



WEB COPY

TOS No. 94 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.10.2025
Pronounced on	05.01.2026

CORAM

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

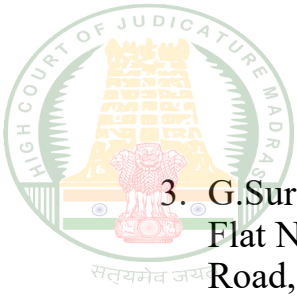
TOS No. 94 of 2013

1. Y.RENGANATHAN (Deceased)
Sudha Nivas, Old No.7a, New No.11, Jeeva
Rathinam Nagar, Adyar, Chennai - 600 020.
2. Shri.G.V.Bashyam
S/o.Sri.G.Ramachandran and Mrs.Padmavathy,
No.2, Kasichetty Lane,
George Town, Chennai - 600 042.
3. Sandhya Sailesh
W/o.A.N.Sailesh,
No.932 C, Poonamallee High Road,
Flowers Road, Chennai - 600 084.
(Plaintiffs 2 and 3 brought on record as per order
of this Court dated 14.12.2022 in A.No.5395 of
2022 in TOS.94 of 2013)

..Plaintiffs

Vs

1. V.Meera
No.52, III Main Road, Vijaya Nagar, Velacherry,
Chennai - 600 042.
2. JOTHI
No.12-B, Ramalinga Nagar, K.K.Pudur,
Coimbatore – 38.



3. G.Sureka

Flat No.16, Jayanag's Complex, No.11, Circular
Road, Kodambakkam, Chennai - 600 024

WEB COPY

..Defendants

PRAYER : Plaintiff filed under Sections 232 and 276 of Indian Succession Act, 1925, seeking Letters of Administration with the Will annexed may be granted to the plaintiffs as the beneficiary of the said deceased having effect throughout the State of Tamil Nadu and whole of Union of India to the properties mentioned in the affidavit of assets.

(Amendment carried out as per orders of this Court dated 11.01.2023 in A.No.209 of 2023 in TOS.No.94 of 2013)

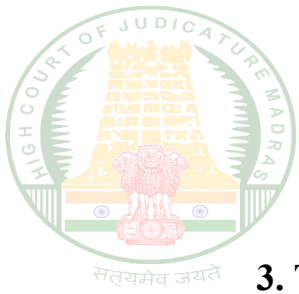
For Plaintiff(s): Mr.Srikrishna Bhagawat for
Mr.P.Subba Reddy

For Defendant(s): Mr. Siddharth Bahety

JUDGMENT

This Testamentary Original Suit has been filed seeking Letters of Administration with the Will annexed may be granted to the plaintiffs as the beneficiary under the Will of the deceased Mrs.B.Chengalvalli Thayaramma having effect throughout the State of Tamil Nadu and whole of Union of India to the properties mentioned in the affidavit of assets.

2. The Original Petition filed by the petitioner has been converted into Testamentary Original Suit in view of the caveat filed by the respondents who have been stated as defendants in the suit. The defendants in the suit are grand daughters of the testatrix.



WEB COPY

3. The short facts pleaded in the plaint are as follows:

The Will dated 01.05.1971 is the last Will and Testament of late B.Chengalvalli Thayaramma who died on 04.09.1973. The deceased plaintiff was the grand son-in-law of the testatrix and husband of the first respondent in the Original Petition and he was the executor of the Will. As per the Will dated 01.05.1971, the immovable properties mentioned in the Will were being enjoyed by the respective parties. Mrs.Padmavathy was the only daughter of the testatrix B.Chengalvalli Thayaramma. The son of B.Chengalvalli Thayaramma by name B.E.Sampath died on 06.04.1968 without any issues. Mrs.B.Andal Ammal, wife of B.E.Sampath also died on 26.02.1971. So, the entire estate of B.Chengalvalli Thayaramma fell into the hands of the daughter Padmavathy. Mr.Ramachandran, husband of Padmavathy died in the year 1990. In the year 2006, Padmavathy also died. The respondents in the Original Petition are the son and daughters of the deceased Padmavathy.

3.1. Though the Will has been executed on 01.05.1971, it was not probated due to the reason that the Will has been acted upon and the benefits of the Will has also been enjoyed by all the parties concerned. Hence, no necessity arose. All the movable properties like jewellery, shares and bank deposits of the testatrix mentioned in the Will are in the custody of the respondents 2, 3, 4 and



5 in the Original Petition. The executor of the Will and his wife were not aware of the distribution of jewellery and other movables mentioned in the Will.

