

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2015

Decided on : 23.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(NPD) No.1261 of 2006
and M.P.Nos.1 of 2006

Shirley Katheleen Wheeler
(Power Agent died Permitted
to prosecute the revision on her own
vide order of Court dated 17.07.2014
made in M.P.No.1 of 2014 in
CRP.No.1261 of 2006)

: Petitioner

Vs

1.Joseph Easwaran Wapshare
2.W.E.Prince Kumar
3.W.E.Praveen Kumar

: Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 10.04.2006 in I.A.NO.54 of 2005 in S.O.P.No.17 of 2005 on the file of Sub Judge, Nilgiris at Uthagamandalam.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.L.Dhamodharan

ORDER

This civil revision petition arises out of the order dated 10.04.2006 passed by the learned Sub Judge, Nilgiris, Uthagamandalam in I.A.No.54 of 2005 in S.O.P.No.17 of 2005.

2.Brief facts of the case are as follows:

The deceased James Hendry Gordon Ouchterlony Wapshare known as G.Wapshare died on 18.01.1991 at Chinese Hill Estate, Naduvattam, Nilgiris.

One James Hendry Wapshare had two sons and two daughters
 viz.,
 FAMILY TREE
 HENRY WAPSHARE
 (Father - Died)

Gordon Wapshare Died 08.01.1991	Edward Wapshare (Son-died)	Dorothy Wapshare Daughter Unmarried (died)	Violet Wapshare Daughter (died)
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Valliammal (Died) Beatrice Wapshare wife died Ms.Eilen Mary Jackson D/o.Violet Wapshare

Babu (son) (Died) Michael Lourence Poole
Son of Beatrice (died)

Easwaran (son) Shirely Katheleen Wheeler
Daughter of Beatrice

The petitioner Mrs.Shirley Katheleen Wheeler claims to be the daughter of Edward Wapshare through Beatrice Wapshare. The first respondent claims to be the son of Gordon Wapshare and Dorothy Wapshare died as a spinster. Violet Wapshare had a daughter viz., Ms.Eilen Mary Jackson.

3.The first Respondent Joseph Easwaran Wapshare filed a petition before the Sub-Court, Nilgiris, Ootacamund in O.P.No.17 of 2005 under Section 372 of the Indian Succession Act to grant succession certificate in favour of him for collection of debts and securities with interest thereon mentioned in the annexure.

4.The case of the first respondent is that the deceased James Henry Gordon Ouchterlony Wapshare known as G.Wapshare died leaving behind the first respondent, Joseph Easwaran Wapshare and his two sons viz., W.E.Prince Kumar and W.E.Praveen Kumar, that the deceased died intestate. The trial Court granted Succession certificate in favour of the first respondent on 16.03.2005.

5.Thereupon, the petitioner filed I.A.No.54 of 2005 in O.P.No.17 of 2005 under Section 383 of the Indian Succession Act, to revoke the succession certificate contending that the deceased James Henry Gordon Ouchterlony Wapshare died leaving behind him, her mother Mrs.Beatrice Wapshare, wife of Late Mr.Edward Richard Wapshare and his niece, Ms.Eileen Mary Jackson as his only surviving her mother heirs and legal representatives.

6. According to the petitioner, the deceased G.Wapshare died testate leaving behind his last Will Testament dated 21.03.1989 and her mother, Mrs. Beatrice Wapshare had filed a petition for grant of letters of administration based on the Will under Section 276 of the Indian Succession Act in the Court of the District Judge, The Nilgiris, Udhagamandalam as early as on 27.11.1991, which was numbered as O.P.No.55 of 1993. Since the first respondent, Joseph Easwaran Wapshare opposed the said O.P., it was converted into a suit and numbered as O.S.No.42 of 1997.

7. It is further stated that Mrs. Beatrice Wapshare filed another application for grant of probate in respect of Chinese Hill Estate, Naduvattam before the District Judge, Udhagamandalam, in O.P.No. 56 of 1993 and thereafter, filed a suit for grant of permanent injunction against the said Easwaran and one M.P.Kandaswamy before the Sub-Court, the Nilgiris in O.S.No.86 of 1996. Subsequent to the filing of the suits and original petitions, Mrs. Beatrice Wapshare died on 29.01.1999. The petitioner being the daughter of Mrs. Beatrice Wapshare has succeeded to the estate of her mother in respect of the estate of the deceased, G.Wapshare.

8. It is further averred in the petition that O.P.No.55 of 1993 and another O.P.No.56 of 19993 in respect of Chinese Hill Estate had gone up to the Supreme Court of India in respect of the payment of Court fees and due to the death of her mother, Mrs. Beatrice Wapshare, the suit in O.S.No.86 of 1996 was dismissed as abated. Subsequently, from the General Notice Board in the Panchayat Office of Naduvattam, the petitioner came to know on 24.03.2005, that the respondents had made an application for grant of succession certificate in the matter of the estate of the deceased, G.Wapshare and further enquiry revealed that the application was allowed on 16.03.2005 as there were no objectors.

