WEB COPY

Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24-09-2026

Pronounced on : 30.10.2026

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

TOS No. 12 of 2018

CNR:{HCMA014002912014}

and

Tr.CS NO. 563 of 2019

Case QR

T.O.S.No.12 of 2018

Mrs.V.Suryakala
W/o.Dr.D.Vijayakumar
No.107, Big Maniyakara Street,
Chingleput-603 001.

..Petitioner

Vs

Mrs.K.Srividhya
W/o.Late Vivek Vijayakumar
Door No.49-717, Green Tulsi Apartments,
Visakhapatnam 530 016
Andhra Pradesh.

..Caveator

Tr.CS No. 563 of 2019

Case QR

CNR:{HCMA011621462019}

Srividhya @ Kurella Srividhya

..Plaintiff

Vs

Suryakala

..Defendant

TOS No. 12 of 2018

The Testamentary Original Suit is filed under Sections 232, 255 & 276 of the Indian Succession Act XXXIX of 1925 seeking the grant of Letters of

https://www.mhc.tn.gov.in/judis

WEB COPY

Administration with the WILL in favour of the petitioner, the mother of the said deceased Vivek Vijayakumar, having effect throughout the state of Tamilnadu and limited to the properties mentioned in the Affidavit of Assets.

Tr. CS No. 563 of 2019

Plaint filed under Order VII Rule 1 of Civil Procedure Code praying to (i) pass a Decree and Judgment declaring the settlement deed bearing document No.1967/2013 dated 04/09/2013 executed in favour of the defendant with respect to the suit property as null and void abinitio illegal improper and not maintainable in law not binding upon the plaintiff, (ii) pass a decree and judgment of partition by dividing the suit property into two equal share and by allotting one such share in the suit property to the plaintiff by metes and bounds and also appoint an Advocate Commissioner to divide the suit property, (iii) pass permanent injunction restraining the defendant in any way encumbering or alienating the suit property, (iv) direct the defendant to pay the cost of the suit to the plaintiff and, (V) pass such other and further orders in the circumstances of the case so as to render justice.

For Petitioner(s): **Mr. K.V. Babu**
for Petitioner/Plaintiff in TOS No. 12/2018

Mr. K.V. Babu
for Mr. N. Ravi
for Sole Defendant in CS No. 563/2019

For Respondent(s): **Mr. M.Aravind Subramanyam,**
Senior Advocate
for Ms. B. Jisha
Ms. A. Gayathri
Ms. U.S. Mrudubhashini
for Plaintiff in CS No. 563/2019
and for Sole Defendant in TOS No. 12/2018

https://www.mhc.tn.gov.in/judis

WEB COPY

Common Judgement

This Testamentary Original Suit in TOS No.12 of 2018 arises out of O.P. No.386 of 2017, filed by the plaintiff seeking grant of Letters of Administration with the Will annexed in respect of the alleged last Will and testament of her deceased son late Mr. Vivek Vijayakumar, dated 09.03.2014.

2. The connected Tr.C.S. No.563 of 2019 was originally instituted before the learned Principal District Court, Chengalpattu, as O.S. No.33 of 2016 and thereafter transferred to this Court. The plaintiff therein is the wife of the deceased Vivek Vijayakumar, and defendant in TOS No. 12 of 2018. She seeks, inter alia, a declaration that the settlement deed dated 04.09.2013 is null and void and not binding upon her, and partition of the properties left behind by her deceased husband.

3. The Case of the Plaintiff in T.O.S. No. 12 of 2018, in brief:

3.1. The plaintiff is the mother of Mr. V. Vivek Vijayakumar, who died on 23.03.2014 at Apollo Speciality Hospital, Chennai. During his lifetime, he ordinarily resided at No.107A, Big Maniyakara Street, Chengalpattu, Kancheepuram District, and owned properties within the State of Tamil Nadu.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.2. The said Vivek Vijayakumar executed a Will dated 09.03.2014 at Apollo Speciality Hospital, Chennai, in the presence of witnesses in favour of the plaintiff. It is further stated that the testator spoke about the execution of the Will in a videographed recording and that a forensic audio authentication report was also obtained in connection with the same.

3.3. According to the plaintiff, the defendant, who is the wife of the testator, left the matrimonial home after the testator underwent surgery and did not return to take care of him. It is further alleged that she did not even attend the funeral rites of her husband.

3.4. After the death of the testator on 23.03.2014, the defendant instituted O.S. No. 33 of 2016 on the file of the Principal District Court, Chengalpattu, seeking the reliefs of declaration and partition. Thereafter, the plaintiff was constrained to initiate the present proceedings, originally filed as O.P. No. 386 of 2017 and subsequently converted into T.O.S. No. 12 of 2018 by order of this Court dated 27.03.2018.

3.5. Since no executor was appointed under the Will, the plaintiff, being the legatee thereunder, filed the petition seeking Letters of Administration with

https://www.mhc.tn.gov.in/judis

WEB COPY

the Will annexed. In the above circumstances, the plaintiff prays that Letters of Administration with the Will annexed be granted in her favour.

4. The defendant disputes the genuineness of the Will, contending that the particulars relating to the date, place and time of its alleged execution, as well as the witnesses thereto, appear to be concocted and fabricated. She further contends that the very existence of the original Will is highly doubtful and improbable. The exclusion of the defendant and the testator's father, brother and sister from the Will is also stated to give rise to serious suspicion regarding its genuineness.

4.1. According to the defendant, she was attending to her husband at the hospital before his death, whereas none of his other family members, including the plaintiff, visited him. She further contends that, having been driven out of the matrimonial home when her husband was seriously ill, she was compelled to reside with her parents at Visakhapatnam, Andhra Pradesh.

4.2. The defendant claims that, as the legally wedded wife of the testator, she is entitled to a half share in the movable and immovable properties left behind by him. Accordingly, she instituted a suit for declaration and partition. She points out that there was no reference to the alleged Will dated 09.03.2014

https://www.mhc.tn.gov.in/judis

WEB COPY

in the written statement filed in the partition suit and contends that the present Testamentary Original Suit is an afterthought, instituted with the sole intention of depriving her of her legitimate share in the estate.