WEB COPY

Hence, the Original Petition has been filed to discharge the duties caused by the testatrix in the Will. The immovable properties mentioned in the Will were already been enjoyed by the beneficiaries. The sale has been effected only for the property in Badrain Street to meet the liabilities. Several efforts have been made to probate the Will with the consent of all the members. As the movable properties are in the hands of the respondents 2,3,4 and 5, a Petition has been filed for seeking probate of the Will dated 01.05.1971. Later, the prayer has been amended for seeking Letters of Administration with the Will dated 01.05.1971 in favour of the plaintiffs.

4. The averments made in the written statement of the first and second defendants are in brief:

The testatrix had never executed any Will whatsoever much less the alleged fabricated Will dated 01.05.1971. She never put her thumb impression on any document on 01.05.1971. The testatrix was 82 years old and she was not in a good condition and also not in a sound disposing state of mind. The alleged Will does not bear the date and place of execution and therefore, it is invalid and void. The alleged Will does not contain the signature of the alleged attesting witnesses. The Will has come into effect in respect of the properties

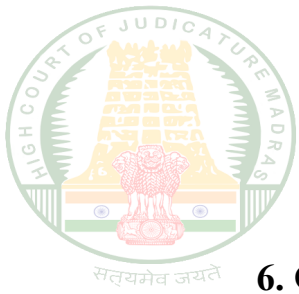


enjoyed by the first and fourth respondents of the Original Petition and they have the custody of the original deeds, title, documents and collecting and enjoying rents from the properties.

WEB COPY

5. The averments made in the written statement of the third defendant are as follows:

After the demise of Padmavathy who was the daughter of the testatrix, the third defendant along with her siblings had inherited and succeeded all the properties of Late.Padmavathy as heirs and legal representatives. The third defendant denied the existence of any Will as alleged in the plaint. On 01.05.1971, the testatrix was not in a good health and in a sound disposing state of mind to execute the Will. The testatrix was never in the habit of putting thumb impression and she used to sign her name, that too, in Telugu. The Suit has been filed after a lapse of 40 years, after the demise of the testatrix. There is absolutely no satisfactory explanation or otherwise given for the abnormal lapse and delay. This indicates the fraudulent intention of the plaintiffs. The Will does not bear any date and place of execution. It does not contain the signature of the alleged attesting witness. No schedule or description of the survey numbers, boundaries etc has been given in the Will. That would also show that the Will has been fabricated and created as an after thought. Hence, this suit is liable to be dismissed.



WEB COPY

6. On the basis of the above pleadings, the following issues are re-framed for consideration:

“i) Whether the Will dated 01.05.1971 alleged to have been executed by B.Chengalvalli Thayaramma is true, genuine and valid?

ii) Whether the plaintiffs are entitled for the grant of Letters of Administration for the Will dated 01.05.1971 or to what relief, if any?”

7. Heard the learned counsels appearing for both sides.

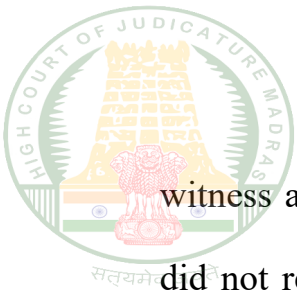
8. The Will dated 01.05.1971 has been executed by the testatrix in Telugu language and marked as Ex.P1. The deceased first plaintiff claimed that he has been appointed as an executor of the Will. Though the Will has been executed on 01.05.1971 and the testatrix also died in the year 1973, no petition has been filed immediately for seeking probate of the Will. The second plaintiff is the grandson of the testatrix through her daughter. The third plaintiff is the biological daughter of the first defendant who was given on adoption to the executor Y.Ranganathan and his wife Sudhamani.

9. The properties belonged to the testatrix has been bequeathed to the plaintiffs. The defendants had denied the very execution of the Will and also the



alleged adoption of the first plaintiff. One of the attesting witnesses who was examined as P.W.2 has stated in his evidence that he did not attest the Will. As per Section 68 of the Evidence Act, the Will is required to be attested and has to be proved by examining one of the attesting witnesses. It shall not be used as evidence until one attesting witness has been called and examined for the purpose of proving its execution and genuineness. This is possible only when one of the attesting witnesses is alive and he is capable of coming to the Court for giving evidence.

10. In the instant case, the attesting witness who has been examined as P.W.2 has not given any concrete evidence as to his role of attestation. It is claimed by the plaintiffs in the affidavit filed along with the Original Petition that the attesting witness has affixed his signature on the Will. In the evidence of the attesting witness, he has not supported the plaintiffs for the reasons best known to him. When the affidavit of the attesting witness filed in the year 2008 was shown to P.W.2, he has stated that his signature was there, but there was a correction and that was not initialled by him and there was no date in the affidavit and he further stated that he has signed in a blank paper and given it to an Advocate by name Ramesh Kumar and that could have been misused to create the subject Will. When the Will was shown to the attesting witness and a specific question was asked to him whether he stood as the second attesting



witness and affixed his signature, he denied and stated in his evidence that he did not remember signing a document in any other language other than tamil.

