had a son named Sathiyandarayana, who is the brother of the legatee Ramadevi @ Rebecca. However, other legal heirs of Sathiyandarayana have not been impleaded as parties to these proceedings, despite being legal heirs of the testatrix. Only the defendant, who is the son of another son of Rukmani Amma, has been made a party. The defendant stated in his pleadings and evidence that Sathiyandarayana, brother of Ramadevi @ Rebecca might have the custody of the original Will, and that the suit was filed without his knowledge.

22. The plaintiff claims that Sathiyandarayana did not raise any objection for the grant of probate. However, if Sathiyandarayana was unaware of the proceedings, it would have been impossible for him to object. The suspicious circumstances already discussed and revealed through evidence will render Ex.P1 Will unreliable and not genuine. PW.1 had pleaded ignorance about the contents of the Will. The attesting witness PW.2 has clearly stated that the testatrix did not accompany them to the registration office for registering the Will. Even when questioned on this aspect in different ways, PW.2 had consistently stated that the testatrix did not come to the registration office.



23. The evidence of PW.1 and PW.2 cannot establish that the Will was executed in accordance with Section 68 of the Evidence Act. PW.2's testimony contains many inconsistencies and doubts regarding the testatrix's sound state of mind at the time of execution. Moreover, PW.2 was not even aware of the testatrix's age. Even though the registered will has got a better presumptive value about its genuineness, the doubts surrounding its execution as it revealed from the evidence of the plaintiff side will cast shadow of strong suspicion on the same. If the execution of a document has not been proved, no presumption can be attached to the document that it has been validly executed or that the contents are written in the document with the approval or the knowledge of the executants. As the validity and the genuineness of the will have not been proved in the manner known to law, the plaintiff is not entitled to the relief as prayed. **Thus the issues 1 and 2 are answered against the plaintiff.**

In the result, the suit stands **dismissed**. No costs.

30.01.2026

Index: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking Order

Neutral citation: Yes/No

gsk/jrs



WEB COPY

TOS No.30 of 2



Dr.R.N.MANJULA, J.,

jrs

TOS No. 30 of 2023

in

OP.NO.414 of 2022

30.01.2026