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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.10.2025
Pronounced on	02.01.2026

CORAM

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

T.O.S. No. 7 of 2018 and C.S. No. 766 of 2014

T.O.S. No. 7 of 2018:-

Tmt.Rekha, W/o.Senthil Kumar
No.1/4489/E, Ammasekottai
Kollanur, TNEB Colony
Vennampatti, Dharmapuri – 636 705.

..Petitioner / Plaintiff

Vs

S.R.Balaji, S/o.K.Ramalingam
No.C-90, G-2, Diamon's Grand Flite
No.13th, Jaganathan Street
Periyar Nagar, Chennai-600099.

..Caveator / Defendant

PRAYER :This Testamentary Original Suit has been filed under Sections 222 and 276 of the Indian Succession Act praying to grant of Probate.

For Plaintiff : M/s.Rajeshwari Karthikeyan

For Defendant : M/s.Rajaramani for Mr.R.Suresh



C.S. No. 766 of 2014:-

1.S.R.Balaji
2.K.Ramalingam. .. Plaintiffs

.. Vs.
Rekha Senthil Kumar ... Defendant

Prayer: This Suit has been filed under Order IV Rule 1 of Original Side Rules read with Orders VII Rule 1 of Code of Civil Procedure, praying to pass a judgment and decree

- (a) for a preliminary decree for partition granting 2/3 share to the 1st plaintiff in the schedule mentioned properties and allot the same to the 1st plaintiff by metes and bounds;
- (b) ordering the appointment of Commissioner to effect the division of schedule property by metes and bounds and put the plaintiff into possession of the same, in the event of the defendant disagreeing for the partition as relief granted in prayer (a);
- (c) to declare that the 1st plaintiff is entitled for custody of the three title deeds of the properties mentioned in the schedule hereunder;
- (d) to grant an order of mandatory injunction directing the defendant to hand over the title deeds of the schedule properties;
- (e) to pay the cost of suit and
- (f) to grant such further or other relief as this Court may deem fit and proper in the circumstances of the case.



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For Plaintiffs :Mr.Rajaramani for Mr.R.Suresh

For Defendant : M/s.Rajeswari Karthikeyan

COMMON JUDGMENT

The Original Petition filed by Tmt. Rekha seeking grant of Probate has been converted into Testamentary Original Suit in view of the Caveat filed by the defendant, viz., S.R.Balaji.

T.O.S. No. 7 of 2018:-

2. The short facts pleaded by the plaintiff are in brief:-

The plaintiff is the only daughter of the Testatrix, viz., R.Selvakumari, who had executed a registered Will dated 17.06.2009 videdocument No. 111 of 2009 registered on the file of the Sub Registrar, Sembium, Chennai. As per the arrangements made in the Will, in respect of item No. 1, the son/defendant has been allotted with the eastern half portion (1350 sq. ft.) and daughter/plaintiff has been allotted with the western half portion (1350 sq. ft.) and in respect of item No.



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2, the defendant has been allotted with 975 sq. ft. in the eastern portion and the plaintiff has been allotted with 1170 sq. ft. in the southern portion. However, life interest has been given in respect of the properties involved in the Will for the husband of the Testatrix. The Testatrix died on 16.01.2012 and her husband died on 14.07.2016, leaving behind the plaintiff and the defendant alone as their legal heirs. As the Will has come into effect, the original petitioner/plaintiff has filed this Original Petition seeking Probate.

3. The written statement of the defendant in brief:-

The defendant submitted that after the demise of his mother, his father during his life time, settled his 1/3rd undivided share in the suit schedule properties and one another property situated in Ranipet, in favour of the defendant through a Settlement deed dated 20.01.2014 registered as Document No.848 of 2014. Thereafter, he filed a suit in C.S. No. 766 of 2014 against the plaintiff for partition



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of the defendant's 2/3 undivided share in the above said properties and the same is pending.