4.3. The defendant further submits that the original petition, which was subsequently converted into T.O.S. No. 12 of 2018, was filed only on 26.04.2017, more than three years after the alleged execution of the Will. According to her, the existence of the Will was disclosed to her only after the institution of the partition suit. She, therefore, disputes the genuineness, validity and due execution of the Will.

4.4. It is further contended that the testator was capable of signing until his death and that there was no necessity for him to affix his left thumb impression, particularly when his right hand was not affected by any illness. The defendant also points out that the left thumb impression appearing in the settlement deed is horizontal, whereas the impression found in the disputed Will is vertical, thereby raising further suspicion regarding its genuineness.

4.5. The defendant also highlights an apparent discrepancy in the description of the place of execution, stating that the opening portion of the Will

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

indicates that it was executed at Chengalpattu on 09.03.2014, whereas the petition states that it was executed at Apollo Speciality Hospital, Chennai, in the presence of witnesses. She further contends that no satisfactory explanation has been offered for the delay of approximately three years in initiating proceedings for the grant of Letters of Administration.

4.6. In the above circumstances, the defendant seriously disputes the execution and genuineness of the Will and prays for the dismissal of the Testamentary Original Suit.

5. On a consideration of the pleadings, this Court on 22.10.2021 framed the following issues:

1. Whether the Will dated 09.03.2014, said to have been executed by Vivek Vijayakumar, is true and valid;

2. Whether the testator was in sound disposing state of mind at the time of execution of the Will;

3. Whether the plaintiff is entitled to grant of letters of administration with the Will annexed.

6. Since TOS No.12 of 2018 and Tr.C.S. No.563 of 2019 were tried jointly and common evidence was recorded in Tr.C.S.No.563 of 2019, the

https://www.mhc.tn.gov.in/judis

WEB COPY

evidence of the witnesses has been considered in the light of the pleadings and evidence in both proceedings.

7. The plaintiff in Tr.C.S. No.563 of 2019 has examined herself as P.W.1 and marked P1 to P18. Her mother was examined as P.W.2. The defendant in Tr.C.S. No.563 of 2019 has examined herself as D.W.1. D.W.2, Dr. K.K. Ram Deepak, one of the attesting witnesses was examined in the connected testamentary proceedings. Mrs. Yuvanthi was examined as D.W.3 and Dr. V. Preetham, was examined as D.W.4. Exs. D6 to D9 were marked through D.W.1 and Exs. D13 and D14 were marked through D.W.3 and D.W.4 respectively. Exs. D1 to D5 and D10 to D12 were marked in the course of cross examination.

8. Mr. K.V. Babu, learned counsel appearing for the plaintiff in TOS No. 12 of 2018 contends that the plaintiff is the mother of the late Vivek Vijayakumar, who executed a Will dated 09.03.2014 in the presence of two attesting witnesses, namely, Dr. R.Sabarathinam and Mr. K.K. Ram Deepak, and in the presence of Advocate T.Chandran. The defendant is her daughter-in-law / wife of late Vivek Vijayakumar and that their marriage was solemnised on 11.03.2012 at Chennai. It is stated that, at the relevant point of time, the deceased was undergoing treatment at Apollo Speciality Hospital, Chennai, for serious illness. It is further submitted that, though the Will contains a recital that it was executed at Chengalpattu, the same was actually executed at Apollo

https://www.mhc.tn.gov.in/judis

WEB COPY

Speciality Hospital, Chennai, and the recital regarding the place of execution was only a typographical mistake.

8.1. He would further submit that, the deceased was unable to affix his signature owing to weakness in his right hand and therefore, affixed his left thumb impression in the presence of the attesting witnesses. He had also relied upon the attestation of the document by an Advocate and Notary Public and also upon an alleged audio recording of the deceased relating to the execution of the Will and a forensic report concerning the said recording.

8.2. He further contends that the defendant, who is the wife of the deceased, had left the matrimonial home and was not taking care of the deceased during his illness and that the deceased, therefore, consciously chose to bequeath his properties in favour of his mother. He would further contend that, after the death of Vivek Vijayakumar on 23.03.2014, the plaintiff dealt with the properties covered by the Will and obtained mutation of relevant records. According to the learned counsel, only after the defendant/wife instituted O.S. No.33 of 2016, claiming a share in the estate of the deceased, did the necessity arise to obtain Letters of Administration with the Will annexed. He would further contend that the Court must place itself in the armchair of the testator while examining the genuineness of the Will and the circumstances surrounding its execution. He would submit that an oversight, typographical

https://www.mhc.tn.gov.in/judis

WEB COPY

error or misunderstanding, if satisfactorily explained, cannot, by itself, form the basis for an adverse judicial finding. He would also submit that there is no period prescribed for filing petition for probate or Letters of Administration. In support of his contention, he has relied upon the following decisions.

1. MANU/PR/0005/1913 before the Privy Council dated 10.12.2013 in Vencata Narayanasamy Appa Rao and Ors. vs. Parthasarathy Appa Rao and others.

2. MANU/SC/0115/1958 (Civil Appeal No. 18/1995, decided on 13.11.1958) in the case of S. Venkatachala Iyengal vs. D.N. Thimmajamma and others.

3. MANU/SC/1035/2023 (Civil Appeal No.3351/2014, decided on 21.09.2023) in the case of Meena Pradan and others vs. Kamala Pradan and others.

4. MANU/SC/8061/2007 (Civil Appeal No.4882/2007, decided on 12.10.2007) in the case of Savithri and others vs. Karthiyayini Amma and others.

5. 2021 (SCC) Online TR1162 – In the Court of Tripura at Agarthala (Division Bench) in the case of Soma Debbarama vs. State of Tripura, decided on 23.03.2021.

6. S. Vatsala vs. K.S. Mohan and Others reported in 2016 (1) CTC 257

https://www.mhc.tn.gov.in/judis

WEB COPY

9. On the other hand, Mr. M.Aravind Subramanyam, learned Senior Advocate appearing for the defendant/wife in TOS No. 12 of 2018 would submit that, the defendant is the widow of the deceased and that, there are several suspicious circumstances surrounding the alleged Will. The learned counsel points out that the document itself recites Chengalpattu as the place of execution, whereas, the plaintiff now asserts that it was executed at Apollo Speciality Hospital, Chennai.