WEB COPY

But the subject Will has been marked as Ex.P1 is in Telugu and this has been stated by P.W.1 in her evidence.

11. When the evidence of the attesting witness fails, the Court can compare the signature of the testatrix with her admitted signatures. As such, no admitted documents are available for comparison. It is further claimed that if the attesting witness denies his signature and makes it impossible for the plaintiffs to comply Section 68 of the Evidence Act, he can prove the Will like proving any other document in accordance with Section 71 of the Evidence Act.

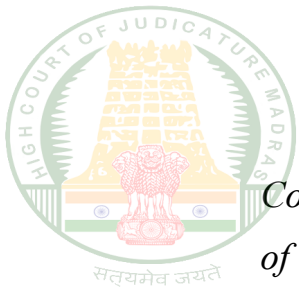
12. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court in the case of ***Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, reported in (2003) 2 SCC 91***. In the said case, it is held that if an attesting witness denies or does not recollect execution of the document, its execution may be proved by other evidence. For a better clarity, the relevant paragraph of the above judgment is extracted as under:

“11. Section 71 of the Evidence Act is in the nature of a safeguard to the mandatory provisions of Section 68 of the Evidence Act, to meet a situation where it is not possible to prove the execution of the will by calling attesting witnesses,



WEB COPY

though alive. This Section provides that if an attesting witness denies or does not recollect the execution of the will, its execution may be proved by other evidence. Aid of [Section 71](#) can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence. [Section 71](#) has no application to a case where one attesting witness, who alone had been summoned, has failed to prove the execution of the will and other attesting witnesses though are available to prove the execution of the same, for the reasons best known, have not been summoned before the court. It is clear from the language of [Section 71](#) that if an attesting witness denies or does not recollect execution of the document, its execution may be proved by other evidence. However, in a case where an attesting witness examined fails to prove the due execution of will as required under clause (c) of [Section 63](#) of the Succession Act, it cannot be said that the Will is proved as per [Section 68](#) of the Evidence Act. It cannot be said that if one attesting witness denies or does not recollect the execution of the document, the execution of will can be proved by other evidence dispensing with the evidence of other attesting witnesses though available to be examined to prove the execution of the will. Yet, another reason as to why other available attesting witnesses should be called when the one attesting witness examined fails to prove due execution of the Will is to avert the claim of drawing adverse inference under [Section 114](#) illustration (g) of [Evidence Act](#). Placing the best possible evidence, in the given circumstances, before the



WEB COPY

Court for consideration, is one of the cardinal principles of Indian Evidence Act. Section 71 is permissive and an enabling Section permitting a party to lead other evidence in certain circumstances. But Section 68 is not merely an enabling Section. It lays down the necessary requirements, which the Court has to observe before holding that a document is proved. Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but driven to a state of helplessness and impossibility cannot be let down without any other means of proving due execution by "other evidence" as well. At the same time Section 71 cannot be read so as to absolve a party of his obligation under Section 68 read with Section 63 of the Act and liberally allow him, at his will or choice to make available or not a necessary witness otherwise available and amenable to the jurisdiction of the court concerned and confer a premium upon his omission or lapse, to enable him to give a go bye to the mandate of law relating to proof of execution of a will."

13. But, on the side of the plaintiffs, the other attesting witness of the Will has not been examined. It is not even known from the evidence of P.W.1 whether the other attesting witness is available and whether any steps have been taken to examine the other attesting witness. The Hon'ble Supreme Court in the case of **Janki Narayan Bhoir**, has made it clear that the advantage of the plaintiffs taking recourse to the mode of proof of the Will under Section 71 of the Evidence Act will arise only after the plaintiffs had discharged their duty to



examine either of the attesting witnesses, in case one attesting witnesses is not available or denies the execution. Hence, the plaintiffs cannot make use of the enabling provision under Section 71 and claim that the execution of the Will has been proved through the other evidence.

14. As the plaintiffs have not chosen to summon the other attesting witness and offer any explanation as to why they are not able to examine the other attesting witness, they cannot be permitted to make use of Section 71 of the Evidence Act. So, the proper course open to the plaintiffs is to comply Section 78 of the Evidence Act as it is a statutory mandate. Without complying the statutory requirements contemplated under Section 78 of the Evidence Act and by calling upon to examine P.W.2 alone, it cannot be concluded by the plaintiffs that they had complied the essential mandates of Section 68 of the Evidence Act.

