

**IN THE COURT OF I ADDITIONAL DISTRICT & SESSIONS JUDGE,
CUDDALORE.**

Present : **Tmt.G.Saraswathi, M.L,**
I Additional District & Sessions Judge,
Cuddalore.

Tuesday, the 21st day of April 2026

O.S. No.76 of 2019

(CNR No.TNCD01 – 003723 – 2019)

Usha

... Plaintiff

-Vs-

Senthilkumar
represented by his power of attorney
agent Smt.Umamaheswari

... Defendant

This suit presented on 05.04.2019 came before me for final hearing on 07.04.2026. Advocate Mr.L.Devanathan appeared for Plaintiff. Advocates M/s.V.Sampathkumar and V.Deivamanohar appeared for Defendant. Upon hearing both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:

JUDGMENT

NATURE OF SUIT :

This suit filed by the plaintiff praying to pass a preliminary decree for partition and separate possession of plaintiff's 1/2 share in the suit properties; in the final decree proceedings, and Advocate Commissioner may be appointed to divide the suit A and B schedule properties by metes and bounds into 2 equal shares and to allot one such share to the plaintiff; to direct the commissioner to determine the

mesne profits of the plaintiff's 1/2 share by separate proceedings under Order 20 Rule 12; the plaintiff may be put in possession of the share allotted to her and if necessary possession may be delivered through Court; to pass a decree against the defendant for costs of suit; and to grant such other relief as the Court may deem just and property in the circumstances of the case.

2. PLAINTIFF CASE :

The plaintiff states that she and the defendant are the children of Ramakrishnan and Kasturi Ammal. The suit A-Schedule properties were purchased in the name of Kasturi Ammal under Document Nos.191 and 192 of 1988 dated 07.03.1988, and the suit B-Schedule property fell to Ramakrishnan's share under the registered partition deed dated 26.02.1974. After the death of Kasturi Ammal on 07.11.2015 and Ramakrishnan on 19.04.2018, the plaintiff claims 1/2 share in both schedules. As the defendant allegedly refused partition and set up a Will dated 16.04.2018, which the plaintiff disputes on the ground that Ramakrishnan was not in a sound disposing state of mind, the suit has been filed.

3. DEFENDANT CASE:

The defendant denies the plaintiff's claim except to the extent specifically admitted. He contends that the suit is not properly valued and that court fee under Section 37(2) of the Tamil Nadu Court Fees Act is not maintainable, as joint possession is denied. According to the defendant, though the A-Schedule properties stand in the name of Kasturi Ammal, they were purchased from funds sent by

Ramakrishnan while employed abroad and therefore were not her independent properties. He further relies on the Will dated 16.04.2018 said to have been executed by Ramakrishnan in a sound disposing state of mind, under which his rights in the properties were bequeathed to the defendant. The defendant also pleads that he discharged family debts and that the plaintiff is not entitled to 1/2 share as claimed, and therefore seeks dismissal of the suit.

4. ISSUES :

On careful reading of the allegations made in the plaint, written statement and on perusing the documents and after hearing the parties, this Court has framed the following issues for proper adjudication:

1. Whether the Plaintiff is entitled for a Preliminary decree of Partition and separate possession of her 1/2 share in the Suit Properties?
2. Whether the valuation of the Suit under section 37(2) of Tamil Nadu Court Fee & Suit Valuation Act is correct?
3. Whether the Plaintiff is entitled for a decree as prayed for?
4. To what reliefs the Parties entitled?

5. EVIDENCE :

On the side of the plaintiff, the plaintiff examined herself as PW1 and marked Exs.A1 to A5. Ex.A1 is the certified copy of the partition deed dated 26.02.1974, and Exs.A2 and A3 are the certified copies of the sale deeds dated 07.03.1988 standing in the name of Kasturi Ammal. Exs.A4 and A5 are the legal

notice and reply notice relied upon by the plaintiff. On the side of the defendant, the defendant's power of attorney agent, Tmt. Umamaheswari, was examined as DW1 and Ex.B1, the Will dated 16.04.2018, was marked. The scribe and attesting witnesses to the said Will, namely Vivekananthan, Sundaramoorthy, and Senthilkumar, were examined as DW2 to DW4 respectively. In addition, Exs.X1 and X2 were marked through the defence witnesses, and Ex.C1 was marked as the Court exhibit.

FINDINGS ON ISSUES :

6. Issue No.1:-

Whether the Plaintiff is entitled for a Preliminary decree of Partition and separate possession of her 1/2 share in the Suit Properties?

