



The Malabar Wills Act, 1898

Act 5 of 1898

Keyword(s):

Minor, Will, Codicil, Testamentary Powers

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¹[TAMIL NADU] ACT No. V OF 1898².

[THE MALABAR WILLS ACT, 1898.]

(Received the assent of the Governor on the 9th July 1898 ;
and of the Governor-General on the 3rd August 1898.)

An Act to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

Preamble.

Whereas doubts have arisen regarding the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance ; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. (1) This Act may be called the Malabar Wills Act, 1898.

Local extent.

(2) It extends to the whole of the ³[State of Tamil Nadu] ; and

¹ These words were substituted for the word "Madras" by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.

² For Statement of Objects and Reasons, see *Fort St. George Gazette Supplement*, dated the 24th November 1896, p. 2 ; for Report of the Select Committee, see *ibid.*, dated the 8th May 1898 ; for Proceedings in Council, see *ibid.*, dated the 12th January 1897, p. 23 ; *ibid.*, dated the 9th March 1897, p. 45 ; *ibid.*, dated the 1st February 1898, p. 13 ; *ibid.*, dated the 3rd May 1898, p. 34 ; and *ibid.*, dated the 12th July 1898, p. 3.

The Governor-General's assent to this Act was published in the *Fort St. George Gazette*, dated the 16th August 1898.

This Act was extended to the merged State of Pudukkottai by section 3 of, and the First Schedule to, the Tamil Nadu Merged States (Laws) Act, 1949 (Tamil Nadu Act XXXV of 1949).

³ This expression was substituted for the expression "Presidency of Madras" by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.

(3) It shall come into force on such date¹ as the Commence-
²[State Government] by notification shall appoint in ment.
 this behalf :

³[]

2. In this Act, unless there be something repugnant Interpretation.
 in the subject or context, --- clause.

(1) "minor" means any person who shall not "Minor."
 have completed the age of eighteen years :

(2) "will" means any legal declaration of the "Will".
 intentions of the testator with respect to his property
 which he desires to be carried into effect after his death :

(3) "codicil" means an instrument made in "Codicil".
 relation to a will and explaining, altering or adding
 to its dispositions. It is considered as forming an
 additional part of the will.

PART II.

OF WILLS.

3. This part shall apply to persons domiciled in the Persons to
⁴[State of Tamil Nadu] who are governed by the whom this
 Marumakkatayam or the Aliyasantana law of inheri- part shall
 tance. apply.

¹ The Act came into force on the 2nd September 1898, see *Fort St. George Gazette*, 1898, Pt. I, p. 818, Notification No. 421, 2nd September 1898.

² The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

³ The proviso was omitted by section 4 of, and the Third Schedule to, the Tamil Nadu Repealing and Amending Act, 1957 (Tamil Nadu Act XXV of 1957). In so far as this Act applies to the added territories, this proviso was omitted by section 4 of, and the Second Schedule to, the Tamil Nadu (Added Territories) Extension of Laws (No. 2) Act, 1961 (Tamil Nadu Act 39 of 1961).

⁴ This expression was substituted for the expression "Presidency of Madras" by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.

Persons
capable of
making wills.

4. Every person of sound mind and not a minor may by will dispose of property which he could legally alienate by gift *inter vivos* and shall be deemed to have been always competent so to dispose of such property.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause, that he does not know what he is doing.

Will obtained
by fraud,
coercion or
importunity.

5. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will may be
revoked, or
altered.

6. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Saving
clause.

7. Nothing contained in section 4 shall—

(a) affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction ;

(b) authorize a testator to deprive any persons of any right of maintenance of which, but for section 4, he could not deprive them by will ;

(c) affect any law of intestate succession or authorize any testator to create in property any interest, which he could not have created prior to this Act.

PART III.

OF THE EXECUTION, ATTESTATION, REVOCATION,
ALTERATION AND REVIVAL OF WILLS.

8. This part shall apply to persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, whether they are domiciled in the ¹[State of Tamil Nadu] or not. Persons to whom this Part shall apply.

9. All wills and codicils made on or after the date of the commencement of this Act within the ¹[State of Tamil Nadu], and all such wills and codicils made outside the ²[said State] so far as relate to immovable property situated within the ²[said State], must be executed according to the following rules :— Execution of wills and codicils.

1st.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

2nd.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

3rd.—The will shall be attested by two or more witnesses, each of whom must have seen the testator, sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

¹ This expression was substituted for the expression " Presidency of Madras " by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.

² These words were substituted for the words " said Presidency " by paragraph 4 of, and the Schedule to, *ibid.*

Incorporation of papers by reference.

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such documents shall be considered as forming a part of the will or codicil in which it is referred to.

Witness not disqualified by interest or by being executor.

11. No person, by reason of interest in, or of his being an executor of a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will or codicil.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Effect of obliteration, interlineation or alteration in a will.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will ; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revival of a will or codicil.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such

revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

15. No will or codicil made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this Part.

Execution
and revoca-
tion of will
or codicil
by soldiers
or mariners.