3.1. The plaintiff remained *exparte* in the above suit without disclosing the alleged Will. The Settlement deed in favour of the defendant is unchallenged. Since the defendant's mother was depressed and mentally unsound, she was not in a position to execute any Will. The fact about the Will has been disclosed after five years from the demise of the defendant's mother. The Plaintiff has approached this Court with an undue delay of five years. The defendant's mother did not have any independent income to purchase the properties. It is the defendant's father who purchased all the properties out of his hard earned money in the name of defendant's mother. So, the alleged Will is not valid and the Testamentary Original Suit should be dismissed.



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4. On the basis of the above pleadings, the following issues are framed now:-

“1. Whether the Will dated 17.06.2009 has been executed by the testatrix in a sound disposing state of mind?

2. Whether the Will dated 17.06.2009 claimed to have been executed by the testatrix is genuine?

3. Whether the plaintiff in T.O.S. No. 7 of 2018 is entitled to get the Probate?”

C.S. No. 766 of 2014:-

5. The plaint filed by the plaintiff in brief:-

The 2nd plaintiff is the father of the 1st plaintiff and the defendant herein. The 2nd plaintiff's wife R.Selvakumari died intestate on 16.01.2012 leaving behind her husband and two children as her legal heirs. Item No. 1 of the suit property has been purchased under the Sale deed dated 21.08.1990 and registered as Document No. 3213 of 1990 in the name of R.Selvakumari. Item No.2 has been purchased



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through the Sale deed dated 24.01.1990 and registered as Document No. 811 of 1990 in the name of R.Selvakumari. Item No. 3 has been purchased under the Sale deed dated 08.05.1987 and registered as Document No. 1234 of 1987 in the name of R.Selvakumari.

5.1. The mother of the 1st plaintiff R.Selvakumari did not have any independent income and the consideration for purchase of properties has been contributed only by the 2nd plaintiff. After the demise of R.Selvakumari, the 1st plaintiff, the defendant and their father had undivided 1/3 share in respect of each of the suit properties. The 2nd plaintiff settled his undivided 1/3rd share in favour of the 1st plaintiff vide a settlement deed dated 20.01.2014 and registered it as Document No. 868 of 2014.

5.2. In view of the above settlement, the 1st plaintiff is entitled to 2/3 undivided share and the defendant is entitled to 1/3 share in respect of each of the suit schedule properties. During the month of May 2012, at the request of the

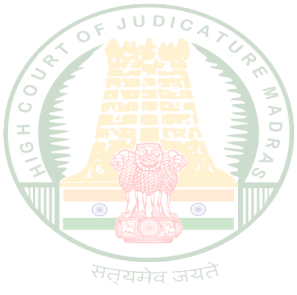


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defendant, the 2nd plaintiff gave temporary custody of three title deeds in respect of the suit properties to the defendant. The defendant refused to return the documents and did not co-operate for partition. Hence, the plaintiffs have filed the suit claiming 2/3 share in the suit item Nos. 1, 2 and 3.

6. The written statement of the defendants:-

It is false to state that the wife of the 2nd plaintiff/mother of the 1st plaintiff and the defendant died intestate on 16.01.2012. The defendant's mother had executed a registered Will dated 17.06.2009 and she had bequeathed the suit properties equally to the son and daughter, who are the 1st plaintiff and the defendant. Hence, they are entitled to equal share. The plaintiff falsely claims that he has got 2/3 share. As per the Will of the mother, the father/2nd plaintiff has got the life interest. Knowing well about the existence of the Will of the mother, the 1st plaintiff has forced his father to execute the Settlement deed and obtained the same on 20.01.2014 in a fraudulent manner. The father had no manner of right to execute



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the Settlement deed in any manner and he has got no share in the suit schedule properties. The 2nd plaintiff had not contributed anything towards the purchase of the suit properties. In respect of item No.3, the mother had already executed a Power of Attorney in the name of the defendant with the consent of the plaintiffs and she was empowered to sell away the properties to meet out the medical expenditure of her mother. However, the mother subsequently had sold the said property to some third parties and this fact is very much known to the plaintiffs. Hence, the said property is not available for partition. The 2nd plaintiff neither had any share nor any right to execute the Settlement deed dated 20.01.2014 in the name of the 1st plaintiff. As the defendant is also entitled to equal half share in respect of item Nos. 1 and 2 of the suit properties under the registered Will dated 17.06.2009, the suit should be dismissed.



