

A.No. 3004 of 2014
in
O.P.No. 834 of 2002
R.SUBRAMANIAN, J.

The petitioner seeks revocation of the probate granted in favour of the respondent in O.P.834 of 2002 dated 08.01.2003.

2. O.P.No. 834 of 2002 was filed by the respondent herein, who is the wife of Late K.N.Shama Sastry seeking probate for the Will executed by him on 06.07.2000. The said Shama Sastry died on 09.09.2000. This Court granted the probate for the said Will by order dated 08.01.2003. The applicant, who is a Class 2 heir of the deceased Shama Sastry (Brother's son) would claim that the deceased has left a Will dated 15.10.1883 in and by which he had bequeathed the property in favour of the applicant.

3. The learned counsel for the applicant would further contend that the subsequent Will dated 06.07.2000 for which probate has been granted is not true and genuine. A person, who seeks for revocation of the grant of probate has to show that he has caveatable interest. The applicant cannot rely upon the Will dated 15.10.1883, to establish his right over the property in view of the prohibition contained under Section 213 of the Indian Succession Act, 1925. Therefore, the fact that there was an earlier Will in favour of the applicant alone would not give any caveatable interest unless the earlier Will is duly probated.

R.SUBRAMANIAN, J.

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4. As regards succession, admittedly, the respondent herein Mrs.Uma Sastry is a Class 1 heir and she was alive at the time of death of the testator namely, K.N. Shama Sastry. Therefore, the applicant would not succeed to the estate of Shama Sastry in the absence of testamentary or non-testamentary disposition. I find that the applicant has no caveatable interest and hence, this application seeking revocation of the grant is dismissed.

5. The learned counsel for the applicant would submit that only if the grant is revoked, he can seek probate for the earlier Will dated 15.10.1883, I am unable to agree with the said submission and it was open to the petitioner to have sought for probate or letters of administration for the Will by impleading the wife of the testator, who was very much alive when the testator died.

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10.04.2019

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