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A.Nos.358, 359 & 360 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

A Nos. 358, 359 & 360 of 2026

IN

T.O.S. No. 5 OF 2021

Mrs.Kalpana Satish
W/o.Mr.P.Satish, D/o.Late Munisamy Sundara Raj
No.9, Bellfield, Northfield Birmingham B31 1FH
UK.

..Applicant(s) in all

Vs

Mrs.Lakshmi Sundara Raj
W/o.Late Munisamy Sundara Raj,
1st Floor, New No.18, Old No.25, Gill Nagar 1st
Street, Choolaimedu,
Chennai 600 094.

..Respondent(s) in all

PRAYER IN A No. 358 of 2026: To reopen the defendant side evidence in T.O.S. No. 5 of 2021 for the purpose of further chief examination of DW1 and marking of documents.

PRAYER IN A No. 359 of 2026: To recall DW1, the applicant herein, for the purpose of further chief examination pertaining to the marking of documents.



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PRAYER IN A No. 360 of 2026: To receive the documents and permit the Defendant to file the documents as mentioned as follows and the same may be marked as Exhibits (1) D1 Power of Attorney dated 11/12/2000 Doc.No.912/2000 on the file of SRO Kodambakkam, (2) D2 Sale Deed dated 27/02/2002 doc.No.523/2002 on the file of SRO Alandur (3) D3 Sale Deed dated 06/09/2002 Doc.No.2284/2002 on the file of SRO Alandur and (4) D4 Sale Deed dated 13/08/1997 Doc.No.2831/1997 on the file of SRO Ti on the Applicant/Defendant side.

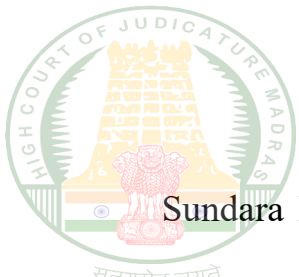
For Applicant(s): M/s.V.Meenakshi Sundaram
A.Selvanambi

For Respondent(s): Mr.K.Moorthy, Mr.S.R.Sundar.

COMMON ORDER

These applications have been filed by the defendant in the testamentary suit. A.No.358 of 2026 is filed to reopen the defendant's side evidence; A.No.359 of 2026 is filed to recall DW1 for further examination-in-chief; and A.No.360 of 2026 is filed to receive and mark the General Power of Attorney dated 11.12.2000, Sale Deed dated 27.02.2002, Sale Deed dated 06.09.2002, and Sale Deed dated 13.08.1997.

2. The suit arises out of O.P.No.18 of 2020 filed by the plaintiff for probate of the alleged Will dated 04.12.1980 said to have been executed by late Munusamy



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Sundara Raj. The plaintiff claims that the deceased died leaving behind the said

Will and that she is entitled to probate. The defendant disputes the genuineness of the Will.

3. The applicant/defendant states that the plaintiff has filed the probate proceedings on the basis of the Will dated 04.12.1980, but the Will is not true, genuine, or valid. According to her, the Madipakkam and Tirupattur properties are listed as Items 2 and 3 in Schedule II to the alleged Will, but the testator never disposed of them during his lifetime. She states that after the testator's death, the plaintiff, the defendant and the other legal heirs executed sale deeds in respect of those properties, in which it was recited that Munusamy Sundara Raj died intestate, and no reference was made to the alleged Will. Therefore, the defendant contends that those sale deeds are necessary to show the plaintiff's inconsistent conduct and to test the genuineness of the Will and hence seeks reopening of evidence and recall of DW1 for marking those documents.

4. The respondent/plaintiff filed a counter affidavit contending that they are filed only to delay T.O.S.No.5 of 2021, which has reached the stage of final

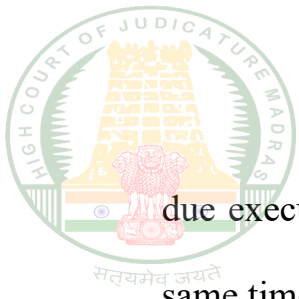


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hearing, and that the applicant/defendant, despite filing her written statement and proof affidavit, did not produce any documents earlier. She states that the earlier application in A.No.4543 of 2023 seeking production of the same documents was dismissed and no appeal was filed; similarly, A.Nos.4961 and 4962 of 2025 to reopen and recall PW2 were also dismissed. According to the plaintiff, the scope of the testamentary suit is confined only to proving the genuineness and due execution of the Will and not to deciding title over properties, and the sale deeds relating to Madipakkam and Tirupattur are irrelevant. She further states that the properties were sold for the education and marriage expenses of the children, that the Will was not mentioned in the sale deeds as it had not then been probated, and that the defendant is attempting to conduct a pre-trial of her partition suit in the present proceedings. Hence, the plaintiff seeks dismissal of the applications with exemplary costs.

5. The suit is admittedly at the stage of arguments, the defendant's evidence having been closed on 18.09.2025. No doubt, the power to reopen evidence and recall a witness is to be exercised sparingly; the power is, in substance, traceable to Section 151 CPC and is meant to advance justice, not to fill up lacunae or protract the trial. No doubt, in a probate proceeding, this Court is concerned only with the

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due execution and genuineness of the Will, and not with questions of title. At the same time, where suspicious circumstances surround the Will, the propounder must dispel them and satisfy the conscience of the Court.

6. Viewed thus, the plaintiff's objection on irrelevance is unacceptable. The documents are not sought to be marked to prove title. They are relied on to show an alleged suspicious circumstance, namely, that the very properties said to have been bequeathed under the Will were later dealt with by the propounder and the heirs under registered instruments reciting that the deceased died intestate, while the present proceedings proceed on the footing that he died testate. That inconsistency is germane to the issue of genuineness. Nor is the defence new. It is reflected in the written statement and was also put to PW2 in cross-examination. Even in paragraph 6 of the probate petition, there is a reference to the properties having been previously dealt with by family members. It is also relevant that, while explaining the delay in seeking probate, the plaintiff stated only that she was under a misconception of law that she would automatically inherit, and not that she was unaware of the Will after the testator's death.



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7. The plaintiff's objection as to delay and finality is not without substance;

however, when A.Nos.4961 and 4962 of 2025 were dismissed on 09.10.2025, this Court did not make any observation foreclosing the documents altogether; it observed that party wishing to mark them, must do so through their own evidence and not by recalling the plaintiff's witness. The present applications adopt that course. Further, the documents are registered instruments and certified copies are already available. The plaintiff, who is aged, need not be recalled. DW1 alone can be recalled for the limited purpose of marking the documents, subject to objection, leaving all questions of admissibility, relevance, proof and evidentiary weight to be decided at the time of judgment. The plaintiff shall, however, have full liberty to cross-examine DW1 with reference to those documents and to explain the recitals therein.

8. In a testamentary cause, where the conscience of the Court must be satisfied as to the genuineness of the Will, it is safer to receive such material on terms than to exclude it altogether. Accordingly, A.Nos.358, 359, and 360 of 2026 are liable to be allowed. The defendant's evidence is reopened only to receive and mark the four documents, and DW1 is recalled only for that purpose. The documents shall be marked subject to proof, relevancy and admissibility, and all such questions



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relating to admissibility, relevance, mode of proof and weight are left open to be decided at the time of judgment. The plaintiff shall be at liberty to cross-examine DW1 only with reference to those documents. The exercise shall be completed before the learned Additional Master-IV within four weeks, without adjournment on either side. Thereafter, the suit shall be listed for arguments. Accordingly, all the applications are allowed. There shall be no order as to costs.

02-07-2026

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

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DR.A.D.MARIA CLETE, J.

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