



T.O.S. No. 68 of 2024 & C.S. No. 240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2026
PRONOUNCED ON : 07.09.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

T.O.S. No. 68 of 2024
and
C.S. No. 240 of 2024

T.O.S. No. 68 of 2024:

K.Sooriya Prakash
S/o.Late A.Kuppu Rao, No.47/21, Narayanaswamy
Street, Aranganathan Nagar, Virugambakkam,
Chennai - 600 092.

..Petitioner(s)

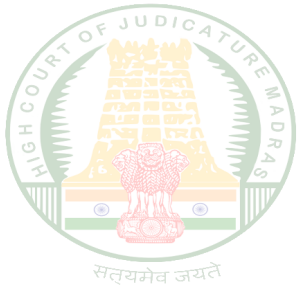
Vs

R.Sujatha Ramesh Pawar
W/o.Late K.Ramesh Kuppu Rao, No.44/15, Flat 1A,
Balaji Garudhadri Apartments, 12th Avenue, Ashok
Nagar, Chennai - 600 083.

..Respondent(s)

PRAYER: That the letters of administration with the WILL annexed may be granted to him as the LEGATEE being son of the said deceased having effect limited to the State of Tamil Nadu. Gross Amount Rs.13,28,250/- and Net Amount Rs.13,28,250/- (OP.486 of 2023 converted into TOS.68 of 2024). C/F OF RS.20,000/- PAID ON 15/10/2024 IN D.NO.39663/2024

For Petitioner(s): M/s.S.Makesh
V.S.R.Iyyappan
D.Madhusudhanan



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For Plaintiff

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For Respondent(s): M/s.K.B.Gopi
For Defendant
Sole Defendant W/s Filed

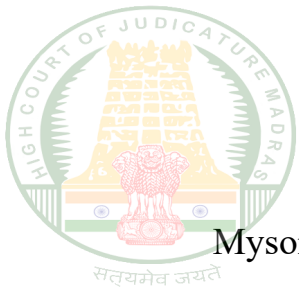
CS No. 240 of 2024:

R.Sujatha Ramesh Pawar
W/o.Late K.Ramesh Kuppu Rao,
No.44/15, Flat 1A,
Balaji Garudadhri Apartments,
12th Avenue, Ashok Nagar,
Chennai - 83.

..Plaintiff(s)

Vs

- 1.A.Kuppu Rao (since deceased)
S/o Annaji Rao
Amended As Per Order In I.A No.5/2022 Dated
21.09.2022 Lrs 2 To 4 Already Party To Suit
- 2.K.Kasthuri (since deceased)
W/o.A. Kuppu Rao
Amended As Per Order In I.A No.12/2024 Dated
10.06.2024 Lrs 3 And 4 Already Party To Suit
- 3.K.Sooriya Prakash
S/o A.Kuppu Rao,
1 To 3 Are Residing At
No.47/21, Narayanasamy St.,
Ranganathan Nagar,
Virugambakkam,
Chennai - 92.
- 4.S.Shanthi Bai,
D/o A.Kuppu Rao.
House No.498, 1st Floor,
5th Cross 3rd Main Road,
Kyathamaranahalli Extension,



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Mysore - 570 019.

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..Defendant(s)

PRAYER: a) Directing partition / division and separate possession of plaintiff's 1/5th share by metes and bounds in the property described in the schedule hereunder by appointing a commissioner; b) Directing the 1st defendant to pay the plaintiff Rs.6000/- per month (or) at such rate as this Court may determine as mesne profits from the date of death 12.04.2018 of her husband Late K.Ramesh Pawar till the date when the plaintiff is allotted her 1/5th share; c) Directing the defendants to pay the plaintiff the costs of and incident of the suit; d) granting any further or other relief which may be just and necessary in the circumstances of the case and thus render justice.

For Plaintiff(s): M/s. K.B.GOPI

For Defendant(s): S.Makesh

COMMON JUDGMENT

The primary question to be determined now in the above Testamentary Original Suit and Original Suit arises after the demise of A. Kuppu Rao, namely, whether his estate is to devolve in accordance with the law of intestate succession applicable to Hindus or under the testament allegedly executed by him. Therefore, it was considered appropriate to try both suits jointly, and they are disposed of by this common judgment.



