

A.S.No.180 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 20.06.2025

Pronounced on: 04.07.2025

Coram:

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Appeal Suit No.180 of 2022  
& C.M.P.No.6571 of 2022

1. Alamelu,  
Widow of Venkataraja Konar.

2. R.Madhavan,  
S/o.Ramasamy Konar.

Both are residing at  
Konar Rice Mills,  
Sarkar Valappady Village and Post,  
Valappady Taluk,  
Salem District.

... Appellants/Plaintiffs

**/versus/**

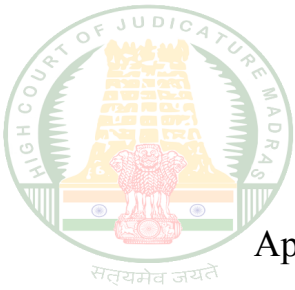
Chinnaraja Konar (Died)

Shanmugasundaram (Died)

Rajamanickam Ammal (Died)  
D/o.Ramasamy Konar.

1. K.Selvi,  
Widow of Shanmugasundaram,  
Thiruinyadam Village, (via) Jolarpet,  
Thirupathur Taluk,  
Vellore District.

...Respondents/Defendants



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Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleased to set aside the judgment and decree dated 07.01.2022 passed by the Learned III Additional District Judge, Salem in O.S.No.102 of 2004.

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.V.Raghavachari, Senior Counsel,  
Assisted by Mr.N.Umapathy,  
for Mr.D.M.Senthil Kumar.

### **J U D G M E N T**

The suit has been filed for partition and separate possession of the properties belonging to the deceased Venkataraja Konar, based on a will purportedly executed by him on 06.09.1998 in favour of the plaintiffs. Venkataraja Konar died on 02.10.1998. The plaintiffs are sister and brother.

2. According to the plaintiffs, the first plaintiff married Venkataraja Konar on 22.08.1991 as per the customs of their caste, in the presence of relatives, at the Rice Mill premises owned by Venkataraja Konar. The said rice mill premises was the matrimonial home of the deceased and the first plaintiff. The second plaintiff, being the brother of the first plaintiff, was residing with his sister and was taking care of Venkataraja Konar during his last days. It is the case of the plaintiffs

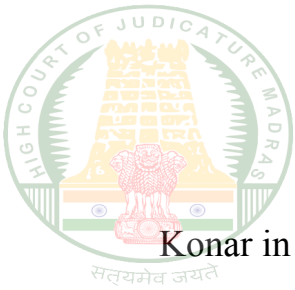


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that out of love and affection, Venkataraja Konar bequeathed his properties to his wife (1<sup>st</sup> plaintiff) and her brother (2<sup>nd</sup> plaintiff) under the Will dated 06.09.1998.

Venkataraja Konar died on 02.10.1998 at CMC Hospital, Vellore. His body was brought to the Rice Mill premises for homage. The first plaintiff, as his wife, conducted the last rites of Venkataraj Konar. A few days later, the defendants, with the intention to deprive the plaintiffs of their lawful right in the property of Venkataraja Konar, issued a public notice denying the marital relationship of the first plaintiff with the deceased Venkataraja Konar. They started propagating that Venkataraja Konar died a bachelor. Hence, the plaintiffs were constrained to file the present suit for partition.

3. The defendants contested the suit on the ground that the first plaintiff, Alamelu, is not the wife of Venkataraja Konar. The first plaintiff and her brother, who is the second plaintiff, were engaged by Vekataraja Konar to assist in running the Rice Mill. They were permitted to stay in the mill premises for that purpose. Venkataraja Konar never stayed in the Mill premises nor lived with the first plaintiff as her husband. The alleged marriage of Venkataraja Konar with Alamelu (first plaintiff) is denied. The Will purportedly executed by Venkataraja



Konar in favour of the plaintiffs is also denied as false and fabricated.