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7. On the basis of the above pleadings, the Court has re-framed the issues as follows :-

“1. Whether the 1st plaintiff is entitled to 2/3 share in the schedule mentioned properties?

2. Whether the settlement deed dated 20.01.2014 executed by the 2nd plaintiff to the 1st plaintiff, is a valid one?

3. Whether the 2nd plaintiff has any right to settle the schedule mentioned property to the 1st plaintiff?

4. Whether the first plaintiff is entitled to preliminary decree as prayed?

5. To what relief are the parties entitled?”

8. The Testamentary Original Suit and the Civil Suit have been tried jointly and the evidence has been set in T.O.S. No. 7 of 2018. Hence, the parties are referred as per their rank in T.O.S. No. 7 of 2018 for the purpose of this discussion.

9. During the course of the trial, on the side of the plaintiff, two witnesses have been examined as P.W.1 and P.W.2 and Exhibits P1 to P7 were marked. On the side of the defendant, two witnesses have been examined as D.W.1 and D.W.2 and Exhibits D1 to D10 have been marked.



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10. The learned counsel for the plaintiff submitted that the mother of the parties was hale and healthy at the time when she executed the Will and she had bequeathed the subject properties in favour of both the plaintiff and the defendant equally. There is nothing to suspect the genuineness of the will. The Testatrix/mother of the parties is the absolute owner in respect of the properties involved in the Will. The only condition in the Will is that the Will shall come into force only after the life time of the father of the plaintiff. Even the Testatrix has appointed both the plaintiff and the defendant as Executors of the Will and that will also confirm that the will is a genuine one.

11. The learned counsel for the defendant submitted that the father of the parties, who is the second plaintiff in the other suit in C.S. No. 766 of 2014, had executed a settlement deed in respect of his 1/3 share in the suit properties in favour of the defendant. He further submitted that after the demise of the plaintiff's mother, the father of the parties is also entitled to 1/3 share in the properties



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involved in the Will and the same has been settled in favour of the defendant through the settlement deed dated 20.01.2014 /Ex.B7. The mother of the parties is not entitled to execute the Will for the whole of the suit properties, as she did not have the ownership over the same. She did not have any separate income to purchase the properties and it was the plaintiff's father who provided the complete sale consideration for purchase of the suit properties. So the plaintiff is not entitled to Probate and the defendant is entitled only to 2/3 share in the suit properties.

Discussion:-

12. The relationship between the parties is not in dispute. The sale deeds for the suit properties stood in the name of the mother of the parties viz., R.Selvakumari and that is also not in dispute. But the defendant contends that the Will dated 17.06.2009 is not genuine and he claims his share in the suit properties through non-testamentary process. The defendant has stated that the father is also



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entitled to 1/3 share as he is also one of the legal heirs of the deceased mother of the parties.

13. As regards the entitlement of the mother of the parties to execute the Will, the evidence of the father of the parties is relevant. It has been the claim of the defendant that the sale consideration has been paid by the father even if the sale deed stood in the name of the mother. Even though the father of the parties has been impleaded in the suit for partition, he has not been examined as a witness to support the defendant's contention that the sale consideration for the suit property has been given by him, though the properties have been purchased in the name of the Testatrix, R.Selvakumari. During the life time of the father of the parties, he had never claimed or filed any suit to declare that the suit item Nos. 1 and 2 are the joint family properties and that mother of the parties is only a name lender for the transaction. Hence, the father of the parties cannot be considered as the owner of the suit properties. Even for the sake of argument, if it is accepted that the father



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had supported the mother financially to purchase the properties in her name, the father cannot claim ownership on the properties purchased by the mother, so long as the father did not claim that the properties have been purchased just due to his fiduciary relationship.