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2. The civil suit was instituted earlier. O.S. No. 534 of 2020 was originally

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instituted before the City Civil Court, Chennai, during the lifetime of A. Kuppu Rao, who was arrayed as the first defendant. During the pendency of the suit, A. Kuppu Rao died on 04.04.2022 , giving rise to the testamentary proceedings in O.P. No. 486 of 2023, which were subsequently converted into T.O.S. No. 68 of 2024. Thereafter, by an order of this Court dated 19.08.2024, passed in O.S.A. No. 240 of 2023, O.S. No. 534 of 2020 was withdrawn from the file of the XVIII Assistant City Civil Court, Chennai and transferred to this Court and renumbered as C.S. No. 240 of 2024, and tried jointly with the Testamentary Original Suit T.O.S. No. 68 of 2024. The respective pleadings of the parties in both suits may now be briefly set out.

C.S.No.240 of 2024:

3. The brief averments in the amended plaint filed on 02.07.2024 are as follows: The plaintiff married Ramesh Pawar, the son of defendants 1 and 2, on 24.05.2000. The first defendant, A. Kuppu Rao, purchased the suit-schedule property from his self-acquired funds. Defendants 3 and 4 are the other children of defendants 1 and 2 and are, respectively, the brother and sister of the plaintiff's husband, Ramesh Pawar. Ramesh Pawar died of illness on 12.04.2018. According to the plaintiff, she was driven out of the matrimonial



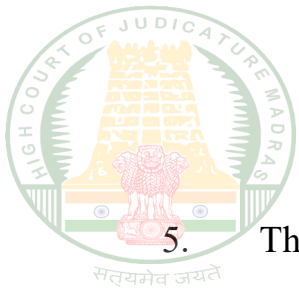
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home in 2019 and has since been residing with her mother. The plaintiff claims

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that, as the legal heir of her deceased husband, who was one of the legal heirs of the first defendant, she is entitled to a one-fifth share in the suit-schedule property. It is further pleaded that the suit property yields a monthly rental income of Rs.30,500/- and that the defendants are attempting to alienate it. The plaintiff has, therefore, instituted the suit seeking a preliminary decree declaring her entitlement to a one-fifth share in the suit-schedule property, together with mesne profits.

4. The brief contents of the written statement filed by the first defendant and adopted by defendants 2 to 4 are as follows: The first defendant contends that he purchased the suit-schedule property from his self-acquired funds. Accordingly, his deceased son, namely the plaintiff's husband, had no right or share in the property during the first defendant's lifetime. Consequently, the plaintiff has no right to claim a one-fifth share therein. It is further contended that, after her husband's death, the plaintiff voluntarily left the matrimonial home. Since the suit-schedule property is the first defendant's self-acquired property and not coparcenary property, neither his deceased son nor the plaintiff acquired any right or share therein. The suit is, therefore, stated to be devoid of any cause of action and liable to be dismissed.



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5. The brief contents of the additional written statement filed by the third

defendant are as follows: The first and second defendants died on 04.04.2022 and 20.02.2024, respectively, after which the plaint was amended. Following the first defendant's demise, the third defendant filed O.P. No. 486 of 2023 seeking the grant of Letters of Administration with the Will dated 06.11.1998, allegedly executed by the first defendant and annexed thereto. Under the said Will, the first defendant is stated to have bequeathed the suit-schedule property to the third defendant. It is further contended that the Tamil Nadu Slum Clearance Board allotted the suit property to the first defendant under a lease-cum-sale agreement dated 05.07.1995. Although the entire consideration has been paid, no sale deed has yet been executed. According to the third defendant, the plaintiff has no cause of action to institute the suit and, therefore, the suit is liable to be dismissed.

6. Based on the above pleadings, the following issues were framed before the transferor court on 08.01.2021:

1. Whether the plaintiff is entitled to 1/5th share in the self-acquired property of the 1st defendant?
2. Is there any legal right to sue exists for the plaintiff to claim partition?
3. Whether the plaintiff is entitled for the mesne profit as prayed for?

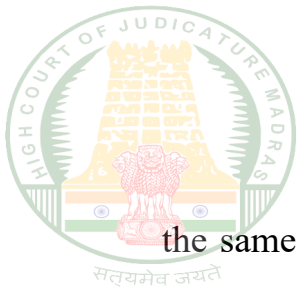


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4.To what other relief?