6.1 The relationship between the parties is admitted. It is also admitted that the suit A-Schedule properties were purchased in the name of Kasturi Ammal, the mother of the plaintiff and the defendant, under Exs.A2 and A3 sale deeds dated 07.03.1988. Likewise, the suit B-Schedule property was allotted to Ramakrishnan, the father of the plaintiff and the defendant, under the registered partition deed dated 26.02.1974 marked as Ex.A1.

6.2 It is the defence of the defendant that the purchases made in the name of Kasturi Ammal under Exs.A2 and A3 were out of the funds sent by their father Ramakrishnan while he was employed abroad. It is further the case of the defendant that, after the death of Kasturi Ammal, Ramakrishnan inherited 1/3 share in her

properties and that such share, together with his rights over the B-Schedule property, was bequeathed in favour of the defendant under Ex.B1 Will dated 16.04.2018.

6.3 On the side of the defendant, his wife, who was recognised as his power agent during the pendency of the suit, was examined as DW1. The scribe and the attesting witnesses to Ex.B1 Will were examined as DW2 to DW4 respectively. Apart from Ex.B1 Will, no other document was produced on the side of the defendant to establish the source of funds for the purchase of the A-Schedule properties. DW1 Umamaheswari, wife of the defendant Senthilkumar, though stating that Kasturi Ammal had no independent source of income, admitted in cross-examination that after Ramakrishnan went to Dubai for employment, Kasturi Ammal was managing the lands in Sirugramam Village and made the dry lands cultivable. She further admitted that during Ramakrishnan's stay abroad, Kasturi Ammal resided at her parents' house at Adoorkuppam, where she carried on chit fund business and basket knitting work, and that the A-Schedule properties were purchased during that period. Though these facts were admitted, DW1 still maintained that the properties were purchased only from the funds sent by Ramakrishnan from abroad. It is well settled that the burden lies on the party who asserts a particular fact. In the present case, the defendant has not adduced either oral or documentary evidence to show that, in the year 1988, the A-Schedule properties were purchased exclusively from the funds sent by Ramakrishnan. Even otherwise, a benami transaction cannot be inferred unless it is established that the purchase in another's name was merely nominal and

that the real contributor intended to retain beneficial ownership. Until the death of Kasturi Ammal, Ramakrishnan had not made any such claim. Therefore, even assuming that he contributed funds for the purchase of the A-Schedule properties, such contribution can only be taken to have been made for the welfare and security of his wife.

6.4 Kasturi Ammal predeceased Ramakrishnan and died intestate. As her properties were her absolute properties, on her death they devolved upon her husband and children. Accordingly, the plaintiff, the defendant, and Ramakrishnan would each take 1/3 share in the A-Schedule properties. It is the contention of the defendant that Ramakrishnan bequeathed his said 1/3 share in the A-Schedule properties, along with the B-Schedule property allotted to him under Ex.A1 partition deed, in favour of the defendant under Ex.B1 Will. Before considering the truth, validity, and due execution of Ex.B1 Will dated 16.04.2018, it is necessary to determine the nature of the B-Schedule property, since the same had been obtained by Ramakrishnan under the partition deed executed between him and his brothers.

6.5 According to the plaintiff, the suit B-Schedule property originally belonged to Ramasamy Naidu, who had four sons, one of whom was Ramakrishnan. Ramakrishnan and his three brothers divided the properties under Ex.A1 partition deed dated 26.02.1974. The defendant has admitted that Ramakrishnan obtained the B-Schedule property under the said registered partition deed. It is settled law that the ancestral character of property is not lost merely because it is divided among co-

sharers. As against third parties, the property may appear to be the separate property of the allottee; however, as between the allottee and his lineal descendants, its ancestral character is retained. Under Section 6 of the Hindu Succession Act, rights in coparcenary property arise by birth. Ramakrishnan did not alienate or bequeath the B-Schedule property before the birth of the plaintiff. Ex.B1 Will is said to have been executed only on 16.04.2018, by which time both the plaintiff and the defendant had already been born. Therefore, the plaintiff, being a coparcener by birth, acquired a right in the B-Schedule property in her own right. Consequently, even assuming that Ex.B1 Will had in fact been executed, Ramakrishnan could have bequeathed only his own share in the B-Schedule property. In this regard, this Court relies upon the unreported decision of the Hon'ble High Court of Judicature at Madras in S.A.No.729 of 2016 and CMP.No.13872 of 2016 dated 05.04.2022 in S. Sampooram Vs. C. K. Shanmugam and four others, as well as the decision of the Hon'ble Supreme Court of India in 2019 SAR (Civil) 809 in Arshnoor Singh Vs. Harpal Kaur & Others. Thus, irrespective of Ex.B1 Will, Ramakrishnan could have bequeathed only his 1/3 share in the suit A-Schedule properties and only his share in the suit B-Schedule property.