10. The learned counsel further contends that, the deceased was suffering from serious illness and was under treatment at the relevant time and that the Will excludes not merely the defendant / wife but also the father, brother and sister of the deceased, thereby, conferring the entire benefit upon the plaintiff, who is the mother of the deceased. He has also pointed out the alleged contradiction between the recital in the Will that the deceased was unable to sign owing to weakness in his right hand and the recital in another portion of the Will that he had “signed and executed” the document. The learned counsel disputes the necessity for obtaining a left thumb impression and contends that the deceased was capable of signing. Reliance is also placed upon the difference allegedly noticed between the thumb impression found in the earlier settlement deed and that found in the alleged Will.

https://www.mhc.tn.gov.in/judis

WEB COPY

10.1. Another important circumstance relied upon by the defendant is that she had instituted O.S. No.33 of 2016 seeking partition and challenging the settlement deed dated 04.09.2013, whereas the plaintiff in her written statement and additional written statement in the said suit, did not disclose the existence of the alleged Will dated 09.03.2014. It is therefore contended that the Will surfaced only subsequently, after the defendant asserted her claim to a share in the estate, and that the Will is an afterthought intended to defeat the defendant's claim.

11. Points for consideration in TOS No. 12 of 2018:

Since the relief in the testamentary proceedings depends upon the validity of the alleged Will, issues 1 to 3 have to be considered together.

12. It is settled law that the propounder of a Will has to establish that the Will was duly executed by the testator and attested in accordance with Section 63 of the Indian Succession Act. Section 68 of the Indian Evidence Act requires the execution of such a document to be proved by examining at least one attesting witness, where such witness is available.

12.1. The Hon'ble Supreme Court in ***Lakshmi vs. Gopi & others*** in SLP No.9510 of 2023 (Civil Appeal No.9006 of 2026), has held as follows:

https://www.mhc.tn.gov.in/judis

WEB COPY

"11. In this context let us deal, albeit briefly, with what a Court is required to do when it is confronted with the question of genuineness of the Will. It has to be proved like any other document except for additional requirements under ISA. To restate, the Civil Court had refused to accept the Will and the High Court as the First Appellate Court was to decide on both questions of fact and law. The requirements below are in the light of Section 67, 68 of the Evidence Act 1872 and Section(s) 59 and 63 of ISA.

(1) Since the proving of the Will is necessarily an event after the death of the testator there is a certain level of sanctity that is attached to the same;

(2) If the will has been signed by the testator, the same has to be established according to Section 67 IEA with recourse to Section 45 and 47 thereof, if required;

(3) The will in order for it to be proved to be the last will of testator, has to be attested in accordance with IEA Section 63 ISA either by signing/affixing his mark or signed by a third party upon his direction and in his presence in which situation not one but two attesting witnesses would be required to be examined;

(4) The testator must be of sound mind within the meaning of Section 59 of ISA and it has to be proved accordingly;

https://www.mhc.tn.gov.in/judis

WEB COPY

(5) At least one attesting witness has to be examined in court to prove its execution;

(6) Three questions need to be asked by the Court and the answer so produced should be to the satisfaction of a prudent mind. Mathematical precision is not to be looked for. They are: (a) has the testator signed the Will?; (b) Did he/she understand the nature?; and (c) the effect of the dispositions in the Will; and (d) Did he /she put his/her signature on the Will knowing what it contained?

12.2. The Hon'ble Supreme Court had also made reference to the judgments in

(i) H. Venkatachala Iyengal v. B.N. Thimmajamma reported in 1958 SCC OnLine SC 31

(ii) Meena Pradhan v. Kamla Pradhan reported in (2023) 9 SCC 734

(iii) Parvathi Nairthi (Dead) and Ors v. Laxmi Nairthy (dead) through Lrs and ors. Reported in 2026 INSC 521

12.3. In ***H. Venkatachala Iyengar vs. B.N. Thimmajamma (cited supra)*** the Hon'ble Supreme Court explained that the propounder has to establish that the Will was signed by the testator; that the testator was in a sound and disposing state of mind; that he understood the nature and effect of the

https://www.mhc.tn.gov.in/judis

WEB COPY

dispositions; and that he executed the document of his own free will. Where suspicious circumstances surrounded the Will, the propounder has the additional burden of removing such suspicion by satisfactory evidence.

12.4. Therefore, the Hon'ble Supreme Court has repeatedly held that, where suspicious circumstances exist, the burden upon the propounder becomes heavier. Suspicious circumstances may include the physical or mental condition of the testator, the participation of persons interested in the execution of the Will, an unnatural or improbable disposition, exclusion of a natural heir, discrepancies regarding the execution and other circumstances which give rise to legitimate doubt regarding the genuineness of the testamentary disposition.

12.5. At the same time, the mere presence of a suspicious circumstance does not automatically render a Will invalid. The question is whether the propounder has satisfactorily explained the circumstances so as to remove the legitimate doubt in the mind of the Court.

12.6. In the present case, the plaintiff has examined one of the attesting witnesses (D.W.2) who has spoken about the execution of the Will. The evidence of the attesting witness, therefore, cannot be brushed aside merely on the ground that the other attesting witness had not been examined. To that extent, the statutory requirement regarding proof of execution by an attesting

https://www.mhc.tn.gov.in/judis

WEB COPY

witness has been substantially addressed. However, the Court is required to consider whether the evidence of the attesting witness is sufficient to dispel the other circumstances surrounding the execution. The fact that the testator affixed his thumb impression instead of signing the document is not, by itself, suspicious. The Will itself contains an explanation that the right hand of the testator has become weak. The thumb impression appearing on the document may also be that of the testator. Likewise, the mere fact that the Will was executed while the testator was undergoing medical treatment cannot, by itself, invalidate the Will.

12.7. The difficulty arises from the cumulative effect of the surrounding circumstances, which are enumerated as follows:

1. The medical condition of the testator;

2. The discrepancy regarding the place of execution;

3. Effect of the Truth Lab report.

It is not in dispute that the testator was suffering from a serious illness and had undergone treatment for cancer. The evidence placed before the Court indicates that the testator had undergone surgery, Chemotherapy and Radiotherapy and that his health had considerably deteriorated by the time of the alleged execution of the Will. However, this Court is not inclined to presume that a person suffering from cancer is necessarily incapable of making a Will. Undoubtedly, a person suffering from a serious physical ailment may very well

https://www.mhc.tn.gov.in/judis

WEB COPY

possess full testamentary capacity.