T.O.S. No. 68 of 2024:

7. The brief averments in the petition are as follows: The petitioner/plaintiff claims to be the legatee under an unregistered Will dated 06.11.1998, allegedly executed by A. Kuppu Rao, who died on 04.04.2022. Under the said Will, the testator is stated to have bequeathed to the petitioner the property bearing Door No. 47/21, Narayanasamy Street, Aranganathan Nagar, Virugambakkam, Chennai-600 092. The testator died leaving behind his wife, the first respondent in O.P.; the petitioner; and his daughter, the second respondent Shanthi Bai. His two other sons had predeceased him. One of them, Ramesh Kuppu Rao, was the husband of the third respondent in O.P., and children were born of their marriage. The other predeceased son, K. Suresh, died unmarried. It is averred that the testator permitted the petitioner to construct a building on the property bequeathed under the Will. The petitioner claims that his mother informed him of the Will's existence and that she and his wife attested to it. The third respondent in O.P. subsequently instituted a suit for partition, claiming a one-fifth share in the property. The property covered by the Will had been allotted to the deceased by the Tamil Nadu Slum Clearance Board under an allotment order dated 05.07.1995. Thereafter, the third respondent entered caveat in O.P. and



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the same was converted into this T.O.S., wherein the petitioner was arrayed as plaintiff and the third respondent as defendant.

8. The brief contents of the defendant's written statement are as follows: The defendant contends that the alleged Will is a fabricated and forged document and is neither the last Will nor the testament of the deceased, A. Kuppu Rao. It is denied that the plaintiff constructed the building on the property. It is further contended that A. Kuppu Rao did not refer to the alleged Will in the written statement he filed in the partition suit instituted by the defendant. According to the defendant, the plaintiff created the Will in collusion with its two attesting witnesses, namely, the plaintiffs's deceased mother and his wife. The plaintiff is, therefore, not entitled to the grant of Letters of Administration.

9. The following issues were framed by this Court on 30.07.2025:

1. Whether the will dated 06.11.1998, said to have been executed by A. Kuppu Rao, who died on 04.04.2022, is a genuine and true document?
2. Whether the contention of the defendant that the said will had been created by the plaintiff has been established during the course of evidence?



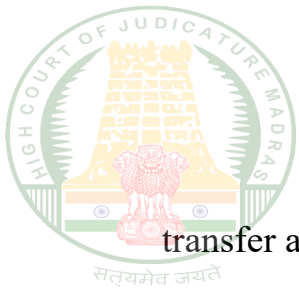
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3. Whether the will had been proved in the manner known to law?

4. To what other reliefs the parties are entitled?

10. During the joint trial, the evidence was recorded in T.O.S. No. 68 of 2024; on the petitioner/plaintiff side, P.W.1 to P.W.4 were examined, and Exhibits P1 to P15 were marked; on the defendant side, the defendant was examined as D.W.1; no exhibit was marked.

11. Learned counsel for the plaintiff in C.S. No. 240 of 2024 / defendant in T.O.S.No.68 of 2024/ submits that, in the written statement filed in the partition suit while the Testator was alive, there is absolutely no mention of the existence of any Will. The Testator specifically pleaded that the property was self-acquired. Having taken that stand, the subsequent production of a Will of the year 1998, after his death, is highly suspicious and appears to have been created only to defeat the claim of the plaintiff in the partition suit. Further, it is submitted that the property was allotted by the Tamil Nadu Slum Clearance Board. Even according to the plaintiff in the testamentary suit, the sale deed has not been issued till date. An allottee does not have absolute title. In the absence of a sale deed, the Testator had no transferable title. A Will cannot validly

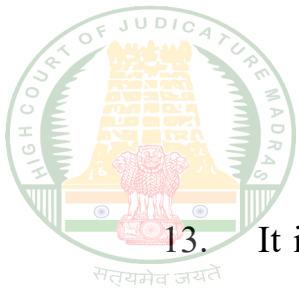


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transfer a property over which the Testator himself did not have clear title. Upon

the death of an allottee, the property would normally devolve upon the wife and children.

12. It is further submitted that the Will is dated 1998, yet it was produced only after the Testator's death in 2022 and after the partition suit had already been filed. The attesting witnesses are the wife of the Testator and the wife of the plaintiff in the testamentary suit, both being interested witnesses. The plaintiff in the testamentary suit claims that, within a week of the Testator's death, his mother informed him about the Will and that they jointly searched for and found it. This version is inconsistent with the earlier stand taken in the written statement in the partition suit. The learned counsel submits that no suspicious circumstances of the kind usually associated with a fabricated Will, such as shifting of pages, uneven signatures, unnatural disposition, etc., have been specifically pleaded or proved by the defendants in the testamentary suit ; nevertheless, it is submitted that the non-disclosure itself and the timing of production raise serious doubt about its genuineness.