15. It is submitted by the learned counsel for the plaintiffs that in the event of the attesting witness becomes hostile, the plaintiffs have a liberty to give additional evidence. The said position will also not arise, in view of the failure of the plaintiffs to examine the other attesting witness. When the statute compels and places an obligation on a person to prove certain documents in a certain manner and made it explicit under Section 68 of the Evidence Act, the



said obligation cannot be diluted or given away. In the instant case, P.W.1 is the third plaintiff who is the daughter of the first plaintiff. The first plaintiff is said to have been appointed as an executor of the Will who is the grand son-in-law of the testatrix.

16. The defendants categorically deny the status of P.W.1. as the daughter or the legal heir of the deceased first plaintiff and the first respondent in the Original Petition. Even P.W.1 has stated in her evidence that she is not a biological daughter of the first plaintiff and her biological mother is the second grand daughter of the testatrix born through her only daughter Padmavathy. In fact, both Sudhamani and Meera along with the other two daughters and one son are the children of Padmavathy. Padmavathy died in the year 2006. The other son of the testatrix by name B.E.Sampath also predeceased the testatrix without any issues. The testatrix also died in the year 1973 as it is evidenced from Ex.P2 death certificate. But P.W.1 who is the third plaintiff has claimed that she is the adopted daughter of the deceased first plaintiff and the first respondent in the Original Petition.

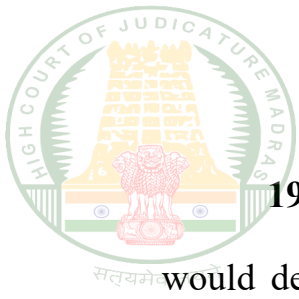
17. The factum of adoption is also not proved before the Court. However, such proof of fact would not arise, as the issue involved in this suit is only to prove the genuineness and validity of Ex.P1 Will. The first plaintiff who is said



to be the executor of the Will, had died during the pendency of the proceedings.

Despite the executor was alive till the lifetime of Padmavathy, he did not choose to probate the Will until this proceedings has been filed in the year 2013. The third plaintiff who has been examined as P.W.1 has stated in her evidence that the necessity to probate the Will did not arise, because the Will has come into effect and that the beneficiaries have been enjoying the property in accordance with the deposition made in the Will.

18. Had it been the case, the defendants 1 to 3 who are all the grand daughters of the deceased testatrix and the daughters of the deceased Padmavathy would not have objected the very execution of the Will. It is the claim of the plaintiffs that Padmavathy had admitted the execution of the Will during her evidence given in the earlier Civil Suit. But, the said fact was also not proved by the plaintiffs by producing the evidence and contradicting it with D.W.1. Whatever may be the case, the mother of the defendants *viz.*, Padmavathy is not one of the attesting witness of the Will and hence, the statement of Padmavathy cannot be of any relevance to the issue involved in this Testamentary Original Suit, unless she proved to be one of the attesting witnesses to the Will.

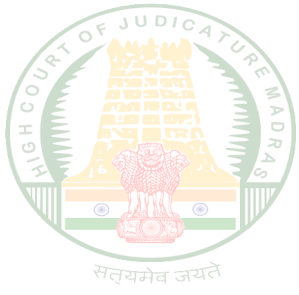


19. In the absence of the Will being proved, the property of the testatrix would devolve upon her legal heirs in accordance with the rules of intestate succession. Since the defendants and other two persons are the children of the deceased testatrix, they have stated that they are entitled to the suit property only in accordance with the intestate succession and there is no Will. From the evidence of P.W.1 and from the recitals of Ex.P1 Will, the plaintiffs 2 and 3 are the beneficiaries of the properties of the deceased testatrix. The executor of the Will who is claimed to be the adopted father of the third plaintiff did not choose to probate the Will until the life time of one and only daughter of the testatrix. So, apart from the failure to prove the Will in accordance with Section 68 of the Evidence Act, there are also some suspicious circumstances surrounding the Will. In such circumstances, the burden to prove the execution and genuineness of the Will would be more onerous and unless the said duty is properly executed, the plaintiffs cannot be held to be entitled to get a decree as prayed for. Thus, the issues are answered against the plaintiffs.

20. In the result, this Testamentary Original Suit is **dismissed**. No costs.

05-01-2026

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



TOS No. 94 of 2



DR.R.N.MANJULA, J.

WEB COPY

GSK

To

1. V.Meera
No.52, Iii Main Road, Vijaya Nagar, Velacherry,
Chennai - 600 042
2. JOTHI
No.12-b, Ramalinga Nagar, K.K.Pudur,
Coimbatore - 38
3. G.Sureka
Flat No.16, Jayanag S Complex, No.11, Circular
Road, Kodambakkam,
Chennai - 600 024.

TOS No. 94 of 2013

05-01-2026