9. The petitioner has further alleged that the first respondent is not the son of the deceased G.Wapshare, but, is a mere imposter claiming to be so and in all previous matters, he has been described as only Easwaran and has come up with the name of Joseph Easwaran Wapshare for the first time in the present application; that the first respondent has obtained the succession certificate fraudulently by making a false suggestions as to both parentage and facts of the case and further by concealment of the previous proceedings which are the material to the case.

10. The petition was resisted by the respondents by filing their counter stating that the first respondent, G.Wapshare had legally wedded Valliammal and was living with her over 35 years as husband and wife and they have two sons by name, G.Babu, who was born on 12.10.1947 and the first respondent was born on 24.02.1951, his mother and brother, viz., Valliammal and G.Babu had predeceased G.Wapshare and the first respondent is the sole legal representative

to succeed all his assets. G.Wapshare died on 08.01.1991 and after his death, the first respondent was in possession of all his assets including the Chinese Hill Estate. The first respondent has also denied the Will dated 21.03.1989 as false nor probated during the lifetime of Mrs.Beatrice.

11.It is further stated that the dismissal of the suit O.S.No.42 of 1997 and the finding in O.S.No.86 of 1996 will act as resjudicata and the petitioner is estopped from making any claim over the properties of the deceased G.Wapshare. The respondent has stated that neither Mrs.Beatrice nor Eiling Mary Jackson are the legal heirs of the deceased G.Wapshare and prayed dismissal of the application.

12.Before the trial Court, the parties have not let in oral evidence. However, the petitioner marked Exs.A1 to A7 and the respondents have marked Exs.B1 to B9.

13.The trial Court dismissed the application on the ground, as it is hit by resjudicata and it was further observed that the petitioner is not the daughter of Mrs.Beatrice through Edward Wapshare, but she was born through her second husband Wheeler and Ms.Eileen Mary Jackson has lost her right. The petitioner and Mrs. Eileen Mary Jackson having failed in the previous three suits did not come forward to contest O.S.No.17 of 2005 and that Ms.Eileen Mary Jackson, who is living abroad, did not file a petition to revoke the succession certificate, the petitioner has no authority to file this petition.

14.The learned Judge has further observed that the respondents have proved that the deceased G.Wapshare during his lifetime has legally married one Vallimammal and had given birth to a male child, who had been named as Easwaran, the first respondent herein and the respondents 2 and 3 are the sons of the first respondent and in the absence of the any testament left by G.Wapshare, the properties will naturally go to his son holding so, the trial court dismissed the petition.

15.Mr.S.Kalyanaraman, learned counsel for the petitioner submitted that G.Wapshare died unmarried and the petitioner, who is the daughter of Edward Wapshare and Ms.Eileen Mary Jackson, who is the niece of G.Wapshare, they are the only legal heirs of Gordon Wapshare and therefore, the first respondent is not entitled for grant of succession certificate; that the original owner has executed a Will in favour of Mrs.Beatrice Wapshare and on the basis of the Will, she had filed the petition for grant of letters of administration in O.P.No.55 of 1993 and it was converted as O.S.No.42 of 1997 and another O.P.No.56 of 1993 for grant of probate in respect of Chinese Hill Estate and also filed O.S.No.86 of 1996 in respect of the same property against the first respondent and one M.P.Kandaswamy and the O.P and the suits were dismissed as abated due to the death of Mrs.Beatrice Wapshare and therefore, the orders passed in the suit

will not operate as resjudicata for filing application to revoke the succession certificate issued in favour of the respondents.

16.The learned counsel further contended that the first respondent should have furnished all the details of the deceased as contemplated in Section 372 of the Indian Succession Act and if the certificate was obtained fraudulently by making a false suggestions or by concealment from the Court of some material to the case, the petitioner is entitled for revocation of the certificate. The learned counsel would submit that the first respondent was a party to O.P.No.55 of 1993 and O.P.No.56 of 1993 and in O.S.No.86 of 1996, however, deliberately suppressing the earlier litigations, filed the application and obtained the certificate by playing fraud on the Court.

17. The learned counsel further submitted that it is not the case of the respondent that the petitioner was born through the second husband of Mrs.Beatrice namely, Wheeler, but the trial Court without considering any pleadings and evidence has come to the conclusion that she was not born to Edward Richard Wapshare and Mrs. Beatrice Wapshare. The learned counsel further submitted that the finding of the trial Court is perverse and the same is liable to be set aside.

18.Per contra, Mr.Dhamodaran, learned counsel for the respondent submitted that the petitioner neither produced any material nor gave oral evidence before the trial Court to establish her relation ship with Gordon Wapshare; that the document produced by the petitioner does not correlate with her contentions and that the petitioner has not made out a case for revocation of the certificate as prescribed in Section 383 of The Indian Succession Act.