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13. It is further submitted that the plaintiff in the testamentary suit claims to

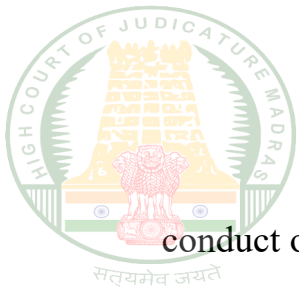
have spent approximately ₹9,72,000 for construction of the building and further amounts for renovation which is marked as Exhibits P12 and P13. There is no document to show that the testator had given written permission for such expenditure. When the property stood allotted in the testators's name, the son had no independent right to invest large sums and claim ownership on that basis. The bills alone do not create title. It is claimed by the plaintiff in the testamentary suit that the Testator gave financial assistance of about ₹20 lakhs to the late husband of the plaintiff in the partition suit for the purchase of two flats in Bangalore and that this is the reason why her husband never claimed a share in the Virugambakkam property. No document, such as a cash receipt, cheque, demand draft or bank record, has been produced to substantiate the payment of ₹20 lakhs. On the contrary, the plaintiff in the partition suit deposed that she and her husband had taken a bank loan (80% loan + 20% margin money paid by them) and purchased the Bangalore properties from their own earnings, her husband earning ₹50,000 and she earning ₹30,000 per month. The plaintiff in the partition suit submits that she had been asked to leave the house. She filed the partition suit during his lifetime precisely because he refused to give her any share. After his death, the same claim is being resisted by projecting a Will of 1998. The plaintiff in the testamentary suit is already the owner of an adjacent



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property purchased in his name by the Testator and is receiving rent of about ₹60,000 therefrom. Thereby, the learned counsel seeks dismissal of the testamentary suit and allowance of the partition suit by granting 1/5th share to the plaintiff in the partition suit.

14. Learned counsel for the plaintiff in T.O.S.No.68 of 2024 /defendants in C.S. No. 240 of 2024 submits that the only issue before the Court are genuineness and due execution of the Will. Questions of title are outside the scope of probate proceedings, and it is well settled that the Probate Court does not decide questions of title and confines itself to whether the execution of the Will has been satisfactorily proved and whether any suspicious circumstances exist. It is further submitted that the property was allotted by the Tamil Nadu Slum Clearance Board and that full payment of instalments was made in 1994–95. The Board has delayed execution of the sale deed not only in respect of this property but also in respect of the entire scheme. The Will specifically directs that the sale deed, whenever executed, should be in the name of the plaintiff in the testamentary suit. The non-disclosure of the Will in the written statement filed in the partition suit does not render the Will fabricated. The sale deed had not yet been executed and the Testator may have intended to execute a fresh Will after obtaining the sale deed. If the Testator had been dissatisfied with the



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conduct of his son, he could have revoked the Will at any time, but he chose not

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to do so. The plaintiff in the partition suit herself admits that she did not enjoy a cordial relationship with the Testator and that she had been asked to leave the matrimonial home. She filed the partition suit during the lifetime of the Testator precisely because he refused to give her any share. It is unnatural to expect that a person with whom the Testator had no cordial relationship would be given a share by way of intestacy. On the contrary, the Testator permitted the plaintiff in the testamentary suit, and earlier the predeceased son's family, to carry out construction on the allotted property in 1998. All construction and renovation bills have been produced and marked.

15. It is further submitted that, in the written statement filed in the partition suit, the Testator specifically pleaded that he had provided financial assistance to his predeceased son for the purchase of properties in Bangalore. The plaintiff in the partition suit, being the widow of the predeceased son of the testator, is in possession of those Bangalore properties. The plaint in the partition suit itself admits that the Virugambakkam property was self-acquired. The Testator's stand was that, pursuant to a family arrangement, the Bangalore properties had been provided for the predeceased son's branch and, therefore, no share in the Virugambakkam property was payable. During cross-examination, it was



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elicited that the signature appearing on the written statement filed by the

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Testator during his lifetime and the signature appearing on the Will are one and the same. The plaintiff in the partition suit has not pointed out any discrepancy in the signature, paper, typing, ink or any other physical feature of the Will. No specific suspicious circumstances, such as shifted pages, uneven signatures, unnatural bequests, etc., have been established, and the only allegation is that the Will is “fabricated”.