12.8. Nevertheless, where the Will is alleged to have been executed shortly before the death, while the testator was in a hospital and in a seriously debilitated condition, the Court must examine with care whether the propounder has satisfactorily established that the testator understood the nature and consequences of the testamentary disposition. The evidence of the attesting witness establishes his presence and his perception of the execution. But the evidence must be examined along with the other surrounding circumstances and not in isolation.

12.9. A significant circumstance is the discrepancy concerning the place of execution. Further, the learned counsel for the plaintiff has submitted that the Will was executed at Apollo Speciality Hospital, Chennai and that under Section 57(a) of the Indian Succession Act, the relevant provisions concerning testamentary succession apply to Wills executed by a Hindu within the ordinary original civil jurisdiction of the High Court of Madras. Section 213 requires the grant of probate or Letters of Administration in cases falling within the classes specified in Section 57. The Madras High Court has consistently recognised the significance of Section 57 and 213 in testamentary proceedings. Therefore, the plaintiff's case that the Will was executed at Chennai provides a legitimate basis for invoking the testamentary jurisdiction of this Court. Further, he would

https://www.mhc.tn.gov.in/judis

WEB COPY

submit that the reference to Chengalpattu in the Will, having been satisfactorily explained in the circumstances of the present case does not deprive this Court of jurisdiction.

12.10. Admittedly, the Will contains a recital indicating Chengalpattu as the place of execution. The plaintiff, however, specifically contends that the Will was executed at Apollo Speciality Hospital, Chennai. This is not merely a trivial discrepancy because the very place at which the testamentary document was allegedly executed becomes relevant in determining the circumstances in which the testator executed the document. The plaintiff contends that, the video recording establishes that the execution took place in the hospital. Even assuming that the video recording is genuine and that the recording was made in the hospital, the authenticity of the video does not, by itself, establish the validity of the testamentary disposition. Ex.D9 is the Truth Lab report. The report, as relied upon the plaintiff, opines that the audio and video recording did not contain signs of morphing and that the recording was authentic. The Will itself contains a recital showing Chengalpattu as the place of execution. The plaintiff, however, specifically pleads that the Will was actually executed at Apollo Speciality Hospital, Chennai and that the recital of Chengalpattu was only a typographical mistake. This circumstance undoubtedly requires examination because the place of execution is specifically stated in the document. The document itself and the case now put forward by the plaintiff are

https://www.mhc.tn.gov.in/judis

WEB COPY

materially different regarding the place where the will was executed. The explanation that the recital was a mere typographical mistake cannot be accepted merely because it has been asserted.

12.11. The place of execution is not an insignificant clerical detail in the present case. It assumes considerable importance because the jurisdiction of this Court is also sought to be founded upon the assertion that the Will was executed within the original jurisdiction of this Court. If the Will itself records Chengalpattu as the place of execution, and the plaintiff seeks to overcome that recital by asserting that the Will was actually executed at Apollo Hospital, the burden lies heavily upon the plaintiff to establish the latter fact by clear and convincing evidence.

12.12. The plaintiff has not produced sufficiently cogent evidence explaining how such a material recital came to be incorrectly incorporated in the Will. This Court therefore finds that the discrepancy regarding the place of execution remains an unexplained suspicious circumstance.

12.13. The next circumstance concerns the manner in which the Will was executed. It is not in dispute that the Will bears the left thumb impression of the deceased. The defendant has specifically contended that the testator was capable of signing and that there was no satisfactory explanation as to why he did not

https://www.mhc.tn.gov.in/judis

WEB COPY

sign the Will. The plaintiff's case is that the hand of the testator had become weak and that he was unable to sign and therefore affixed his thumb impression. There is no satisfactory contemporaneous medical evidence specifically establishing that on 09.03.2014, the testator was physically incapable of signing the document. This Court is not holding that affixing a thumb impression is legally impermissible. It is undoubtedly permissible. The question here is, why, in the peculiar circumstances of this case, did the testator adopt that mode of execution. When the Will is already surrounded by other circumstances requiring explanation, the unexplained departure from the normal mode of signature assumes significance. The defendant has also pointed out the difference in the appearance of the thumb impression between the earlier settlement deed and the Will. Though this circumstance alone may not establish forgery, it adds to the requirement for satisfactory proof. The plaintiff has failed to remove the doubt surrounding this circumstance.

12.14. Further, the medical records establish that the testator was suffering from a serious and ultimately fatal illness. He has been admitted to Apollo Hospital, Chennai on 21.02.2014 and died on 23.03.2014. The Will is alleged to have been executed on 09.03.2014, when he was undergoing treatment. It is true that illness by itself does not render a person incapable of making a Will. However, in the present case, the testator was admittedly suffering from a grave medical condition shortly before his death. Therefore,

https://www.mhc.tn.gov.in/judis

WEB COPY

the propounder was required to establish by cogent evidence that, notwithstanding his condition, the testator was fully conscious of the nature and effect of the disposition and voluntarily executed the Will. The evidence relied upon by the plaintiff does not satisfactorily remove all the doubts created by the surrounding circumstances.

12.15. Further, the Will excludes the defendant who is the wife of the deceased. The father, brother and sister of the testator are also stated to have been excluded. Exclusion of natural heirs is not, by itself, a ground to reject a Will. A testator is entitled to dispose of his property according to his own wishes. However, where the Will substantially excludes the natural heirs and confers the estate upon another person, such circumstance assumes significance when considered with other suspicious circumstances.

12.16. In the present case, the Will contains allegations concerning the conduct of the defendant and the matrimonial relationship. The defendant has categorically denied those allegations and has given a materially different account of the matrimonial circumstances. This Court is not required in this testamentary proceeding to determine the matrimonial disputes between the parties. But the fact remains that the plaintiff has not established by independent and convincing evidence that the testator, while in a critical state of health,

https://www.mhc.tn.gov.in/judis

WEB COPY

voluntarily chose to exclude his wife for the reasons stated in the Will. The exclusion of the wife, therefore, becomes a relevant circumstance when considered cumulatively with the other circumstances surrounding execution.