WEB COPY The relief sought in the suit :-

*a) directing the division of the suit properties into 18 equal shares and allotment of 9 such divided shares to the plaintiffs together;*

*b) appointing a Commissioner for division of the suit properties as per the preliminary decree;*

*c) allotting one such divided share to the plaintiffs together and placing them in separate possession of such allotted share to the plaintiffs;*

*d) awarding costs of the suit payable by the defendants to the plaintiffs;*

**4. The cause of action disclosed in the plaint is:-**

*“Cause of action for the suit arose on 22.8.1991 the date of marriage between the first plaintiff and Venkatarajakonar, 16.09.1998 the date of the Will, 02.10.1998 the date of death of Venkatarajakonar. 16.10.1998, the date of paper publication in Dhinathanthi, 05.11.1998, the date of reply and on other*



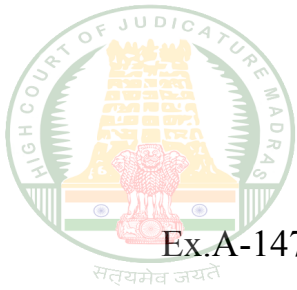
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*dates at Vazahappady Village, Vazhappady Taluk and Thukkaiyampalayam Village, Valapady Taluk were the suit properties are situate and within the Jurisdiction of this Honourable Court.”*

**5. The issues framed based on the pleadings are:-**

1. Whether it is true to state that the plaintiff No.1 was married the Venkataraja Konar.
2. Whether the Will dated 16.09.1998 is true and genuine?
3. Whether the plaintiffs are entitle to 9/18 share in the suit properties?
4. Whether the plaintiffs are entitle to get a relief of partition as prayed for?
5. What are the other reliefs available to the plaintiffs?
6. On behalf of the plaintiffs, 7 witnesses and Ex.A-1 to Ex.A-151 marked. On the side of the defendants, 3 witnesses and Ex.B-1 to Ex.B-23 marked.
7. Considering the evidence, the trial Court held that the marriage between Vekataraja Konar and Alamelu in the year 1991 was not proved. The Will



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Ex.A-147 alleged to have been executed by Vekataraja Konar on 06.09.1998, by

affixing his Left Thumb Impression was also held to be not genuine.

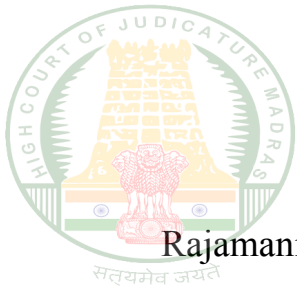
8. Aggrieved by the judgment and decree of the trial Court, dismissing the suit in O.S.No.102 of 2004, the plaintiffs have filed the First Appeal.

**Point for determination:-**

(i) Whether the evidence of P.W-3 to P.W-7 for plaintiffs satisfies and sufficient to prove long cohabitation of Venkataraja Konar and Alamelu (first plaintiff), as husband and wife?

(ii) Whether Ex.A-147 Will is surrounded with suspicion and not been duly proved?

9. In this case, before proceeding with the analysis of the evidence on the disputed facts, it is appropriate to record the facts that are not in dispute. Ramasamy Konar had three sons and three daughters. Vekataraja Konar through whom the plaintiffs claim rights in the suit properties, was one among the three sons of Ramasamy Konar. The other two sons are Chinnaraja Konar (first defendant) and Shanmugasundaram (second defendant). One of the daughters,



Rajamanikammal died as a spinster. The other two daughters, Meenakshi and Seethaalakshmi, were both married to the same person by name Perumal Konar.

The said Perumal Konar was none other than the brother of Nallammal, who is the wife of Ramasamy Konar. Perumal Konar, had no issues and in respect of his properties, he executed a Will dated 14.04.1980 and died on 16.03.1981. The said Will of Perumal Konar got probated in O.P.No.73 of 1982. Under this Will, Perumal Konar bequeathed his properties equally to the three sons of Ramasamy Konar i.e., Vekataraja Konar, Chinnaraja Konar and Shanmugasundaram konar. The present suit is in respect of the 1/3<sup>rd</sup> share which Venkataraja Konar inherited under the Will of his maternal uncle, Perumal Konar, as well as his self acquired properties, which include the Rice Mill at Valapadi.