16. It is further submitted that, under Section 63 of the Indian Succession Act, 1925 and Sections 68 of the Evidence Act, 1872 the propounder has discharged the burden of proving the Will. The wife of the Testator was an 1st attesting witness and has since passed away during the pending of the proceeding, the sister of the deceased 1st attesting witness and daughter of the attesting witness has been examined as P.W.2 and P.W.3 and has identified the signatures of the Testator and the deceased attesting witness and also the 2nd attesting witness who is the wife of the plaintiff in the testamentary suit was also examined as P.W.4. The learned counsel submitted that mere relationship of the attesting witnesses is not a ground to discard their testimony, and the Court is only required to scrutinise such evidence carefully. The plaintiff in the testamentary suit has produced all relevant documents, including proof of



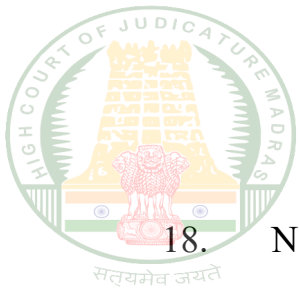
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payment of instalments, construction and renovation expenses, and the original Will. In cross-examination, the plaintiff in the partition suit admitted, inter alia, that her husband never claimed any share in the property during the lifetime of the Testator; that she had difficulty in paying the EMI of the Bangalore property loan and had to pledge jewellery; that she had not specifically pleaded any discrepancy between the signature appearing on the Will and that appearing on the written statement; and that the construction and renovation bills produced by the plaintiff in the testamentary suit had not been specifically disputed as forged in the written statement. Thereby, learned counsel submits that Letters of Administration may be granted to the plaintiff in the testamentary suit and that the partition suit filed by the plaintiff therein may be dismissed.

Issue No. 2 in C.S. No. 240 of 2024:

17. The plaintiff in the civil suit, who is also the defendant in the Testamentary Original Suit, is the daughter-in-law of the first defendant. She instituted the suit for partition, claiming a one-fifth share in the suit-schedule property, which is admitted to have been acquired by the first defendant from his own funds.



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18. No person can claim a share in another's self-acquired property during the owner's lifetime. Therefore, as the widow of a predeceased son, the plaintiff in the civil suit had no vested right or share in her father-in-law's self-acquired property during his lifetime. Consequently, the suit, as originally instituted, was not maintainable.

19. However, during the pendency of the suit, the first defendant, the owner of the suit property, died on 04.04.2022. Upon his death, the plaintiff, being the widow of his predeceased son, became one of his Class I heirs under Section 8 read with the Schedule to the Hindu Succession Act, 1956, subject, however, to the determination of whether the first defendant died intestate or left a valid testamentary disposition.

20. The second defendant also subsequently died on 20.02.2024. Following the deaths of defendants 1 and 2, the plaint was amended and the amended plaint was filed on 02.07.2024. Ordinarily, the maintainability of a suit is determined by reference to the circumstances prevailing on the date of its institution. Nevertheless, subsequent events that materially affect the parties' rights may be taken into account to shorten litigation and grant appropriate



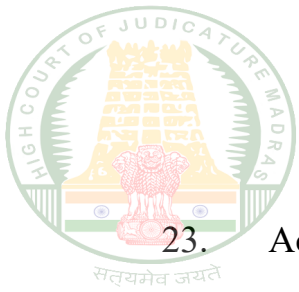
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relief, provided that the essential character of the suit is not altered and no

accrued right of limitation is defeated.

21. In the present case, the first defendant's death during the pendency of the suit brought about a material change in circumstances. The plaintiff thereby acquired a right to claim a share in the first defendant's estate in the event of intestate succession. The amended claim, founded on that subsequent event, must, for limitation purposes, be treated as having been introduced on the date of the amendment and not on the date of institution of the suit.

22. Therefore, notwithstanding that the suit was unsustainable on the date of its institution, the subsequent death of the first defendant and the consequential amendment of the plaint rendered the claim for partition maintainable. The quantum of the share claimed by the plaintiff is a separate matter. Her entitlement ultimately depends on whether A. Kuppu Rao died intestate or whether the Will propounded in the connected Testamentary Original Suit is proved genuine and valid.



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23. Accordingly, Issue No. 2 is answered in favour of the plaintiff, holding that the suit, as amended, is maintainable.

Issue Nos. 1 to 3 in T.O.S. No. 68 of 2024

24. The plaintiff in the Testamentary Original Suit claims an exclusive right to the suit-schedule property as the beneficiary under an unregistered Will dated 06.11.1998, allegedly executed by A. Kuppu Rao, who died on 04.04.2022. The defendant disputes the Will's genuineness and contends that it is a fabricated and forged document.

