



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31-07-2026

DATE OF DECISION: 19-08-2026

CORAM

**THE HONOURABLE MR.JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

OSA No. 245 of 2021

1. Mrs.Rajeswari Sappany (Died)
2. Sappany Raveendra
New No.10, Old No.20, C.P.Ramasamy Road
Alwarpet, Chennai 600 018
3. Sappany Nadarajah
New No.10, Old No.20, C.P.Ramasamy Road
Alwarpet, Chennai 600 018
(R2 and R3 are transposed as A2 and A3 vide
order of Court dated 20.12.2023 made in
CMP.3722 of 2022 in OSA.245 of 2021)

Appellants

Vs

1. Thaiyalnayagi Damayanthi
W/o.Thiyagarajan V
Old No.D-21, New No.15,
West Extension, Seventh Cross Street
Thillai Nagar, Trichy Town 620 018

(R2 & R3 transposed as A2 & A3)

4. Vasugi Sappany
W/o.Natarajan
Old No.21, S.G.P. School Lane
Thuraiyur, Trichy Town 620 010

Respondents



Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 2 of the Original Side Rules read with Clause 15 of the Letters Patent, against the order and decretal order dated 02.02.2021 passed by the learned single Judge in Application No.3556 of 2013 in O.P.No.426 of 2012.

For Appellants: Mr.T.R.Rajagopalan
Senior Counsel assisted by
Ms.P.Veena Suresh
for Mr.K.Govindan

For Respondents: Mr.S.Balasubramanian for R1
R4 - No appearance

JUDGMENT

P.Velmurugan J.

This original side appeal is directed against the order dated 02.02.2021 passed by the learned single Judge in Application No.3556 of 2013 in O.P.No.426 of 2012.

2. The factual matrix leading to the filing of the present appeal is as follows:-

The appellants and the respondents herein are the legal heirs of the deceased Mr.Nadaraja Pillai Sappany also called Sappany Pillai. The first appellant herein, Mrs.Rajeswari Sappany, being the wife of the deceased, filed the Original Petition No.426 of 2012 under Sections 232, 235 and 276 of the Indian Succession Act and under Order XXV, Rule 5 of the Original Side Rules



for grant of Probate in respect of the last Will and Testament dated 22.11.1995 executed by her late husband pertaining to the property mentioned in the affidavit of assets thereto, claiming that her husband, while ordinarily residing at New No.10, Old No.20, C.P.Ramasamy Road, Alwarpet, Chennai, died on 06.08.1997 at St.Isabel's Hospital, Mylapore, Chennai and her husband, at the time of his death, left the immovable property situated at New No.10, Old No.20, C.P.Ramasamy Road, Alwarpet, Chennai; lands at Adaikanpatti Village, Perambalur District and properties at Srilanka; shares and interest in partnership, to Ranjana Traders 213, Deans Road, Colombo-10, Srilanka; 40 acres of lands at Ramakrishna Estate, Berragalla Haputale Srilanka; house at No.52, Layards Road, Colombo-5; house at No.61, Lorenze Road, Colombo-4 in Srilanka. According to the first appellant, in respect of properties situated at Srilanka, she already obtained the probate dated 29.04.2002 in Testamentary Jurisdiction No.1386/01/T on the file of District Court of Mount Lavinia Srilanka and only in respect of the properties situated at Tamilnadu, she filed the petition for probate, as she has been appointed as executrix by the testator, who is also beneficiary in respect of property situated at New No.10, Old No. 20, C.P.Ramasamy Road, Alwarpet, Chennai-600 018, which was purchased by her husband through a deed of sale dated 27.08.1980 and registered as Document No.1654 of 1980 at the office of Sub Registrar, Mylapore, Chennai. As per the Will, the immovable property at New No.10, Old No.20, C.P.Ramasamy Road,