12.17. Further, the defendant had instituted proceedings for declaration and partition after the death of the testator. It is an admitted circumstance that the alleged Will was not disclosed in the written statement originally filed in the partition proceedings. The plaintiff seeks to explain this by contending that the properties covered by the Will were not originally included in the schedule to the partition. This explanation is not wholly satisfactory. If the plaintiff was in possession of the alleged Will from 2014 onwards and the Will purported to govern the devolution of the properties of the deceased, the existence of such a document would be a material fact in any litigation concerning the estate of the deceased. The subsequent production of the Will assumes importance because the testamentary proceeding was instituted only after the partition litigation had commenced. This circumstance, by itself, may not prove fabrication. But, it cannot be ignored when the Court is required to decide whether the propounder has dispelled all legitimate suspicion.

12.18. It is to be noted that, the testator died on 23.03.2014. The original petition was filed only on 26.04.2017. The learned counsel for the plaintiff relies upon the judgements of this Court, including **S. Vatsala vs. K.S. Mohan**

https://www.mhc.tn.gov.in/judis

WEB COPY

(cited supra) to contend that Article 137 of the Limitation Act does not, by itself, bar testamentary proceedings and that a Will creates a continuing right. There can be no quarrel with the proposition that mere delay does not automatically invalidate a Will. However, the issue before this Court is not merely whether the proceeding is barred by limitation. The issue is whether the delay, when considered together with the other circumstances, has been satisfactorily explained.

12.19. In the present case, the delay assumes significance because:

a) The Will is said to have been executed shortly before the death of the testator;

b) The testator died within a fortnight thereafter;

c) The Will contains a disputed recital as to the place of execution;

d) The testator's thumb impression rather than the signature is relied upon;

e) The Will excludes the wife and other natural heirs;

f) The defendant subsequently instituted partition proceedings;

g) The Will was not disclosed in the original pleadings in those proceedings; and

h) The testamentary proceeding was instituted only thereafter.

https://www.mhc.tn.gov.in/judis

WEB COPY

12.20. Therefore, the proposition relied upon may be correct as a general statement of law in the appropriate factual setting. However, the question of limitation is not determinative of the present Testamentary proceedings. Even assuming that, the testamentary suit is not barred by limitation, the plaintiff must independently establish the genuineness and due execution of the Will. Therefore, the decisions relied upon by the learned counsel for the plaintiff on limitation do not advance the plaintiff's case on the principal issue of testamentary validity. Further, the delay is not being treated as an independent statutory bar. It is considered as one of the surrounding circumstances which the propounder was required to explain. The explanation offered is insufficient.

12.21. The plaintiff has relied upon the videographic recording and the forensic report marked as Exhibit D9. The expert has opined that the recording did not contain signs of morphing and that it was authentic. This Court has no reason to reject the expert opinion in so far as it relates to the technical authenticity of the recording. However, the scope of such expert opinion must be properly understood. This Court accepts that the report may establish that the recording was not shown to have been digitally manipulated. However, absence of morphing is not equivalent to proof of valid execution of the Will. The expert was concerned with whether the audio video recording has been tampered with, morphed or manipulated. The expert was not called upon to determine whether the testator possessed testamentary capacity in law, whether he understood the

https://www.mhc.tn.gov.in/judis

WEB COPY

contents of the Will, whether he voluntarily approved every disposition contained therein, or whether, the document was free from undue influence. Nor can a forensic opinion regarding the integrity of an electronic recording establish the circumstances in which the Will itself was prepared, explained, executed and attested. At the highest, the recording may corroborate that a particular conversation or incident was recorded. It does not, by itself, remove the other suspicious circumstances surrounding the Will. Therefore, authenticity of the video recording cannot be equated with proof of the validity of the Will.

12.22. Likewise, the evidence of D.W.4 regarding the making of the video cannot substitute the statutory proof of due execution and the propounder's obligation to dispel legitimate suspicion. The plaintiff contends that the video and other evidence establish that the testator was in a sound disposing state of mind. This Court is unable to accept this contention in the absence of sufficiently convincing evidence. The question is not merely whether the testator could speak or answer questions. The testator must have understood the nature of the document, the extent of the property dealt with, and the persons whose interests were being affected. The evidence must therefore be assessed against the background of his serious illness, the unusual mode of execution, the disputed place of execution and the exclusion of his wife.

https://www.mhc.tn.gov.in/judis

WEB COPY

12.23. The learned counsel for the plaintiff placed considerable reliance upon the answers given by the defendant in the cross examination. It is true that the defendant has admitted that she was not present at the hospital on 09.03.2014 and that she cannot speak from personal knowledge as to the precise circumstances in which the Will was executed. The defendant has also admitted that she had seen the video recording and has not obtained an independent expert opinion to establish that the recording was manipulated. However, the fact that the defendant was not present at the alleged execution cannot, by itself, prove the Will. The burden does not shift to the defendant merely because she is unable to establish that the Will is fabricated. The initial burden remains upon the propounder to establish the Will and to remove legitimate suspicious circumstances surrounding its execution.

12.24. This Court is required to examine the evidence of the propounder as a whole and determine whether the propounder has succeeded in satisfying the judicial conscience of the Court. The relationship between the testator and the plaintiff is itself a material circumstance. The defendant, in the connected partition proceedings, has made several serious allegations concerning the conduct and character of the deceased during the matrimonial relationship. She had also admitted that she was not with the testator on 09.03.2014 and that she was at her parents house at that time. She had also admitted that she did not return to the hospital thereafter. These circumstances, standing alone, would not

https://www.mhc.tn.gov.in/judis

WEB COPY

invalidate a Will. A spouse living separately may nevertheless be a beneficiary under a Will. However, when the Will is alleged to have been executed in the final stage of the testator's illness, this Court has to examine the circumstances with greater care, particularly, when the Will materially alters the normal course of succession.

12.25. The defendant is the widow of the testator and is a natural heir under the applicable law. The alleged Will substantially affect the defendant's statutory entitlement. The exclusion of a natural heir is not, by itself, a ground for rejecting a Will. A testator is free to depart from intestate succession. But, where the disposition is challenged and the circumstances surrounding its execution are questioned, the reason for such exclusion becomes relevant. The propounder must therefore satisfactorily establish that the disposition was the free and conscious act of the testator. The Will itself gives reasons for the disposition. However, the Court must be satisfied not merely with the existence of reasons in the document but with the circumstances in which those reasons came to be recorded and the testamentary document brought into existence.