19.It is not in dispute that one James Henry Wapshare had two sons and two daughters. According to the petitioner, G.Wapshare and his sister Dorothy Wapshare died unmarried and G.Wapshare died testate leaving behind his last Will testament dated 21.03.1989. Mrs. Beatrice Wapshare filed a petition for grant of letters of administration with original Will in O.P.No.55 of 1993 and the same was converted to the suit and renumbered as O.S.No.42 of 1997. It is the further case of the petitioner that Mrs.Betraise Wapshare has filed another petition in O.P.No.56 of 1997 and a suit in O.S.NO.86 of 1996 against the first respondent and one M.P.Kandaswamy and the proceedings have been dismissed as abated after the death of Mrs.Beatrice Wapshare.

20.It is specifically contended by the petitioner that the first respondent is not the son of the deceased G.Wapshare and the petitioner and Mrs.Eileen Mary Jackson are the legal heirs entitled to the estate of G.Wapshare. The respondents have contended that the deceased G.Wapshare died intestate and he married one Valliammal and out of the marriage, the first respondent, one Babu were born to

them. Since Valliammal and G.Babu predeceased, the first respondent is the only legal heir of the deceased G.Wapshare.

21.It is useful to refer the relevant Sections 372 and 383, which reads as follows:

"372. Application for certificate --(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, (5 of 1908.) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code. (45 of 1860.)

1*[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased credit or or in respect of portions thereof."

"383. Revocation of certificate --A certificate granted under this Part may be revoked for any of the following causes, namely:--

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of

an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
(d) that the certificate has become useless and inoperative through circumstances;
(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked."

22.The reading of the above provisions would indicate that person who applies for succession certificate shall furnish all the details of the deceased, viz., date of death of the deceased, ordinary residence of the deceased, family and other relatives of the deceased and if there is any succession certificate was obtained by concealment from the Court of something material facts, the Court has to revoke the certificate under Section 383 of the Act.

23.In the case at hand, the main contention of the petitioner is that the respondents obtained succession certificate fraudulently by making of false suggestions and by concealment of material fact from the Court. It is not in dispute that the first respondent was a party to the earlier proceedings, however, he has not impleaded the petitioner herein and Mrs.Eileen Henry Jackson nor mentioned about the earlier proceedings in the present petition. In view of the above fact, I am of the view that the petitioner has established her case for revocation of the certificate.

24.It is settled law that the principles of resjudicata will apply only if the litigation between the same party has been adjudicated and decide on merits. At this juncture, it is useful to extract Section 11 of CPC:-

"9. For section 11 of C.P.C. to be applicable, the case must satisfy the following tests.

(i) The earlier suit must be between the same parties or must be claiming a right from a party in the earlier suit.

(ii) The suit must have been concluded.

(iii) The issue in both the suits must be directly and substantially same and must have been decided.

(iv) The earlier suit must have been tried by a court having competent jurisdiction. It is sufficient even if the court had limited jurisdiction to try the suit at that particular point of time.

(v) The subject matter must have been alleged by

one party in the earlier suit and directly or impliedly denied by the other party in the earlier suit.

(vi) Any matter which might and ought to have been raised as a defence in the earlier suit would be deemed to be the matter directly and substantially the issue in the earlier suit.

(vii) Any relief claimed in the plaint shall be deemed to be refused if it is not expressly granted.

(viii) Once a litigation is raised on a public right or private right in common for others, it will bind all the persons interested.

(ix) The defence of res-judicata can be raised even in execution proceedings.

(x) "

25. In 1994 (2) SCC 14 (Sulochana Amma Vs. Narayana Nair), the Hon'ble Supreme Court has held as under.

"5. Section 11 of CPC embodies the rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a court competent to try such subsequent suit in which the issue has been directly and substantially raised and decided in the judgment and decree in the former suit would operate as res judicata. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between 1 AIR 1978 Cal 440: (1978) 2 Cal LJ 150: 82 CWN 1097 2 AIR 1980 Cal 181: (1980) 1 Cal LJ 203 3 AIR 1980 Ker 230: 1980 KLT 690 4 AIR 1981 Ori 177: (1981) 52 Cut LT 242 5 1991 LW 63 (Mad): (1991) 2 MLJ 538 the same parties or their privies, been decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. They would apply, therefore, to all judicial proceedings

whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts."

26. Undisputedly, in this case, the earlier suits and the original Petitions were dismissed as abated. In the light of the decision of the Hon'ble Apex Court referred supra, the principle of resjudicata will not operate against the petitioner in filing the application to revoke succession certificate granted in favour of the respondents. Therefore, I am of the view that the findings of the trial Court cannot be sustained and they are liable to be set aside.

27. In the result, the civil revision petition is allowed and the learned Sub-Judge, Uthagamandalam shall decide the S.O.P.No.17 of 2005 after providing opportunity to both parties and dispose of the same on merits and in accordance with law as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

The Subordinate Judge,
Nilgiris at Uthagamandalam.

+1cc to Mr.S.Kalyanaraman, Advocate sr.16396

+1 CC TO Mr.L.Dhamodaran, Advocate, sr.16209 (23/09/2015)

Pre-delivery orders in
C.R.P(NPD) No.1261 of 2006

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