25. The principal suspicious circumstances alleged by the defendant are:

- 1.that the alleged Will was executed nearly 23 years before the testator's death;
- 2.that the testator did not disclose the existence of the Will in the written statement he filed in the civil suit; and
- 3.that the attesting witnesses to the Will are the mother and wife of the plaintiff in T.O.S., who is the sole beneficiary.



26. Regarding the age of the Will, the testator died on 04.04.2022 at the age

of 73 years. The Will was allegedly executed on 06.11.1998, when he was approximately 50 years old. Thus, the testator remained alive for about 23 years after its execution. There is no legal bar to recognising a Will merely because it was executed several years before the testator's death. The material questions are whether the Will is genuine, whether it reflects the deceased's free and conscious testamentary intention, and whether its execution and attestation have been proved in accordance with law. Therefore, the mere fact that the testator survived for a considerable period after the Will's execution does not, by itself, constitute a suspicious circumstance.

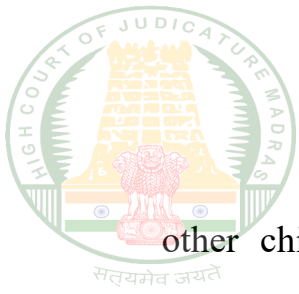
27. The property covered by the Will had been allotted to the testator by the Tamil Nadu Slum Clearance Board on 05.07.1995. The Will is said to have been executed after that allotment. According to the plaintiff, although the entire amount payable to the Board had been remitted, a sale deed had not been executed in favour of the testator. This is relied upon to explain why the Will was not registered. Since registration of a Will is not compulsory, its non-registration, by itself, does not affect its validity.



28. The plaintiff also attributes the non-disclosure of the Will in the testator's

written statement to the Board not having executed the formal sale deed at that time. Though non-disclosure of a Will in an earlier proceeding may be a circumstance requiring consideration, it cannot, standing alone, lead to the conclusion that the Will is fabricated, particularly when the testator's title itself was then founded on an allotment and a lease-cum-sale arrangement. Further, a Will is not a conveyance inter vivos and does not create or transfer any present interest in the property during the testator's lifetime. It is inherently ambulatory and takes effect only upon the testator's death. Therefore, the Will remained inoperative on the date the testator filed his written statement in the civil suit. In these circumstances, his failure to disclose the Will in that written statement is understandable and, by itself, cannot be treated as a suspicious circumstance affecting its genuineness.

29. The written statement filed by the testator in C.S. No.240 of 2024 shows that he had financially assisted his deceased son—the husband of the plaintiff—in purchasing a property in Bengaluru, where the plaintiff presently resides. This indicates that the testator had made financial provision for his deceased son and his family during his lifetime. Accordingly, the bequest in favour of the plaintiff in T.O.S cannot be regarded as unnatural merely because the testator's

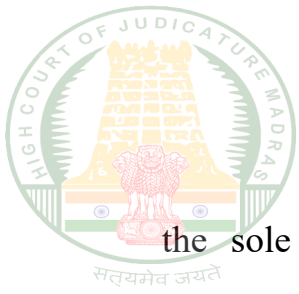


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other children were excluded under the Will. Notably, the testator's only daughter, who is arrayed as the fourth defendant in the present Civil suit and examined as P.W.3, has raised no grievance regarding the bequest and has filed an affidavit consenting to the grant of Letters of Administration.

30. The testator specifically excluded his other children from inheriting under the Will by naming them. This deliberate exclusion demonstrates that the omission was neither accidental nor inadvertent, but rather reflected the testator's conscious intention. Further, the Will need not state the reasons for such exclusion, particularly when the evidence shows that the testator had made financial provision for his deceased son and his family during his lifetime. The exclusion of the other children, by itself, therefore, does not constitute a suspicious circumstance affecting the validity of the Will.

31. Accordingly, neither the Will's age nor its non-registration constitutes a suspicious circumstance. The non-disclosure of the Will in the earlier written statement is also, by itself, insufficient to reject it. However, the genuineness and due execution of the Will, particularly in light of the relationship between



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the sole beneficiary and both attesting witnesses, must be independently examined on the basis of the evidence on record.

32. The Will was attested by two witnesses, as required by law, and its execution was proved by examining one of the attesting witnesses, as the other had died before the commencement of the trial.

33. The first attesting witness filed an affidavit detailing the circumstances in which the Will was executed and attested by her. She also filed a separate affidavit consenting and stating that she had no objection to the grant of Letters of Administration in favour of the petitioner, who is the legatee under the Will. However, during the pendency of the proceedings and before the trial commenced, she died and therefore could not be examined before the Court.

