# S. Sangeetha vs Tmt. P. Ponni on 7 August, 2026

## Author: Sanjay Karol

## Bench: Sanjay Karol

2026 INSC 813 NON-REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) No. 26326 of 2024)

S. SANGEETHA & ORS. … APPELL

VERSUS

TMT. P. PONNI … RESPONDE

JUDGMENT

SANJAY KAROL, J.

Leave granted.

2. The present appeal is directed against the impugned judgment and order dated 21.08.2024 passed in OSA No. 31/2023 by the High Court of Judicature at Madras, which, in turn, was preferred against the order of the Single Judge dated 04.11.2022 in Application No. 4262 of 2022 in T.O.S. No. 12 of 2021. Reason:

> 3. The brief facts giving rise to the present lis are that on 17.10.2019, the plaintiff, being respondent herein, filed a suit bearing number O.P. No. 164 of 2020 [later converted to T.O.S. No. 12/2021] seeking probate of the will of one late C. Shyamalavalli before the High Court of Judicature at Madras. The suit remains pending as on date.
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> 4. The defendant being appellant herein filed a written statement in the aforesaid suit on 19.04.2021. Thereafter, on 10.08.2022, a proof affidavit came to be filed by the plaintiff. Aggrieved thereof, the appellant filed an application bearing number 4262 of 2022 praying to eschew the proof affidavit, averments and documents exhibited. It

was stated therein that certain documents and averments made therein are irrelevant to the present testamentary proceedings before the High Court.

5. The Single Judge of the High Court vide order dated 04.11.2022 dismissed the application of the defendant. It was observed:

a. Filing of lengthy proof affidavit cannot be faulted, as the defendant themselves filed a 16-page written statement for a 5-page petition. b. Marking of the will is different from proof of the same. It can be marked through the beneficiary of the will, who is PW-1 in the proceedings. c. Document numbers 5 – 9 cannot be marked as they are not original documents, but are xerox copies. In the absence of any explanation as to the non-availability of originals, these documents cannot be permitted to be marked.

d. All other documents can be received in evidence for showing title and deciding rival claims on the will.

6. Yet dissatisfied, the appellant preferred an appeal, which came to be numbered as Original Side Appeal No. 31 of 2023. Vide the impugned order dated 21.08.2024, the appeal of the appellant herein came to be dismissed. It was observed that:

a. Mere filing of an affidavit is not proof of statements that are found in the same. It does not dispense with the requirement of proof by relevant evidence.

b. Eschewing the contents of the affidavit in the peculiar facts, will cause serious prejudice to the respondents.

c. In testamentary proceedings, the plaintiff will have to prove the will to the satisfaction of the Court.

d. There is no bona fides in this litigation. It is a settled proposition that evidence, both oral and documentary, should not be shut down at the initial stage.

e. Appeal dismissed, with cost of Rs. 10,000 imposed due to the conduct of the appellants.

7. We have heard the learned counsel for the appellant and the learned senior counsel for the respondent.

8. For reference, Order XIII Rule 3 reads as under:

“3. Rejection of irrelevant or inadmissible documents.— The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”

9. We find no reason to interfere with the reasoning of the Courts below. The Single Judge has rightly eschewed the documents wherein xerox copies were filed in place of originals, without any explanation thereto. That apart, the objections raised to the other documents marked and exhibited are not such which make the documents prima facie inadmissible in law or irrelevant to the properties involved in the present suit. Consequently, exercise of power under Order XIII Rule 3 of the Civil Procedure Code, 1908 by this Court is not warranted in this case.

10. Moreover, in our view, the contentions raised and documents marked in the proof affidavit relating to pendency of other suits and transfer of properties relating to the very same family structure cannot be rejected at the threshold. We advert to the observations of a three-Judge Bench of this Court in Bipin Shantilal Panchal v. State of Gujarat1:

"13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this:

Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)" (emphasis supplied) (2001) 3 SCC 1.

11. It is also settled law that mere marking of a document as an exhibit, is not a proof of the contents thereof. A Division Bench of this Court in LIC v. Ram Pal Singh Bisen2 had observed:

> "25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.
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> 31. Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court." (emphasis supplied) [See also: Sait Tarajee Khimchand v. Yelamarti Satyam3, Narbada Devi Gupta v. Birendra Kumar Jaiswal4, Vijay v. Union of India and Ors.5]

12. Therefore, in the instant case, the contents of the documents which have been marked/exhibited will have to be proved in accordance with law. We find no reason to eschew them, at this stage.

13. In view of the above, the present appeal is dismissed. The impugned judgment and order dated 21.08.2024 passed in OSA No. 31/2023 by the High Court of Judicature at Madras is upheld.

(2010) 4 SCC 491.

(1972) 4 SCC 562.

(2003) 8 SCC 745.

(2023) 17 SCC 455.

14. Needless to add, the testamentary proceedings in T.O.S. No. 12 of 2021 to proceed uninfluenced of the observations made hereinabove. The stay of proceedings granted by this Court on 11.11.2024 stands vacated.

15. Pending application (s), if any, shall stand disposed of.

……J. (SANJAY KAROL) ……J. (NONGMEIKAPAM KOTISWAR SINGH) New Delhi August 07, 2026