12.26. This Court has also viewed the video recording relied upon by the plaintiff. The recording may show the testator speaking about the Will and the reasons for affixing his thumb impression. That is certainly a relevant circumstance. But the existence of a video in which the testator speaks cannot

https://www.mhc.tn.gov.in/judis

WEB COPY

dispense with the legal requirement of proving testamentary capacity and removal of suspicious circumstances. The crucial question is not merely whether the testator was capable of speaking or answering questions but whether he possessed sufficient mental capacity to understand the nature of his act, the extent of the property disposed of, the persons who might ordinarily have claims upon his estate and the consequences of the disposition. The medical evidence and the surrounding circumstances have to be assessed from that perspective.

12.27. Further, the Will is stated to have been executed in the presence of Advocate T. Chandran. It is unfortunate that the said Advocate is no longer alive, as evidenced by Ex.D14. Had the Advocate who was allegedly present at the time of execution been available, his evidence could have been of considerable assistance in determining the circumstance in which the Will was prepared and executed. His absence is not attributable to the plaintiff and cannot, by itself, be treated as a suspicious circumstance. Nevertheless, in a case where the Will is otherwise surrounded by circumstances requiring explanation, the absence of a material witness who was allegedly present at the execution necessarily leaves one aspect of the evidence uncorroborated.

12.28. The evidence of the attesting witness (D.W. 2) has been carefully considered. He has spoken about the execution of the Will, the affixing of the

https://www.mhc.tn.gov.in/judis

WEB COPY

thumb impression and the presence of other attesting witness. His evidence establishes an important part of the plaintiff's case. However, the attesting witness's statement that the testator was in a sound state of mind is not conclusive. This Court has independently assessed the totality of the evidence. The statutory requirement of attestation and the judicial requirement of removal of suspicious circumstances operate in different fields. Therefore, even after accepting the evidence of D.W.2 regarding physical act of execution, it has to be determined whether the plaintiff has satisfactorily removed the other circumstances which legitimately arise from the evidence.

12.29. This Court is not considering any single circumstance in isolation. The following circumstances assume significance when considered cumulatively;

1. The testator was suffering from an advance and serious illness and died shortly thereafter.

2. The Will was allegedly executed during the period of his hospitalisation.

3. There is discrepancy between the place of execution recited in the Will and the place asserted by the propounder.

4. The natural heir, namely the wife, is excluded or materially affected by the testamentary disposition.

5. The defendant was admittedly not present at the alleged execution.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. The principal Advocate said to have been present at the execution is no longer available for examination.

7. The video recording, though found technically authentic, does not by itself, establish testamentary capacity or absence of undue influence.

8. The medical condition of the testator was sufficiently serious to require careful scrutiny of his testamentary capacity.

9. The circumstances in which the document came into existence have not been established with such clarity as would completely dispel the legitimate doubts arising from the record.

This Court reiterates that none of these circumstances, individually, is sufficient to invalidate a Will. The question is whether, taken together, the plaintiff has discharged the heavier burden cast upon a propounder in a case involving suspicious circumstance. On a careful consideration of the entire evidence, this Court is unable to hold that the suspicious circumstances surrounding the subject Will has been satisfactorily removed.

12.30. The plaintiff has sought to explain the non disclosure of the Will in the Written Statement filed in the partition suit on the ground that the property covered by the Will was not the subject matter of the Original Partition Suit. The explanation may have some relevance while considering the conduct of the

https://www.mhc.tn.gov.in/judis

WEB COPY

parties. However, it does not by itself either prove or disprove the Will. This Court therefore, does not rest its conclusion upon the alleged non disclosure.

12.31. The learned counsel for the plaintiff has relied upon several decisions relating to the following propositions:

a) the Court should examine the Will from the perspective of the testator;

b) an attesting witness satisfying Section 63 of the Indian Succession Act and Section 68 of the Evidence Act is sufficient to establish formal execution;

c) minor discrepancies or typographical errors should not invalidate an otherwise genuine document;

d) modern technology, including video recording and expert analysis, can be relied upon to establish authenticity of electronic material;

e) delay in seeking testamentary relief does not, by itself, constitute a suspicious circumstance; and

f) testamentary proceedings may stand on a different footing from ordinary suits for the purpose of limitation.

12.32. There can be no quarrel with these propositions. However, none of these authorities lays down that once one attesting witness enters the witness

https://www.mhc.tn.gov.in/judis

WEB COPY

box, every suspicious circumstance surrounding the Will automatically disappears. Likewise, a judgment concerning a typographical or clerical error cannot be applied to a discrepancy concerning the very place of execution when that circumstance forms part of the overall challenge to the Will. A minor error can be ignored where satisfactorily explained and where the surrounding evidence leaves no genuine doubt. The question here is not the typographical error in isolation but its evidentiary significance when considered along with the other circumstances. Similarly, decisions recognising the evidentiary value of video recordings or electronic material cannot be applied to hold that a technically genuine recording conclusively proves testamentary capacity. Each testamentary case must ultimately turn upon its own facts and the evidence adduced before the Court.

12.33. Further, the plaintiff contended that once the execution and attestation were spoken to by the witnesses, the burden shifted upon the defendant to establish forgery or fabrication. This submission cannot be accepted in the manner advanced. The initial and continuing burden upon the propounder is to establish the Will and, where suspicious circumstances exist, to satisfy the conscience of the Court that the Will represents the genuine and free testamentary intention of the deceased. The caveator is not required, in every case, to affirmatively establish the precise manner in which the Will was

https://www.mhc.tn.gov.in/judis

WEB COPY

fabricated. The failure of the defendant to prove a positive act of forgery does not relieve the propounder of the obligation to remove legitimate suspicion.

12.34. In the present case, the plaintiff seeks Letters of Administration with the Will annexed in respect of the alleged Will dated 09.03.2014. The central question is not merely whether the testator affixed his thumb impression or whether one attesting witness has spoken to the execution of the document. The real question is whether the plaintiff has established that the Will represents the free, conscious and voluntary testamentary intention of the deceased, executed while possessing a sound and disposing state of mind, and free from suspicious circumstances. The testator's serious illness, the circumstances of hospital execution, the material effect of the disposition upon a natural heir, and the limitations of the evidence relied upon to establish testamentary capacity must be considered together. The question is whether the plaintiff has satisfactorily explained the cumulative effect of these circumstances. This Court is of the view that the plaintiff has failed to do so. Notwithstanding the evidence of one attesting witness and the technical authenticity of the video recording, the plaintiff has not discharged the heavier burden required in a case involving suspicious circumstances. Further, sitting in the testator's arm chair, does not mean accepting the Will merely because the dispositions are legally possible. It requires the Court to examine whether, considering the testator's circumstances, the document represents his free and conscious intention.

https://www.mhc.tn.gov.in/judis

WEB COPY

12.35. Merely because some formal requirements of execution have been established, this Court cannot grant Letters of Administration, when the genuineness of the testamentary intention remains surrounded by legitimate and unexplained doubt.