**10.** The controversy is in respect of the claim made by the plaintiffs that the first plaintiff Alamelu, who had initially come to the house of Perumal Konar at Valapadi to take care of him and his wife, was residing with them there. During this period, Vekataraja Konar, who was staying with his sister Nallammal and brother in law Perumal Konar, is said to have developed intimacy with the first plaintiff. Later, she moved to the Rice Mill premises and allegedly began living



with Vekataraja Konar as his wife. After few years, it is claimed that their marriage

was formally solemnised on 22.08.1991. The second plaintiff, who came to Valapadi to assist his sister, also settled in the rice mill premises with his family and was taking care of Venkataraja Konar. It is further stated that Venkataraja Konar fell ill and was initially treated at Dr.Krishna Chetty Hospital, Salem for a week from 17.09.1998 to 25.09.1998. On the instruction of Venkataraja Konar, the Will Ex.A.147 was prepared on 06.09.1998. Subsequently, Venkataraja Konar was admitted as an inpatient in the C.M.C hospital at Vellore. The plaintiffs claim that they were with Venkataraja Konar during his hospitalisation till his death on 02.10.1998. As a wife, the first plaintiff conducted the last rites of Venkataraja Konar.

**11.** The relationship of husband and wife, between Vekataraja Konar and Alamelu was never accepted by the defendants, who are the class II heirs of Venkataraja Konar. The will purportedly executed by Venkaraja Konar is alleged to be forged and invalid having been obtained without the consent or knowledge of Venkataraja Konar while he was not in fit state of mind and health. After the demise of the two brothers (Chinnaraj Konar and Shanmugasundaram) and the sole





sister (Rajamanikammal). The sole surviving class II heir of Venkataraj Konar is

the 4<sup>th</sup> defendant, Selvi W/o late Shanmugasundaram, who is contesting the case.

**12.** The oral evidence of the plaintiffs' witnesses, PW-3 to PW-7 who are all residents of Valapadi village, but not from the same community, relied by the plaintiffs to prove the marriage of first plaintiff with the deceased Venkaraja Konar on 22.08.1991 at Konar Rice Mill, Valapadi. However, the trial court disbelieved their evidence because they were not able to recollect the name of the priest, who solemnised the marriage. Further, no evidence was produced to show that the marriage was solemnised by performing saptapathi or tying of the thali, which are necessary and mandatory ceremonies under Hindu law for a valid marriage. Further, the trial court also observed that the first plaintiff claimed she was treated like a daughter by Perumal Konar and his wife. If so, Venkataraja Konar, being the brother in law of Perumal Konar would fall within prohibited relationship. Hence, the plea of the first plaintiff that she got married to Venkataraja Konar is unacceptable.

**13.** The Learned Counsel for the appellants/plaintiffs contended that



the trial Court erred patently by holding Venkataraja Konar and Alemelu fell within the prohibited relation. No doubt, she was brought up by Perumal Konar and his wife Nallammal as their own daughter, but that will not bring her and Venkataraja Konar under prohibited relation.

**14.** The Learned Counsel for the appellant submits that, Alamelu was in the house of Perumal Konar and his wife Nallammal and assisting them in their needs. Hence, she was treated like a daughter. Treating a person as son or daughter will not make the relationship legally equivalent. Hence, disbelieving the marriage on this ground was erroneous. Further, he contended that the Courts have consistently held that long cohabitation between two persons as husband and wife is sufficient to presume that they are married. Marriage has to be presumed from their conduct and need not be strictly proved as a fact, especially when the events occurred several years ago.