34. The first attesting witness is the mother of the sole beneficiary under the Will, while the second is the beneficiary's wife. The sister of the first attesting witness is examined as P.W.2; she identified the signatures of the testator and the first attesting witness. The testator's daughter is examined as P.W.3. The second attesting witness, the wife of the legatee, is examined as P.W.4. The

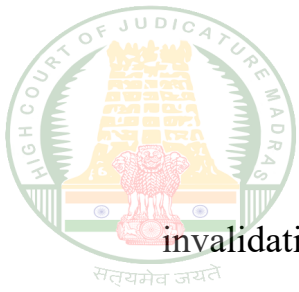


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defendant challenged the validity of the bequest on the ground that both attesting witnesses are closely related to the sole beneficiary.

35. However, the mere fact that the attesting witnesses are relatives of the beneficiary does not render either the attestation or the bequest invalid. There is no legal prohibition against a relative of a beneficiary attesting a Will. Such a relationship may require the Court to scrutinise their evidence with due care, but it does not, by itself, constitute a suspicious circumstance or invalidate the Will. Since one of the attesting witnesses was examined and proved the testator's execution of the Will and their attestation thereof in accordance with law, the objection to the validity of the bequest cannot be sustained solely on the ground of their relationship with the beneficiary.

36. The petition seeking the grant of Letters of Administration with the Will annexed has been filed under the provisions of the Indian Succession Act, 1925. Section 67 of the Act provides that where a Will is attested by a legatee, or by the spouse of a legatee, the bequest made in favour of such legatee shall be void, although the attestation itself remains valid. In the present case, the plaintiff is the sole beneficiary under the Will. Therefore, if Section 67 were applicable, the



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invalidation of the sole bequest would render the Will ineffective for all practical purposes, notwithstanding the validity of its execution and attestation.

37. However, Section 67 does not apply to Wills made by Hindus. Under Section 57 of the Indian Succession Act, only the provisions set out in Schedule III apply to such Wills, and Section 67 is expressly excluded from Schedule III. In the present case, the testator and the parties are Hindus. Accordingly, the bequest in favour of the plaintiff does not become void merely because the plaintiff's mother and wife attested the Will.

38. Section 30 of the Hindu Succession Act, 1956, recognises a Hindu's right to dispose of property by Will or other testamentary disposition in accordance with the Indian Succession Act or any other law applicable to Hindus. However, it does not make every provision of the Indian Succession Act applicable to Hindu Wills. The applicability of such provisions remains governed by Section 57 read with Schedule III of the Indian Succession Act.

39. In **Manoharlal Hinduja and another vs. Jayesh dolia and 2 others** [A. No.5656 of 2019 in T.O.S. No.15 of 2007, decided on 17.03.2020], the Madras

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High Court considered an objection that a bequest in favour of an attesting witness was void under Section 67 of the Indian Succession Act. The Court rejected the objection in the case of a Hindu testatrix, noting that Section 67 does not apply to Wills and codicils executed by Hindus.

40. In *Anand Burman v. State*, Test Cas. No. 25 of 2010, decided on 27.07.2012, following *Jose v. Ouseph*, (AIR 2007 Kerala 77), the Delhi High Court held that Section 67 of the Indian Succession Act, 1925, does not apply to Wills executed by Hindus, as that provision is not included in Schedule III, which is made applicable by Section 57. Consequently, a bequest in favour of an attesting witness under a Hindu Will does not become void merely because of such attestation. The same legal position was recognised in *Lisamma v. Saramma*, R.S.A. No. 329 of 2017, decided on 05.04.2017 (Kerala High Court).

41. It may be noted that the application of Section 67 of the Indian Succession Act, 1925, varies according to the personal law governing the testator. Whether such differential statutory treatment based on religion is constitutionally permissible does not arise for determination in the present testamentary proceeding, as no challenge to the validity of the provision has been raised in



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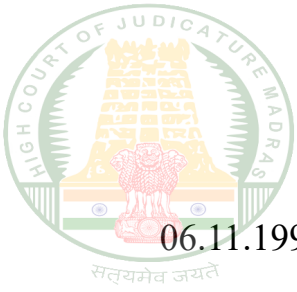
the manner known to law. The Court must, therefore, apply the enactment as it presently stands.

42. For the above discussions, these issues are decided in favour of the legatee of the will, Plaintiff, in the testamentary suit.