6.6 A person inheriting property from his father, father's father, or father's father's father holds it as coparcenary property as regards his lineal descendants, though as against others he may hold it as his separate property. In *Shyam Narayan Prasad Vs. Krishna Prasad, (2018) 7 SCC 646*, the Hon'ble Supreme Court held that

ancestral property inherited by a male Hindu retains its ancestral character in his hands as regards his children, and that the share obtained on partition of ancestral property continues to be ancestral property vis-à-vis his issue. In view of the amended Section 6 of the Hindu Succession Act, the same right by birth extends equally to a daughter. Therefore, the plaintiff's right in the B-Schedule property cannot be defeated except to the extent of the share lawfully disposable by Ramakrishnan. The next question that arises for consideration is whether Ex.B1 Will is true, genuine, and duly executed and proved in accordance with law, or whether it is surrounded by suspicious circumstances.

6.7 Under Section 63 of the Indian Succession Act, an unprivileged Will must be signed or marked by the testator, and it must be attested by at least two witnesses, each of whom has either seen the testator sign or affix his mark, or has received from the testator a personal acknowledgment of the same. Under Section 68 of the Indian Evidence Act, such a document cannot be used in evidence unless at least one attesting witness is called to prove its execution, provided such witness is alive and capable of giving evidence. In the present case, in order to satisfy the above requirements, the defendant examined not only the attesting witnesses to the Will but also the scribe as DW2 to DW4. DW2, the scribe, categorically stated that Ex.B1 Will was written by him at the instance of the testator Ramakrishnan when he was in a conscious state of mind; that after drafting, the contents were read over to him and accepted; and that after typing, the Will was again read over, whereupon

Ramakrishnan affixed his thumb impression on all pages in the presence of DW3, DW4, and Advocate Mr.Kumaran. Likewise, the attesting witnesses DW3 Sundaramoorthy and DW4 Senthilkumar deposed that Ramakrishnan invited them to attest the Will on 16.04.2018; that in their presence the Will was read over to him; that he admitted the contents and affixed his thumb impression on all pages; and that they thereafter attested the Will in his presence and in the presence of each other. Thus, the defendant has adduced formal evidence intended to satisfy the statutory requirements governing proof of a Will.

6.8 According to the defendant, Ramakrishnan was in a sound disposing state of mind at the time of execution of Ex.B1 Will, and the plaintiff was aware of the same, as the Will was allegedly shown to her and to the relatives after the death ceremony of Ramakrishnan. However, neither the written statement nor Ex.B1 discloses the true medical condition of Ramakrishnan at the relevant time. On the contrary, the defendant's own case in the Will is that the defendant had been maintaining Ramakrishnan by providing him with food, clothes, and medicine. It is not in dispute that Ramakrishnan died on 19.04.2018, namely, only three days after the alleged execution of Ex.B1 on 16.04.2018. The plaintiff has specifically pleaded in the plaint that Ramakrishnan had been hospitalised at Sri Manakkula Vinayaga Medical College and Hospital from 02.04.2018 to 13.04.2018, that is, immediately prior to the alleged execution of the Will. This averment was not specifically denied by the defendant in the written statement. Further, DW1 Umamaheswari, in her

cross-examination, admitted that her father-in-law Ramakrishnan had been hospitalised from 02.04.2018 to 10.04.2018 due to a brain stroke resulting in paralytic weakness on the right side.

6.9 DW1 Umamaheswari stated in cross-examination that the Will was prepared at her house at Kurinjipadi and that Advocate Mr. Kumaran, the scribe DW2 Vivekananthan, and the attesting witnesses DW3 Sundaramoorthy and DW4 Senthilkumar were present at the time of execution. She further stated that, after the stroke, her father-in-law had intended to execute such a Will and that the witnesses were brought by him. However, she did not explain how the said witnesses were brought by Ramakrishnan when, according to her own evidence, he had suffered a paralytic stroke on the right side and was physically debilitated. She also admitted that Ex.C1, the General Power of Attorney executed by her husband in her favour on 11.06.2019, had been attested by the very same witnesses who attested Ex.B1 Will. This circumstance also assumes significance in assessing the independence and reliability of the attesting witnesses.