13. In view of the findings recorded above, the plaintiff in TOS No. 12 of 2018 is not entitled to grant of Letters of Administration with the Will dated 09.03.2014 annexed thereto.

14. **Tr. C.S. No.563 of 2019**

14.1. The case of the plaintiff in brief:

14.2. The plaintiff is the wife of late Mr. Vivek Vijayakumar. The defendant is the mother of the deceased. The marriage between the plaintiff and the deceased was solemnised on 11.03.2012 at Chennai. According to the plaintiff, after the marriage, she came to know that her husband was addicted to alcohol and drugs and was suffering from serious health ailments. He was subsequently diagnosed with colon cancer and underwent surgery, chemotherapy and radiotherapy. Ultimately he died on 23.03.2014.

https://www.mhc.tn.gov.in/judis

WEB COPY

14.3. The plaintiff alleges that, taking advantage of the serious illness and condition of her husband, the defendant and her family members obtained a settlement deed dated 04.09.2013 in favour of the defendant in respect of the property jointly purchased in the name of the deceased and the defendant. According to the plaintiff, the deceased was not in a fit state of mind to execute the settlement deed and the same was brought about by fraud, coercion and undue influence.

14.4. The plaintiff further claims that, upon the death of her husband, she became entitled to his share in the properties and, therefore, instituted the suit seeking a declaration that the settlement deed dated 04.09.2013 is invalid and not binding upon her and for partition and separate possession of her alleged share.

14.5. The second item of property was subsequently brought into the suit schedule by way of amendment pursuant to the order dated 20.10.2017 in I.A. No.948 of 2017.

15. On the other hand, the defendant had denied the allegations made by the plaintiff. According to the defendant, the deceased was hale and healthy and voluntarily executed the settlement deed dated 04.09.2013 in her favour out of natural love and affection. It is her specific case that the deceased personally

https://www.mhc.tn.gov.in/judis

WEB COPY

appeared before the Sub Registrar, Chengalpattu, presented the document, admitted its execution and completed the registration formalities.

15.1. The defendant further contends that the plaintiff has not pleaded or established any specific act of fraud, coercion or undue influence and that the registered settlement deed cannot be invalidated merely on the basis of the deceased's subsequent illness. The defendant also contends that the suit is not maintainable as a suit for partition, since the plaintiff has deliberately omitted several properties belonging to the deceased from the suit schedule. It is further contended that, the plaintiff is not in possession of the suit property and, therefore, the Court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuations Act, 1955, is incorrect.

16. The following issues have been framed in CS No.563 of 2019:

1. Whether the settlement deed dated 04.09.2013 is null and void and not binding on the plaintiff;

2. Whether the plaintiff is entitled to half share in the suit property;

3. Whether the plaintiff is in joint possession of the property;

4. Whether the Court Fee paid is proper;

5. To what other reliefs the parties are entitled to?

https://www.mhc.tn.gov.in/judis

WEB COPY

Issue No. 1:

17. The foundation of the plaintiff's claim is that the settlement deed dated 04.09.2013, marked as Ex.P1, executed by her husband in favour of the defendant is invalid and consequently the plaintiff is entitled to succeed to the share which, according to her, continue to remain with her deceased husband. Ex.P1 is a registered settlement deed dated 04.09.2013. The document contains the signature / execution particulars of the settlor. The registration endorsement contains the photographs and left thumb impression of the deceased. The endorsement also records the presentation and admission of the document for registration.

17.1. The plaintiff does not dispute that the photographs appearing in the registration endorsement is that of her husband. In cross examination, she has also admitted that the thumb impression appearing in the registration endorsement is that of her husband. She has further admitted that the registration endorsement records that the document was presented by her husband and admitted by him for registration.

17.2. The significant question, therefore, is whether the plaintiff has established that, notwithstanding the execution and registration of Ex.P1, the document was brought about by fraud, coercion, undue influence or incapacity of the executant. The plaintiff has stated in her evidence that her husband was

https://www.mhc.tn.gov.in/judis

WEB COPY

suffering from cancer and that, on account of his medical condition, he was not in a position to execute the settlement deed. However, the mere fact that the executant was suffering from cancer or had undergone treatment does not, by itself, establish that he lacked the mental capacity to execute a document.

17.3. The burden was upon the plaintiff to establish the circumstances which would render Ex.P1 invalid. Though in the cross examination P.W.1 was specifically asked whether the settlement deed had been obtained by fraud or coercion, she stated that it was so. However, she was unable to set out any specific act or circumstance constituting such fraud or coercion. More importantly, P.W.1 has admitted that she was at the residence at Chengalpattu on the relevant date. She has also admitted that she was unaware of the exact circumstances of the execution. She has not stated who accompanied her husband to the Sub Registrar's Office, what transpired there or in what manner the defendant exercised any coercion or undue influence upon him.

17.4. The plaintiff has also admitted that she did not specifically use the expressions "fraud" or "coercion" in the plaint or in her proof affidavit. Merely describing the transaction as a "sham transaction" is not sufficient to establish fraud or coercion unless the material particulars constituting such fraud or coercion are pleaded and proved. This Court also cannot lose sight of the fact that Ex.P1 was not a document brought into existence privately or an

https://www.mhc.tn.gov.in/judis

WEB COPY

unregistered document. The document was presented for registration before the competent Sub Registrar. The registration endorsement records the appearance and admission of the executant. His photograph and thumb impression form part of the registration record. The plaintiff has not examined any person who was present before the Sub Registrar to establish that the deceased was incapable of understanding the nature of transaction or that the document was executed against his free will.