**15.** In support of his submissions, the Learned Counsel for the appellants rely upon the following judgments:-



1. *Tulsa and others vs. Durghatiya and others reported in (2008) 4*

*SCC 520.*

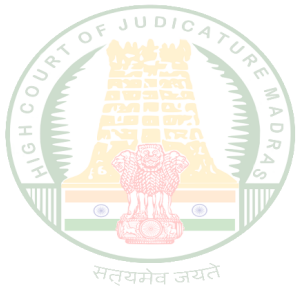
2. *M.Yogendra and others vs. Leelamma N. & ors reported in 2009*

*(15) SCC 184.*

3. *Madan Mohan Singh and others v. Rajni kant and another*

*reported in AIR 2010 Supreme Court 2933.*

16. Per contra, the Learned Senior Counsel for the respondents submitted that the status of the first plaintiff was denied from the very beginning, immediately following the demise of Venkataraja Konar. The paper publication marked as Ex.A-1 dated 16.10.1998, the notice Ex.A-7 dated 09.11.1998 and the reply Ex.A-8 dated 11.11.1998 and the subsequent events clearly establish that the first plaintiff was never recognised as the wife of Venkataraja Konar by any of his family members or his relatives. In such facts and circumstances, the plaintiffs ought to have prayed for declaration of her status as the wife of Venkataraja Konar. Without declaration of her status, the suit filed for partition based solely on oral evidence is ill-conceived. Further, the content of the disputed and doubtful Will (Ex.P-147) cannot serve as proof of the marriage or relationship of first plaintiff with Venkataraja Konar, particularly when the Will itself a fabricated document.



17. In support of his arguments, the following judgments are relied by

WEB COPY the respondents:-

1. *Bhaurao Shankar Lokhande vs. State of Maharashtra* reported in *AIR 1965 SC 1564*.
2. *Dolly Rani vs. Manish Kumar Chanchal* reported in *(2025) 2 SCC 587*.
3. *Leela and others vs. Muruganatham and others* reported in *(2025) 4 SCC 289*.

18. The trial Court, after examining Ex.B-21, Ex.B-22 and Ex.B-23 had categorically held that the stamp papers upon which the Will Ex.A-147 was written not sold either to Venkataraja Chettiar or by the vendor whose name found in it. The stamp paper numbers found on the stamp paper does not co-relates with the face value of the stamp or the vendor's name raising suspicion. The Will was not proved through the attesting witnesses in the manner known to law. The fact that the Will bears only a left thumb impression (LTI), despite the executant being capable of signing and the circumstances surrounding its execution being suspicious, led the trial Court to conclude that Ex.A-147 is not genuine.

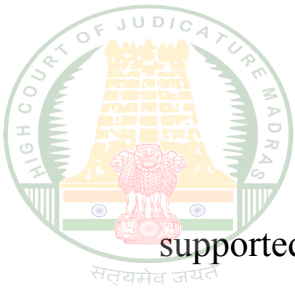


**19.** The Learned Senior Counsel for the respondent submitted that out

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of three attesting witnesses, even if two of them reported dead, the plaintiffs ought to have summoned the third witness to satisfy statutory requirement under Section 68 of the Indian Evidence Act and the scribe of the document. However, for reasons best known, in this case though one of the attesting witness is alive, the plaintiffs have not taken any genuine efforts to summon his appearance.

**20.** As per the Will of Venkataraja Konar Ex A-147, his 1/3<sup>rd</sup> share in the properties inherited from his uncle Perumal Konar along with all other properties which he acquired during his life time, was bequeathed to the plaintiffs. The plaintiffs are residing in the mill premises, which is one of the properties covered under the Will. In fact, a few days prior to the Will, Venkataraja Konar had executed sale deeds along with his brothers, who were co-sharers in the properties. In those sale deeds, Venkataraja Konar had affixed his signatures. Those sale deeds are marked as Ex.B-13 to Ex.B-16 dated 04.09.1998 and 09.09.1998. However, in Ex.A-147 dated 06.09.1998 only the left thumb impression (LTI) of Venkataraja Konar appears. The reason given by the plaintiffs for Venkataraja Konar to affix his thumb impression instead of his signature is not



supported with medical records, which says Venkataraja Konar was suffering swelling of his leg. There is no evidence to show that he was incapacitated from signing due to his illness at the relevant time.