6.10 Learned counsel for the plaintiff submitted that mere examination of the attesting witnesses and the scribe, by itself, is not sufficient to prove a Will unless the propounder dispels all legitimate suspicious circumstances and establishes that the document is free from fraud, coercion, and undue influence. In support of this submission, reliance was placed on the decision of the Hon'ble High Court of Judicature at Madras reported in **2017-1-L.W.268, K. Iyeswaran (since deceased)**

and others Vs. G. Iyeswariyalakshmi and another. It was further contended that Ramakrishnan was accustomed to signing in English, as admitted by DW1 in cross-examination, whereas Ex.B1 bears only his left thumb impression on all pages. A perusal of Ex.B1 further shows that the thumb impressions do not appear in a uniform manner and that some impressions overlap. DW1 sought to explain this by stating that, since her father-in-law was unwell, he was unable to affix the thumb impression properly and that the thumb had rolled while making the impression. This explanation itself suggests the possibility of assistance or intervention by another person in affixing the impressions, which constitutes a suspicious circumstance. Though this circumstance by itself may not be conclusive, it assumes importance because the Will is set up to defeat the succession and coparcenary rights of the plaintiff. Significantly, the Will contains no explanation as to why no provision whatsoever was made in favour of the plaintiff. Though DW1 stated that the plaintiff had been given sridhana and that she had an independent 1/3 share in the A-Schedule properties devolving from her mother, Ex.B1 is completely silent on these aspects. On a careful reading of the Will, there is no recital that any prior arrangement had been made for the plaintiff or that her exclusion was for any stated reason. This omission further strengthens the suspicious circumstances surrounding Ex.B1.

6.11 The Will does not even mention the plaintiff, namely Usha, by name. It merely states in general terms that Ramakrishnan's daughter, her descendants, or any other

relatives shall not claim any right over the bequeathed properties. Though Ex.B1 states that only Ramakrishnan's 1/3 share in the A-Schedule properties and the B-Schedule property allotted to him under the partition deed are bequeathed, no inference can be drawn therefrom that the Will recognises or safeguards the plaintiff's legal entitlement. DW2 Vivekananthan, the scribe of Ex.B1, admitted in cross-examination that the Will contains no recital explaining why no property was allotted to Ramakrishnan's daughter, the plaintiff. Having so admitted, DW2 volunteered to state that Ramakrishnan had told him that other arrangements had been made for the plaintiff. However, the defendant has failed to explain what such arrangements were, particularly with reference to the B-Schedule property. Thus, the intention of the testator, as reflected in the Will, remains unclear. It is also not the case of the defendant that the plaintiff had any strained relationship with the testator. DW1 was likewise unable to explain why Advocate Mr. Kumaran alone was brought from Panruti for preparation and notarisation of the Will when advocates were available at Kurinjipadi and nearby places. She merely stated that she did not know the reason and that Advocate Mr. Kumaran might have been known to her father-in-law. In the above circumstances, the non-examination of Advocate Mr. Kumaran also assumes significance, particularly because Ex.B1 is not a registered Will but only a notarised one. Learned counsel for the plaintiff also relied on the decision of the Hon'ble Supreme Court of India reported in **2024 SAR (Civ) 758, Lehna Singh (D) By Lrs. Vs. Gurnam Singh (D) By Lrs. and Others**, and rightly contended that

where glaring suspicious circumstances surround the execution of a Will, the mere evidence of attesting witnesses is not by itself sufficient to hold that the Will has been duly proved.

6.12 Admittedly, the testator Ramakrishnan had suffered a brain stroke, had been hospitalised immediately prior to the alleged execution of the Will, and died within three days thereafter. In such circumstances, the execution of Ex.B1 by affixing only thumb impressions, coupled with the doubtful circumstances surrounding the attesting witnesses and the absence of any satisfactory explanation for the exclusion of the plaintiff, creates serious suspicion as to the genuineness of the document. I am therefore of the considered view that Ex.B1 has not been proved to be a true, valid, and genuine Will, and that the defendant has failed to dispel the suspicious circumstances surrounding its execution.