17.5. The execution of a registered instrument cannot be discarded merely because the executant subsequently died of a serious disease. There must be cogent evidence connecting the illness with lack of testamentary or contractual capacity at the relevant point of time. No such evidence has been established in the present case. It is also relevant that the settlement was made in favour of the defendant, who is admittedly the mother of the deceased. The property covered by Ex.P1 had itself been purchased jointly in the names of the deceased and the defendant. The defendant was, therefore, already a co-owner of the property. The transaction, viewed in that background, cannot by itself be characterised as an unnatural transaction.

17.6. The contention of the plaintiff that the deceased was suffering from cancer in September 2013 also cannot, by itself, invalidate the transaction. The medical records may establish the nature of his illness, but they do not, in the

https://www.mhc.tn.gov.in/judis

WEB COPY

absence of medical or other cogent evidence, establish that on 04.09.2013 he lacked the capacity to understand the nature and effect of the settlement deed.

17.7. This Court is therefore unable to accept the contention that Ex.P1 was executed by the deceased without knowledge or consent or that it was procured by fraud, coercion or undue influence. A registered document carries a presumption arising from the regularity of the official act of registration, but such presumption is not conclusive. Nevertheless, in the present case, the plaintiff has failed to produce evidence sufficient to rebut the evidentiary value of the registered instrument.

Issue Nos. 2 to 5:

18. The learned counsel for the defendant has relied upon the decision in **Gandhi vs. Swaminatha Gounder, 2006 (1) CTC 267** and would submit that, in her cross examination, P.W.1 has admitted that the affidavit of assets filed in the connected testamentary proceedings contained particulars of several properties. She has further admitted that even after becoming aware of those properties, she did not take steps to incorporate them in the present suit. The suit, even after amendment, contains only two items of property. A suit for partition ordinarily ought to encompass the entire estate available for partition between the parties. A plaintiff cannot seek partition of only some of the

https://www.mhc.tn.gov.in/judis

WEB COPY

properties forming part of the common estate while leaving out other properties, unless the case falls within a legally recognised exception or there is a satisfactory explanation for such exclusion. In the present case, the plaintiff has not established any such exception. Her explanation that she was unaware of the other properties cannot survive in view of her own admission that she subsequently became aware of the properties but nevertheless did not amend the plaint. The decisions relied upon by the learned counsel for the defendant on the principle relating to partial partition support the proposition that, where several properties forming part of the estate are available for partition, omission of such properties without justification renders the suit defective.

18.1. His further submission is that the plaintiff has not established that the properties omitted from the suit are either not available for partition or that there exists any legally sustainable reason for excluding them. Consequently, the plaintiff cannot seek a decree for partition in respect of the two items alone. For both these reasons, namely, failure to establish invalidity of Ex.P1 and the maintainability of the suit as a partial partition, the plaintiff is not entitled to the relief of declaration or partition.

18.2. The learned counsel for the defendant has relied upon the decision in ***Gandhi Vs Swaminatha Gounder, 2006 (1) CTC 267***, in support of the proposition concerning non inclusion of properties in a partition suit. The

https://www.mhc.tn.gov.in/judis

WEB COPY

principle in Gandhi case has to be applied on the facts of the particular case. The decision dealt with a situation where an admitted item of family property had been omitted from the partition suit. A suit for partial partition is discouraged to prevent a multiplicity of proceedings.

18.3. In the present case, the properties to which plaintiff claims title as heir must first be identified as properties forming part of the estate of Vivek Vijayakumar. In the present case, TOS and Tr.CS were tried jointly and this Court effectively has cognizance of the entire dispute surrounding the deceased's estate. Because both suits were tried jointly, the evidence regarding the estate, shares, and status of the family members is already before this Court. Once the Court dismisses the testamentary suit and finds the Will invalid, the assets designated in that Will do not disappear or belong exclusively to the propounder of the Will. Instead, they become part of the general estate available for distribution among all legal heirs according to the applicable succession law. Therefore, the properties covered under the failed Will fall back into the estate of the deceased as intestate property. Courts generally lean towards a liberal approach to amendments in joint trials so that all properties of the deceased are partitioned in a single decree, avoiding future litigation. Hence, the omission of the properties initially is rarely fatal to the entire partition suit when the Will fails during the joint trial.

https://www.mhc.tn.gov.in/judis

WEB COPY

18.4. Therefore, the plaintiff, being the widow of the deceased, is entitled to the statutory share in the estate of the deceased in the absence of a valid Will. The mother of the deceased is also a Class 1 heir. Accordingly, in respect of the properties which are established to have belonged to the deceased on the date of his death and which are not otherwise excluded by a valid prior transfer, the plaintiff and the defendant are each entitled to one half share.

18.5. Further, in a suit for partition, the plaintiff need not establish actual physical possession in the manner required in a suit for recovery of exclusive possession where there is no legally established ouster. In the absence of clear and cogent evidence of ouster, possession of one co-sharer is ordinarily referable to the possession of all co-sharers. Therefore, the contention raised on the side of the defendant that the plaintiff is not in joint possession of the property and improper Court fee has been paid is unsustainable.

19. In the result:

(i) TOS No. 12 of 2018 is dismissed. The plaintiff is not entitled to Letters of Administration with the Will annexed in respect of the alleged Will dated 09.03.2014.

(ii) Tr.CS No. 563 of 2019 is partly decreed, holding that, in the absence of a valid Will, the plaintiff, being the widow of late Vivek Vijayakumar, is entitled to one half share in the properties which are proved to have formed part

https://www.mhc.tn.gov.in/judis

WEB COPY

of the estate of the deceased on the date of his death. The said property shall be included in the estate and dealt with in accordance with the preliminary decree.

(iii) A preliminary decree for partition shall be drawn accordingly, and an Advocate Commissioner shall thereafter be appointed for division by metes and bounds, if necessary.

(iv) The relief seeking declaration that the settlement deed dated 04.09.2013 is null and void stands rejected.

(v) The relief of permanent injunction shall operate only to the extent necessary to preserve the properties forming part of the estate pending completion of the partition proceedings.

(vi) There shall be no order as to costs.

30-10-2026

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

BGA/mar

https://www.mhc.tn.gov.in/judis

WEB COPY

K.GOVINDARAJAN THILAKAVADI J.

BGA/mar

Pre-delivery Common Judgment in
TOS No. 12 of 2018
and
CS NO. 563 of 2019

30-10-2026

https://www.mhc.tn.gov.in/judis