14. In this regard, it is relevant to refer to the decision of the Hon'ble Supreme Court in *Jaydayal Poddar vs. Bibi Hazra*, reported in (1974) 1 SCC 3, wherein the court has categorically laid down the principles governing benami transactions and the burden of proof required to establish that the apparent purchaser is not the real owner. For further clarification, the relevant paragraphs are extracted hereunder:-

6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the



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party or parties concerned; and not often such intention is shrouded in a thick veil which cannot be easily pierced through. Such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances : (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

7. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1, viz. the source whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another.



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15. The third item of the suit property was also in the name of the mother of the parties and that has been sold by the mother without any objection from the defendant and the father of the parties. The above property not only stood in the name of the mother of the parties, it was also enjoyed by her as self-acquired property. In fact, the third item has been sold by her, by entering into sale transactions. In fact, in the written statement filed by the plaintiff in the partition suit, she has specifically pleaded that item No. 3 of the suit property has been sold to some third parties through a sale deed and the defendant did not deny the same.

16. The defendant who was examined as DW1 during his cross examination did not deny about the sale deed executed by her mother in respect of item No.3 of the suit property. So, in the absence of any contrary proof, the written instruments/Ex.D2 to D4 would only prove that the mother of the parties was the absolute owner of the suit item Nos. 1 to 3. The mother of the parties who is the owner of the suit properties is at liberty to make any testamentary settlement as per



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her wishes. The plaintiff claims that the mother had executed a Will dated 17.06.2009 during her life time and the properties have been bequeathed equally in favour of the plaintiff and the defendant with the only condition that the Will shall come into effect after the life time of the father of the parties.

17. On reading the above recitals, it is claimed by the plaintiff that the father of the parties had life interest in respect of item Nos. 1 and 2 of the suit properties. The Will is not even clear as to the life interest, but it only appears that the absolute interest conferred upon the beneficiaries was postponed till the demise of the father. The suit filed by the defendant as the 1st plaintiff in C.S.No. 766 of 2014 itself is only for partition and not for declaration of the item Nos. 1 and 2 of the suit properties belonged to the father of the parties. So, the documents on record and the conduct of the parties and the admission of DW1 will cumulatively establish the only one inference that the mother of the parties alone was the absolute owner of the suit properties and her entitlement to make any disposition in



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respect of the suit properties is not limited. In the absence of any right of entitlement of ownership, the father of the parties cannot claim that he had a right to execute a settlement in respect of his 1/3 share in respect of the suit properties.

Hence, issues 1, 2 and 3 in C.S.No. 766 of 2014 are answered against the plaintiffs.

18. On perusal of Ex.B7/Will dated 17.06.2009, it appears that it is a registered Will. It is not the contention of the defendant that the mother of the parties was not in sound and disposing state of mind at the time when she had executed the Will. The Testatrix was hale and healthy as per the evidence deposed by PW1 and PW2 and she had executed the Will when she was in sound state of mind. In the evidence of PW2/the attesting witness, the plaintiff had tried to prove that the Will is genuine and valid in a manner known to law. PW2 is the son-in-law of the Testatrix and he has stated that he had been in the registration office, read the Will and then signed it, as one of the attestors.



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19. In fact, his evidence would show that himself and the husband of the Testatrix were present at the Sub Registrar Office during the execution of the Will and that the Testatrix was in a sound and disposing state of mind. He has stated that he was called upon by the Testatrix and her husband and the Testatrix had subscribed her signature in his presence. He has also stated that the other attesting witness Bavani Priya has signed after his signature and that the Will contains two properties. The cross-examination of PW2 did not demolish his evidence given in the chief examination. As the Will is a registered one and PW2 is the son-in-law of the Testatrix, this could be natural for him to be with the Testatrix at her call and stand as an attesting witness. So, the plaintiff has proved the genuineness of the Will in accordance with Section 81 of the Indian Evidence Act. The defendant did not give any contrary proof to show that the Testatrix was not in a sound and disposing state of mind and she did not have the decision making capacity at the time of the execution of the Will. No coercive or undue influence has been shown to be the reason for executing the Will. In fact, the arrangements in the Will have