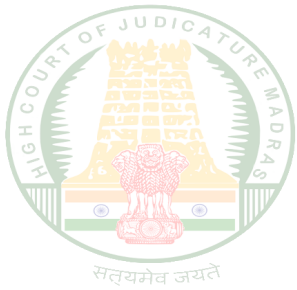
**21. Presumption of relationship in case of long cohabitation of a man and woman:**

(i) In *Tulsa and others cited supra*, the Hon'ble Supreme Court has held that:-

*“12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e. Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy [AIR 1927 PC 185] Their Lordships of the Privy Council laid down the general proposition that : (AIR p. 187)*

*“... where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.”*

*13. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan [(1928-29) 56 IA 201 : AIR 1929 PC 135] Their Lordships of*



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*the Privy Council once again laid down that : (AIR p. 138)*

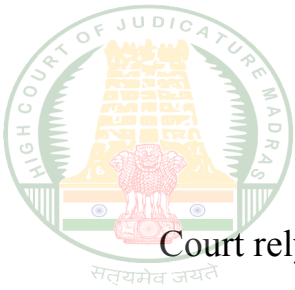
*“The law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years.”*

*14. It was held that such a presumption could be drawn under Section 114 of the Evidence Act.*

*15. Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. (See Badri Prasad v. Dy. Director of Consolidation [(1978) 3 SCC 527 : AIR 1978 SC 1557] .*

*16. This Court in Gokal Chand v.Parvin Kumari [(1952) 1 SCC 713 : AIR 1952 SC 231] observed that continuous cohabitation of (sic man and) woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them.”*

(ii) In **Madan Mohan Singh** case cited *supra*, the Hon’ble Supreme



Court relying on its earlier judgments observed as :-

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*“24. The Courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide Mohabbat Ali Khan v. Mohd. Ibrahim Khan [(1928-29) 56 IA 201: AIR 1929 PC 135], Gokal Chand v. Parvin Kumari [(1952) 1 SCC 713: AIR 1952 SC 231], S.P.S. Balasubramanyam v. Suruttayan [(1994) 1 SCC 460], Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni [(1996) 7 SCC 681] and Sobha Hymavathi Devi v. Setti Gangadhara Swamy [(2005) 2 SCC 244].”*

**22.** The Hon'ble Supreme Court of India has, on various occasions, consistently reminded that, law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such a presumption can be rebutted by leading unimpeachable evidence. The case of the plaintiff is not long cohabitation but a valid and formal solemnisation of marriage in the presence of relatives and friends. However, the witnesses for the plaintiffs admitted that there was no marriage invitation, no photographs and no registration of the alleged marriage. In case, there is no direct





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evidence of the solemnisation of marriage. Section 50 of the Evidence Act, permits

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parties can resort to prove the factum of marriage. In this case, P.W-3 to P.W-7 were examined for the purpose of proving the factum of marriage. Unfortunately, their evidence does not inspire confidence, since it was seriously impeached during cross-examination by highlighting material contradictions.

**23.** At the very least, the plaintiffs ought to have produced reliable evidence to prove long term cohabitation under one roof. The best evidence to show cohabitation under one roof is the family card, voter identification card or any other official documents indicating that Venkataraja Konar and Alamelu were living under one roof for a long time and presumable they are related as husband and wife. In this case, Plaintiffs have failed to produce any material evidence to prove that they were residing in the Konar Mill premises. The family card relied on by the plaintiffs reflects their native village and not the Rice Mill premises. There is no evidence to prove that Venkataraja Konar was also residing in the Rice Mill premises. In the absence of proof for living together under one roof, the presumption of a relationship as husband and wife cannot be drawn.



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24. In all the cases cited where the Courts have drawn a presumption in favour of marriage, we find that clinching evidence such as child's birth certificate, family card or any other official documents clearly showing that the man and woman lived together as husband and wife under one roof. In the instant case, for the marriage alleged to have been solemnised in the year 1991, no documentary evidence is available and the oral evidence has been found to be unreliable. Further, no evidence has been produced to prove joint living or cohabitation. The mere possession of the personal documents of the deceased person will not be sufficient to presume the martial relationship. As persons, who assisted Venkataraja Konar in his Rice Mill business, the plaintiffs have access to such documents, but these records nowhere near to the presumption of marital relationship.