Alwarpet, Chennai-18 has been bequeathed to the first appellant and the properties situated at Adaikampatti Village, Trichy District to the appellants 2 and 3. By virtue of the said will, the right to administer the properties and receive rents in the said properties have been bequeathed to the first appellant. The schedule of property bequeathed to the first appellant is the land and building at New No.10, Old No.20, C.P.Ramasamy Road, Alwarpet, Chennai comprised in R.S.No.1646/24, Block No.34 of Alwarpet Village within the Registration District of South Chennai and Sub Registration District of Mylapore within the limits of Corporation of Chennai and bounded on the North by: 30 feet Road, East by: 12, Sankeswal House, South by: Old No.3, Natesan Sanjevi Illam and West by: No.8, Ramasamy Road, to a total extent of 3800 sq.ft. The parents of the deceased predeceased him. Though the Will was executed on 22.11.1995 at Chennai and the deceased died on 06.08.1997 at Chennai, the first appellant has filed the petition for Probate only in 2012, because she was obtaining probate at Srilanka for the properties situated at Srilanka and thought that it is sufficient. When she came to know about the necessity of obtaining a probate from this Court for the properties situate at Tamilnadu regarding the proof of Will, the original petition for probate came to be filed, which was allowed as prayed for by order dated 19.12.2012.

3. The first respondent herein, being one of the legal heirs of the



deceased, filed the Application No.3556 of 2013 in O.P.No.426 of 2012 under Section 263 of the Indian Succession Act read with Order XIV, Rule 8 and Order XXV, Rule 62 of the Original Side Rules to revoke the probate granted vide order dated 19.12.2012. According to the first respondent, on receipt of notice in the petition seeking issuance of probate in respect of the alleged Will dated 22.11.1995 said to have been executed by her late father, Vakalath was filed by her counsel on 06.11.2012 in D.No.29777 of 2012. However, though the case seems to have been listed for hearing on 19.12.2012, the first respondent, after verifying the case status from the Information Centre, later found that the name of the counsel had not been printed in the cause list and without hearing the objections of the first respondent, the petition for probate was ordered as prayed for. It has been stated that her father was very affectionate with herself and there was no reason to disinherit the first respondent completely in respect of his properties. Even a mere perusal of the alleged Will dated 22.11.1995, which is typed on a Rs.10/- stamp paper, will disclose that the same is not true and valid as to the manner in which the alleged Will is typed, the fact that it is typed on the rear side of a stamp paper & page 3 of the said Will, which is very unnatural, will prove that the alleged Will is a fabricated one. According to the first respondent, a Will is not normally executed in a stamp paper and that no one types on the rear side of a stamp paper, apart from clear discrepancy in the alleged signatures of her deceased



father in each page. It has been further stated that the first respondent already filed a suit in O.S.No.13 of 2011 before the Principal District Court at Perambalur against the other legal heirs seeking partition, in which all have entered appearance and also filed their written statements. However, they failed to refer to the above suit in the original petition seeking issuance of probate, as the suit instituted by the first respondent was prior in point of time. Having taken a defence in the said suit regarding the alleged Will, they are not entitled to seek probate without even referring to the earlier proceedings in which the same issue is directly involved, which shows that they have colluded together with a view to defeat the rights of the first respondent, as she had entered appearance and her counsel's name was not even printed in the cause list. Further, there are several discrepancies in the evidence of the alleged attesting witness, which can be established only by cross examining the said witness. The Will in dispute has been forged and fabricated and the other legal heirs have also suppressed the pendency of the civil suit regarding the same dispute and obtained probate. There are several untrue allegations in the petition seeking issuance of probate and the first respondent has to be given opportunity to set forth her objections against issuance of probate, as no such Will had been executed by her father. The first respondent also intends to question the probate allegedly granted by the District Court of Mount Lavinia at Sri Lanka by taking recourse to appropriate proceedings. The allegations regarding the value of



assets are denied, as the property regarding which probate is sought is worth several crores being located in a prime locality at Chennai. The non production of the original Will is fatal and therefore the first respondent was constrained to file the application to revoke the probate granted in O.P.No.426 of 2012 by order dated 19.12.2012. If the probate is not revoked, the first respondent would suffer irreparable loss, hardship and injury and the suit in O.S.No.13 of 2011 on the file of the Principal District Court at Perambalur would become infructuous.

4. A counter affidavit was filed by the first appellant denying the allegations made by the first respondent in the application. The first appellant stated that before granting probate, the Court satisfied itself that service was completed and thereafter only, the first respondent was set ex parte and the matter was posted before the learned Master for recording of evidence. At the time of filing the written statement in O.S.No.13 of 2011, the first respondent was aware of the steps taken by the first appellant for probate proceedings. Upon the same Will, the Srilankan Court granted probate, in which the first respondent filed a consent affidavit stating that the Will is true. The Will certified by the Srilankan Court is enclosed and as such, the Will probated is genuine, true and correct. Since the original petition for issuance of probate was listed before the Court as well as before the learned Master on various dates and that the first respondent has not followed the procedure contemplated under



Order XXV, Rule 51 of the Madras High Court Original Side Rules by filing a caveat in Form No.69 in the Registrar's office and that before granting the probate, the beneficiaries and the two attesting witnesses were examined before the learned Master, the allegation of forgery is totally untenable.