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also been made as equal apportionment of the suit properties in favour of the plaintiff and the defendant. Hence, the defendant did not establish any suspicious circumstances surrounding the Will. **So, the issue Nos. 1 to 3 in T.O.S. No. 7 of 2018 are answered in favour of the plaintiff.**

20. In the result, the Civil suit in **C.S. No. 766 of 2014** is **dismissed** and **T.O.S. No. 7 of 2018** is **allowed** and decreed the Probate, having effect throughout Tamil Nadu, shall be issued in favour of the plaintiff in respect of the Will executed on 17.06.2009 by the Testatrix R.Selvakumari in favour of the plaintiff.

No costs.

02.01.2026

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
Maya

To
The Assistant Registrar (O.S-II), Madras High Court, Chennai – 600 104.



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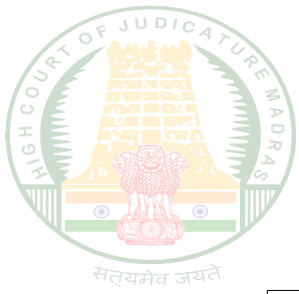
APPENDIX

I. Witnesses:

On the side of the Plaintiff	
PW1	Tmt.Rekha
PW2	Mr.M.Senthil Kumar
On the side of the Defendant	
DW1	Mr.S.R.Balaji
DW2	Ms.S.Meenakshi

II. Exhibits:

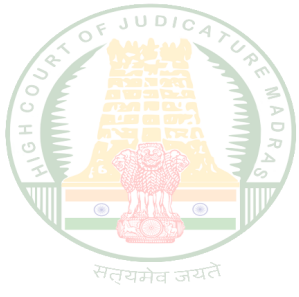
S. No.	Exhibits	Description of Documents
1.	P1	The certified copy of the sale deed registered as Document No. 811 of 1990 dated 24.01.1990.
2.	P2	The certified copy of the sale deed registered as Document No. 3213 of 1990 dated 17.08.1990.
3.	P3	the original Will dated 17.06.2009 executed by Mrs.Selvakumari in favour of the plaintiff.
4.	P4	the computer generated death certificate of K.Ramalingam dated 22.11.2016.
5.	P5	the computer generated death certificate of R.Selvakumari dated 22.11.2016.
6.	P6	the certified copy of the legal heir certificate of Selvakumari dated 23.02.2012.
7.	P7	The 1st attesting witness's signature in Ex.P3, Will is mine.
8.	D1	The photocopy of the Power of Attorney dated 24.07.2009 executed by R.Selva Kumari in favour of



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S. No.	Exhibits	Description of Documents
		Rekha Senthil Kumar
9.	D2	the certified copy of the sale deed dated 17.08.1990 for item No.1 of the schedule properties.
10.	D3	the certified copy of the sale deed dated 24.01.1990 for item No. 2 of the schedule properties.
11.	D4	the certified copy of the sale deed dated 06.05.1987 for item No.3 of the schedule properties.
12.	D5	the original legal heir certificate of Mrs.R.Selvakumari dated 23.02.2012.
13.	D6	the computer generated copy of the death certificate of Mrs.R.Selvakumari died on 16.01.2012.
14.	D7	the certified copy of the settlement deed executed in favour of S.R.Balaji registered as Doc. No. 868 / 2014 dated 20.01.2014.
15.	D8	the original order passed by the Managing Director of the Salem District Co-operative Milk Producers dated 11.02.1992.
16.	D9	the original MRI scan report of Mrs.R.Selvakumari given by Madras Medical Mission dated 27.03.2008.
17.	D10	(Series) (3 Nos) are the discharge summary of R.Selvakumari given by Madras Medical Mission.

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Dr. R.N.MANJULA, J.

Maya

T.O.S. No. 7 of 2018 & C.S. No. 766 of 2014

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