25. As far as the Will Ex.A-147, in ***Leela and others*** (*cited supra*), the Hon'ble Supreme Court of India, had listed the circumstances which causes suspicion about the genuineness of a Will.

*“17. Now, we will refer to the suspicious circumstances pointed out by the courts below:*



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*(i) That the first appellant (DW 1) one of the beneficiaries and the mother of the other beneficiaries played active role in the execution of the will in question and concealed this fact before the Court;*

*(ii) Contradictory recitals on the health of the testator in the will and the evidence of DW 1 herself strengthening the same;*

*(iii) Non-matching of the signature of the testator in Ext. A-1, partition deed and Ext. B-2, will dated 6-4-1990;*

*(iv) Non-examination of the person who typed the will;*

*(v) Non-examination of the scribe;*

*(vi) Incongruity with respect to the place of execution of the will;”*

**26.** On testing the genuineness of the Will marked as Ex.A-147, it is admitted by the second plaintiff that he was present at the time of its execution. His active participation is apparently seen and admitted. He being the beneficiary under the Will, the suspicion grew against the propounder. The Will is not signed and the reason given for affixing the thumb impression is not impressive. It is true that a Will need not be registered, but in this case, the plaintiffs claim that the Will was written at the Sub Registrar office at Attur. Despite this, the Will was not registered and no satisfactory explanation is offered by the plaintiffs as to why



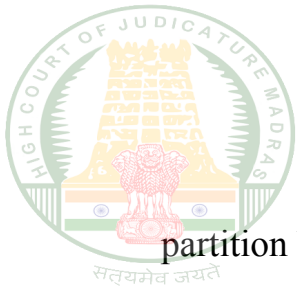
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Venkataraja Konar, a resident of Valapadi, would come to Attur, S.R.O to execute

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27. Above all, the Will includes properties that had already been sold by Venkataraja Konar prior to the alleged execution of the Will. Without excluding these properties, the omnibus will is written and no plausible reason for the erroneous inclusion. This leads strength to the suspicion that the Ex.A.147 Will prepared without the knowledge of Venkataraja Konar and his thumb impression is affixed on it.

28. The statement in the plaint and the cause of action shown in the plaint indicates that the plaintiffs case is primarily based on the Will Ex.A-147 and incidentally on the alleged marital relationship between the first plaintiff and Venkataraja Konar. However, the evidence on record does not prove the due execution of the Will. Therefore, the plaintiffs cannot sustain their suit for



partition based on the Will marked as Ex.A-147.

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**29.** The Learned Counsel for the appellants, as an alternate argument, submitted that if the Will (Ex.A.147) is not to be believed and relied, the first plaintiff alone will be entitled to a share in the property of Venkataraja Konar being his widow. He pursued the Court to mould the relief and grant a share in the suit properties not based on testamentary succession, but on the basis of intestate succession by presuming that Venkataraja Konar died intestate and the first plaintiff being the legally wedded wife of Venkataraja Konar, would be entitle to inherit the properties as Class I heir under Section 8 of the Hindu Succession Act.

**30.** In view of this Court, such relief cannot be granted for two reasons. First and primarily, the status of the first plaintiff as the wife of Venkataraja Konar was not specifically sought in the plaint by way of declaratory relief. Nonetheless, the trial Court framed an issue to that effect and given its finding. On appeal, this Court also has also considered this point and answered in negative. Having failed to prove the marital relationship with Venkataraja Konar, share in his properties through suit for partition as Class-I legal heir is not



sustainable.

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**31.** As a result, the *Appeal Suit No.180 of 2022 stands dismissed.*

The judgment and decree passed by the Learned III Additional District Judge, Salem in O.S.No.102 of 2004 is confirmed. There shall be no orders to costs. Consequently, connected Miscellaneous Petition is closed.

04.07.2025

Index :Yes.  
Neutral citation :Yes/No.  
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To,

1. The III Additional District Judge, Salem.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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VERDICTUM.IN



A.S.No.180 of 2022

**Dr.G.JAYACHANDRAN,J.**

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Pre-delivery judgment made in  
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