5. The learned single Judge, upon consideration of the pleadings and the submissions made by the learned counsel on either side, came to the conclusion that non printing the name of the Advocates in the cause list amounts to neglecting the parties and therefore the case would clearly fall under Explanation (b) and illustration (ii) of Section 263 of the Indian Succession Act to constitute a 'just cause' for revocation of the probate order and accordingly, allowed the application filed by the first respondent and revoked the probate order dated 19.12.2012.

6. Aggrieved thereby, the first appellant has filed the present original side appeal. During the pendency of appeal, since the first appellant-mother died, her sons, namely, Sappany Raveendra and Sappany Nadarajah, who were arrayed as respondents 2 & 3, were transposed as the appellants 2 & 3 to prosecute the appeal vide the order dated 20.12.2023 passed in C.M.P.No.3722 of 2023 in O.S.A.No.245 of 2021.



7. Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of the appellants, reiterating the grounds, would submit that the impugned order revoking the probate granted in the O.P.No.462 of 2012 is clearly erroneous and unsustainable, as the mere filing of Vakalat by an Advocate for one of the respondents in the original proceedings will not give him/her a right to contest the proceedings, unless the mandatory procedure prescribed under the Madras High Court Original Side Rules has been scrupulously followed. As per Order XXV, Rule 51 of the Original Side Rules, any person intending to press the issue of a grant of Probate or Letters of Administration must either personally or by his Advocate file a Caveat in the Registrar's office in Form No.69 and the Caveat, in addition to the particulars prescribed by Section 284(4) Schedule 5 of the Indian Succession Act, shall state the name, place of abode, description, occupation and the address for service of the Caveator. The said procedure was not followed by the first respondent in the present proceedings. Further, on filing of such Caveat against the grant of Probate or Letters of Administration, the Registrar shall give notice thereof in Form No.70 to the appellant/petitioner, which was not done in the present case. Admittedly, when there was no Caveat and no service of notice of Caveat on the appellant/petitioner, the application filed by the first respondent herein for revocation of the probate order is not maintainable. As per Order XXV, Rule 52 of the Original Side Rules, the Caveator should file an affidavit in support of the Caveat within 8 days of



Caveat being filed, making averments relating to the right and interest of the Caveator and the grounds of objection to the petition. However, the above procedures were not followed by the first respondent and in such circumstances, the non-mentioning of the name of the counsel in the cause list cannot be a ground for revocation of the probate order granted in favour of the first appellant. The learned Senior Counsel would further contend that in the petition for probate, apart from making other legal heirs of the deceased testator as parties, the appellant filed the documents, namely, the partition deed dated 22.12.1977, the legal heirship certificate October 1997, the death certificate of the testator dated 6.8.1997, a certified copy of the sale deed dated 22.8.1980, a certified copy of the probate order in relation to the Will dated 22.11.1995 of the testator passed by the Srilankan Court, which included the consent affidavit filed by all the legal heirs including the first respondent herein. However, ignoring the probate order of the Srilankan Court which included the consent affidavit filed by the first respondent herein and others as well the affidavits filed by the witnesses and the minute of consent read over and explained to the deponent of the affidavit and then attested by a Notary, the impugned order has been passed. Having regard to the above categorical documents placed before the Court in which the same Will was probated in respect of properties in Srilanka, the first respondent has filed the application without disclosing the said fact in her affidavit. This itself is a ground for rejection of the application



for revocation of the probate order passed by this Court. The learned Senior Counsel also placed reliance on the Division Bench judgment of this Court in the case of *N.Sthirasundari and another v. V.Kalyani and others*, 2013 (1) CTC 646, wherein it has been held that the requirement of Order XXV, Rule 52 is mandatory and once an affidavit as contemplated in the said Rule is not before the Court, the issue of probate is justified. Even in the written statement filed by the first defendant in O.S.No.13 of 2011, it has been specifically pleaded that the probate has been obtained in the Sri Lankan Court on the consent given by the plaintiff, who had full knowledge about the institution of probate proceedings before this Court. When this is the position, the learned Judge erred in observing that no averment was made in the written statement with respect to the Will alleged to be executed by the father. When the Will has been proved and deposited in the Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the Will is produced, the impugned order revoking the probate granted to the appellant requires interference at the hands of this Court.