6.13 Learned counsel for the plaintiff further relied on the decision of the Hon'ble High Court of Madras reported in **2013 (2) MWN (Civil) 62, R. Duraisamy Vs. S. Rajan and others**, and submitted that the defendant's failure to enter the witness box is an adverse circumstance against the defence. Though such non-examination may, in an appropriate case, permit an adverse inference, the law does recognise that a spouse may depose on behalf of the other in matters within her knowledge. In the present case, the principal fact in issue is the proof of execution and genuineness of the Will. Therefore, the mere non-examination of the beneficiary by itself is not decisive. However, for the reasons already discussed, this Court holds that the Will

has not been sufficiently proved by the defendant. Consequently, the plaintiff, by virtue of her birthright under Section 6 of the Hindu Succession Act in respect of the B-Schedule property and by succession under Section 14(1) read with the general rules of succession applicable to the absolute property of Kasturi Ammal in respect of the A-Schedule properties, is entitled to 1/2 share in the suit B-Schedule property and 1/2 share in the suit A-Schedule properties.

This Issue is decided in favour of plaintiff.

7. Issue No.2 :

Whether the valuation of the Suit under section 37(2) of Tamil Nadu Court Fee & Suit Valuation Act is correct?

The defendant has contended that the plaintiff is not in joint possession of the suit properties and that, therefore, the suit ought not to have been valued under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act. This contention cannot be accepted. In a suit for partition among co-sharers, possession of one co-sharer is, in the eye of law, possession on behalf of all, unless there is clear pleading and proof of ouster, exclusion, or hostile assertion of exclusive title to the knowledge of the other co-sharer. In the present case, though the defendant denied the plaintiff's entitlement and relied upon Ex.B1 Will, he has not established by acceptable evidence that the plaintiff had been lawfully excluded from possession prior to the filing of the suit. Mere denial of share or mere assertion of exclusive right in the written statement is not, by itself, sufficient to displace the legal

presumption of joint possession between co-owners. Therefore, the plaintiff is entitled to value the suit under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, and the court fee paid on that basis is proper and correct.

This Issue is decided accordingly.

8. Issue No.3 & 4 :

Whether the Plaintiff is entitled for a decree as prayed for?

To what reliefs the Parties entitled?

In view of the findings recorded, the plaintiff is entitled to the principal relief of partition and separate possession of her 1/2 share in the suit properties. Since the plaintiff has also sought mesne profits on the ground that the defendant has been in management and enjoyment of the suit properties, such relief has necessarily to be determined in separate enquiry proceedings under Order XX Rule 12 of the Code of Civil Procedure. Accordingly, the plaintiff is entitled to a preliminary decree for partition and separate possession of her 1/2 share in the suit A and B-Schedule properties and is also entitled to have mesne profits ascertained in the manner known to law during the final decree proceedings.

These Issues are decided accordingly.

VII. RELIEF :

In the result, the suit is decreed with costs by granting preliminary decree for partition and separate possession of plaintiff's 1/2 share in suit A and B schedule

properties and for mesne profits. For passing Final Decree post the suit after two months.

Dictated to the Steno-Typist, taken down and transcribed by her, corrected and pronounced by me in open court, this the 21st day of April, 2026.

I Additional District and Sessions Judge,
Cuddalore.

Plaintiff side Witnesses :

P.W.1 Usha (Plaintiff)

Plaintiff side Exhibits :

Ex.A1	26.02.1974	Certified copy of Partition Deed
Ex.A2	07.03.1988	Certified copy of Sale Deed executed by Kannammal in favour of Kasturi
Ex.A3	07.03.1988	Certified copy of Sale Deed executed by Nirmala in favour of Kasturi
Ex.A4	03.12.2018	Xerox copy of Legal Notice issued by Plaintiff's Counsel to Defendant Senthilkumar
Ex.A5	25.12.2016	Xerox copy of Reply Notice issued by Defendant's Counsel to Plaintiff's Counsel.

Defendant side Witnesses :

D.W.1 Umamaheswari
 (the Power of Attorney agent of Defendant Senthilkumar)

D.W.2 Mr.Vivekananthan

D.W.3 Mr.Sundaramoorthy

D.W.4 Mr.Senthilkumar

Defendant side Exhibits :

Ex.B1 16.04.2018 Original Will executed by Ramakrishnan in favour of
Defendant Senthilkumar

Defendant side witness' document :

Ex.X1 - Xerox copy of DW3 Sundaramoorthy's Aadhar Card

Ex.X2 - Xerox copy of DW2 Vivekananthan's Aadhar Card

Court Exhibit :

Ex.C1 11.06.2019 General Power of Attorney executed by Defendant
Senthilkumar to his Power of Attorney Agent
Umamaheswari.

I Additional District and Sessions Judge,
Cuddalore.