Issues No. 1, 3 and 4 in C, S.No.240 of 2024, and Issue No.4 in T.O. S. No.68 of 2024:

43. In view of the answers arrived at to the previous issues as above, it is held that the Plaintiff in the Civil suit is not entitled to any share in the suit schedule property, since her father-in-law died testate, leaving the will Ex. P1, which has been proved in accordance with law, and the Plaintiff in the testamentary suit is entitled to letters of Administration with will annexed.

44. In the result, Civil suit C.S.No.240 of 2024 is dismissed with costs, and T.O.No.68 of 2024 is allowed without costs by granting Letters of Administration with the Will annexed to the plaintiff in respect of the estate bequeathed under the last Will and testament of the late A.Kuppu Rao dated



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06.11.1998. The plaintiff is directed to execute a security bond for a sum of

Rs.25,000/- (Rupees Twenty Five Thousand only) in the name of the Assistant Registrar (Original Side) of this Court. The plaintiff is further directed to file an inventory of assets and statement of accounts within a period of six months and one year, respectively.

07.09.2026

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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

List of witnesses examined on the side of the plaintiff in T.O.S.No.68 of 2024 / defendants in C.S.No.248 of 2024 :

PW1 – K.Sooriya Prakash

PW2 – N.Vaijyanthi Bai

PW3 – Shanthi Bai

PW4 – S.Sujatha

List of Documents marked on the side of the plaintiff in T.O.S.No.68 of 2024 / defendants in C.S.No.248 of 2024 :

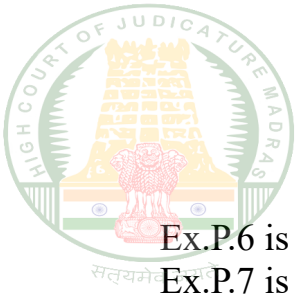
Ex.P.1 is the original Will dated 06.11.1998 executed by Mr.A.Kuppu Rao.

Ex.P.2 is the photocopy of the lease and sale agreement dated 05.07.1995 entered between Mr.Kuppu Rao and Tamilnadu Slum Clearance Board.

Ex.P.3 is the photocopy of the receipt dated 14.11.1994 issued by Tamilnadu Slum Clearance Board to Mr.Kuppu Rao for the payment of monthly installment.

Ex.P.4 is the photocopy of the receipt dated 14.11.1994 issued by Tamilnadu Slum Clearance Board to Mr.Kuppu Rao for the payment of additional cost.

Ex.P.5 is the photocopy of the receipt dated 08.11.2020 issued by Tamilnadu Slum Clearance Board to Mr.Kuppu Rao for the payment of documentary charges.



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Ex.P.6 is the computer generated death certificate of Mr.Kuppu Rao.

Ex.P.7 is the computer generated legal heir certificate of Mr.Kuppu Rao.

Ex.P.8 is the photocopy of my Aadhar Card (Original is produced, compared and returned to plaintiff's counsel)

Ex.P.9 is the certified copy of plaint in O.S.No.534 of 2020 filed before City Civil Court, Chennai.

Ex.P.10 is the certified copy of the written statement in O.S.No.534 of 2020 filed before City Civil Court, Chennai.

Ex.P.11 is the affidavit of assets showing the net value of estate as Rs.13,28,250/-.

Ex.P.12 (Series 221 Nos.) are the photocopies of the invoices for construction expenses in respect of the building of schedule mentioned property.

Ex.P.13 (Series 57 Nos.) are the photocopies of the invoices for renovation of the building of the schedule mentioned property.

Ex.P.14 is the consent affidavit filed by me.

Ex.P.15 is the affidavit of attesting witness of mine.

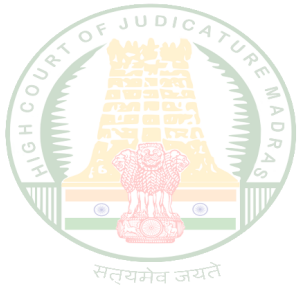
List of witnesses examined on the side of the Defendant in T.O.S.No.68 of 2024 / plaintiff in C.S.No.248 of 2024 :

DW1 – R.Sujatha Ramesh Pawar

List of documents marked on the side of the Defendant in T.O.S.No.68 of 2024 / plaintiff in C.S.No.248 of 2024 : Nil

07.09.2026

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T.O.S. No. 68 of 2024 & C.S. No. 240 of 2024

DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT MADE IN
T.O.S. No. 68 of 2024
and
C.S. No. 240 of 2024

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