8. The learned counsel appearing on behalf of the first respondent would submit that the impugned order of revocation of the probate requires no interference, as the learned Judge has considered the scope of Section 263 of the Indian Succession Act and held that the right of the first respondent, being the



Class-I legal heir of the testator, has been affected. The learned counsel also placed reliance on a Division Bench judgment of this Court in the case of *C.T.Ramasamy v. SP.Kaveri Achi, 2002-4-L.W.681* in support of his contentions.

9. We have considered the rival submissions and perused the materials available on record.

10. It is not in dispute that the appellants and the respondents are the legal heirs of the deceased testator Mr.Nadaraja Pillai Sappany also called Sappany Pillai. The case of the appellants is that the first appellant, being the wife of the testator, filed the Original Petition No.426 of 2012 for grant of Probate in respect of the last Will and Testament dated 22.11.1995 executed by her late husband pertaining to the immovable property situated at New No.10, Old No.20, C.P.Ramasamy Road, Alwarpet, Chennai, apart from the lands at Adaikanpatti Village, Perambalur District and properties at Srilanka, shares and interest in partnership, to Ranjana Traders 213, Deans Road, Colombo-10, Srilanka, 40 acres of lands at Ramakrishna Estate, Berragalla Haputale Srilanka, house at No.52, Layards Road, Colombo-5 and the house at No.61, Lorenze Road, Colombo-4 in Srilanka. According to the first appellant, in respect of properties situated at Srilanka, she already obtained the probate dated 29.04.2002 in Testamentary Jurisdiction No.1386/01/T on the file of District



Court of Mount Lavinia Srilanka and only in respect of the properties situated at Tamilnadu, she filed the petition for probate, as she has been appointed as executrix by the testator, who is also beneficiary in respect of the immovable property situated at New No.10, Old No. 20, C.P.Ramasamy Road, Alwarpet, Chennai comprised in R.S.No.1646/24, Block No.34 of Alwarpet Village within the Sub Registration District of Mylapore, which was purchased by her husband through a deed of sale dated 27.08.1980 and registered as Document No.1654 of 1980 at the office of Sub Registrar, Mylapore, Chennai. As per the Will, the immovable property at New No.10, Old No.20, C.P.Ramasamy Road, Alwarpet, Chennai-18 has been bequeathed to the first appellant and the properties situated at Adaikampatti Village, Trichy District to the appellants 2 and 3. By virtue of the said will, the right to administer the properties and receive rents in the said properties have been bequeathed to the first appellant. Therefore, the first appellant filed the petition for probate, which was allowed by the learned single Judge vide order dated 19.12.2012 after satisfying that the service was completed on the first respondent and since there was no representation on behalf of the first respondent on various dates, she was set ex parte and the probate order came to be passed for the first respondent's failure to follow the mandatory procedure contemplated under Order XXV, Rule 51 of the Madras High Court Original Side Rules by filing a caveat.



11. The case of the first respondent is that she is one of the legal heirs of the deceased testator and though Vakalath was filed by her counsel on receipt of notice in the petition seeking issuance of probate in respect of the alleged Will dated 22.11.1995 said to have been executed by her late father, without printing the name of the counsel in the cause list and without hearing the objections from her side, the probate order came to be passed on 19.12.2012. It is also the case of the first respondent that the first appellant, suppressing the pendency of the suit in O.S.No.13 of 2011 on the file of the Principal District Court at Perambur filed by the first respondent against all the other legal heirs for partition, has filed the petition for probate and obtained an order ignoring her caveatable interest in the property. Therefore, when there are several discrepancies in the evidence of the alleged attesting witness in respect of the Will said to have been executed by her father, the first respondent filed the Application No.3556 of 2013 seeking to revoke the probate order, which was allowed by the learned single Judge accepting her case.

12. We also find merits in the contentions advanced on behalf of the first respondent. Admittedly, when the O.P.No.462 of 2012 was filed for grant of probate in respect of the last Will and Testament dated 22.11.1995 said to have been executed by the late husband of the first appellant (testator) in respect of the subject immovable property, apart from the other properties situated in India



and Srilanka, the first respondent, being one of the legal heirs, has entered appearance through a counsel who filed Vakalath on 06.11.2012 in D.No.29777 of 2012 in the said probate proceedings. Though the learned Senior Counsel appearing on behalf of the appellants vehemently contended that the application filed by the first respondent seeking to revoke the probate order is not maintainable at all, as the first respondent has failed to follow the procedure contemplated under Order XXV, Rules 51 & 52 of the Original Side Rules by filing an affidavit within 8 days relating to her caveatable interest and the grounds of objection to the petition, the fact remains that without hearing the objections of the first respondent on the alleged Will and without printing the name of the counsel in the cause list, the ex parte probate order came to be passed on 19.12.2012. Moreover, the factum of pendency of the civil suit in O.S.No.13 of 2011 filed by the first respondent for partition before the Principal District Court at Perambalur was duly suppressed in the probate petition for the reasons best known to the first appellant, which was admittedly prior in point of time. In this context, it will be useful to refer to Section 263 of the Indian Succession Act, which reads as follows:-

“Revocation or annulment for just cause. —The grant of probate or letters of administration may be revoked or annulled for just cause. Explanation. —Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in



substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a latter Will has been



discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.”

13. A reading of the above provision shows that the Court is empowered to revoke or annul a grant of probate for ‘just cause’. The Explanation appended to the said provision is illustrative and not exhaustive. Clause (b) specifically provides that where the grant has been obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case, the grant is liable to be revoked. The expression ‘just cause’ has consistently received a liberal interpretation. Since probate is a judgment *in rem*, the Court granting probate owes a corresponding duty to ensure that every person having a legitimate caveatable interest is given an opportunity to contest the Will. In the case on hand, as pointed out by the learned counsel appearing for the first respondent, on the date of passing of the probate order, the name of the learned counsel who filed Vakalat on behalf of the first respondent was not printed in the cause list. Therefore, obviously the first respondent, being unaware of the hearing date, was not in a position to make her objections as to the caveatable interest. The learned Senior Counsel for the appellants is unable to deny the fact that on the date when the ex parte order was passed, the name of the counsel



who filed Vakalat for the first respondent, was printed in the cause list. Hence the Division Bench judgment relied upon by the learned Senior Counsel in *N.Sthirasundari* case is not applicable to the case on hand, as in the said case the name of the counsel was in fact printed, but there was no representation on the side of the Caveator.

14. One of the contentions raised by the Senior Counsel for the appellants is that the first respondent already filed a consent affidavit before the Srilankan Court in relation to the Will dated 22.11.1995 executed by the testator and therefore she is legally estopped from filing the application seeking to revoke the probate granted earlier. However, on perusal of records, we find that the consent given by the first respondent is in respect of the immovable assets shown in the inventory therein situated at Srilanka and not in respect of the subject property.

15. Moreover, a similar issue was considered by us in OSA Nos.81 & 82 of 2026 and by judgment dated 07.08.2026, after referring to various judgments of the Hon'ble Supreme Court on the issue, we have held that the failure to disclose the fact of institution of the partition suit in the probate petition was undoubtedly material, to enable the Court to convert the probate petition into a contentious testamentary original suit and granting the parties sufficient



opportunity to lead evidence.

WEB COPY

16. In the light of the above, in the case on hand, we hold that the first respondent possesses a caveatable interest and the suppression of the pendency of the partition suit in the probate petition, constitutes concealment of material fact attracting clause (b) of the Explanation to Section 263 to satisfy the deemed existence of 'just cause' to revoke the probate granted earlier. Accordingly, finding no merits whatsoever on any of the grounds raised by the appellants to interfere with the impugned order, the original side appeal stands dismissed. Needless to state that the Testamentary Original Petition stands restored to the file of the learned single Judge, which shall be converted into a contentious Testamentary Original Suit after impleading all persons having caveatable interest including the first respondent and all issues relating to the due execution, attestation and genuineness of the alleged Will are left open to be decided by the learned single Judge on merits and in accordance with law. Considering the facts and circumstances and the nature of relationship between the parties, there shall be no order as to costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)

19-08-2026

Index: Yes/No

Internet: Yes

Neutral Citation: Yes/No

SS



OSA No. 245 of 2021



1. The Sub Assistant Registrar (O.S.)
High Court, Madras



WEB COPY

OSA No. 245 of 2021



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.**

SS

**Judgment in OSA No.
245 of 2021**

19-08-2026