

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2015

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

O.S.A.No.174 of 2015
and M.P.No.1 of 2015

M.V.Krishna Rao (Deceased)
Murugesan

... Appellant

-vs-

1.K.Shivakumar
2.Meena Shivakumar
3.Seetharajakumari
4.M.B.V.Sathya Sai Prasad
5.M.Suriyanarayanamurthy
6.M.Bagya Suryalakshmi
7.M.B.L.Ragaventhra Swamy
8.Uma Mageswari

... Respondents

Appeal filed under Order XXXVI Rule 11 of the O.S. Rules read with Clause 15 of the Letters Patent against the order dated 05.12.2014 passed in Application No.2171 of 2011 in C.S.No.925 of 2010.

For Appellant : Mr.R.Ravi

For Respondents : Mr.N.Jothi
for M/s.N.Srinivasalu for RR 3 to 8

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J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Late Mr.V.Krishna Rao filed the suit on the original side of this Court being C.S.No.925 of 2010 seeking a decree for (i) declaring that the registered sale deed bearing Reg.No.976 of 2010 on the file of the Sub-Registrar Office at Kodambakkam, executed by the plaintiff in favour of defendants 1 and 2 as null and void and not binding on

the plaintiff or any person claiming right through them and cancel the same; (ii) for permanent injunction restraining the defendants from alienating or in any manner encumbering the plaintiff schedule property and for costs.

2.The suit was still pending when Sri.Krishna Rao passed away on 21.12.2010. The descendants of Sri.Krishna Rao were impleaded as legal heirs in his place.

3.The dispute starts with the present appellant also seeking his impleadment in the suit as a legal heir on the basis of the testamentary document being the alleged last Will of the deceased dated 24.12.2009. This application was allowed by the learned Single Judge vide order dated 19.10.2011.

4.The defendants in the suit preferred an appeal against the said order objecting to the impleadment of the appellant in O.S.A.No.123 of 2012, which was allowed by the Division Bench vide order dated 20.11.2013. The matter was remitted back to the learned Single Judge to hear all parties concerned leaving all issues open and for a fresh decision in accordance with law on the aspect of impleadment.

5.The learned Single Judge, who thereafter, took up the matter, held vide the impugned order dated 12.05.2014 that the appellant could not be impleaded as a plaintiff, but impleaded him as one of the defendants in the suit giving him leave to raise a counter-claim, if any, in the manner known to law. The reason which permeates this order is that the probate of a Will is mandatory albeit being a registered Will and that stands as an impediment in the way of the appellant claiming any right in respect of the property, as the appellant had not taken any steps to institute proceedings of probate of the Will, despite four years having elapsed since the demise of the Testator.

6.At the inception itself, we posed the question to the learned counsel for the appellant as to whether any probate proceedings had been filed and if so, whether that had been brought to the notice of the learned Single Judge, since the finding was to the contrary. Learned counsel sought to take an ambivalent stand by first claiming that a probate petition had been filed and SR number given, i.e., the probate was still under objection and not numbered. He, however, was not able to state the date on which the probate petition had been filed. On pointing out that the impugned order proceeds on a premise that no such application has been filed, learned counsel sought to contend that relevant material was before the learned Single Judge and it was, accordingly, informed to the learned Single Judge. When we asked him to say as to what it is the material which was placed before the learned Single Judge, he changed the direction to say that no material had been placed, but orally the Judge was informed.

7. At the aforesaid stage, we pointed out to the learned counsel that if the impugned order had proceeded on an incorrect factual premise, he should have moved the learned Single Judge for clarification. On this, he stated that he would like to proceed in the present appeal on the premise that no probate was necessary at all for purposes of getting his impleadment in the suit. This is the initial history of the hearing.

8. We put to the learned counsel for the appellant as to how he can plead that in the absence of probate of the Will, he can claim any right in respect of the property as a beneficiary of the Will, since the probate is mandatory in Kolkata, Mumbai and Chennai Courts, in view of the specific provision of Section 57 of the Indian Succession Act, 1925. The position, thus, is different for other Courts. Learned counsel, however, insists that for impleadment, it is not necessary and seeks to rely upon the decision of the Hon'ble Supreme Court in *Suresh Kumar Bansal vs. Krishna Bansal and Anr.*, (2010) 2 SCC 162. This decision of the Hon'ble Supreme Court arose out of a Special Leave Petition filed against the judgment of the High Court of Madhya Pradesh Bench at Gwalior. Thus, we put to him that there is no requirement of probate being mandatory in Courts other than the original Principality Courts. At this stage, learned counsel insisted that actually probate is required for any Will all over the country, a position of law, which is, on the face of it, not correct and is contrary to Section 57 of the Indian Succession Act, 1925. Suffice to say that the judgment cited by the learned counsel is good for the proposition that for purposes of bringing the legal representatives on record in inter se disputes between rival legal representatives, those can be decided in appropriate proceedings and all the legal representatives can be brought on record in proceedings for eviction under the Rent Control Act for recovery against the tenant.

9. Learned counsel, apparently, seems to have failed to focus on the crucial issue - the mandatory requirement of a probate of the Will in the three original Principality Courts, as against the situation where it may not be mandatory. It is trite to say that where such probate is not mandatory, a Will can be proved even in collateral civil proceedings (vide judgment of the Division Bench at Delhi of the Punjab High Court in *M/s. Behari Lal Ram Charan vs. Karam Chand Sahni and Others*, AIR 1968 Punjab 108 (V 55 C 30), followed in *Prithipal Singh Sabharwal vs. Jagjit Singh Sabharwal*, 1996 (37) DRJ 643 of the Delhi High Court).

10. Learned counsel for the appellant also sought to advance a plea arising from Section 211 of the Indian Succession Act, which reads as under:

211. Character and property of executor or administrator as such. - (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased persons

vests in him as such.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, Raina or Parsi) or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.''

The appellant claims that he being the sole beneficiary of the Will, is an Executor.

11.The aforesaid issue has been dealt with in the impugned order by referring to the aforesaid argument and rejecting the same. In this behalf, both the defences of an Administrator and an Executor had been taken into account. The appellant is not an Administrator as he was not a person appointed by the Competent Authority to administer the estate of the deceased person. In so far as the defence as an Executor under Section 2(c) of the Indian Succession Act is concerned, the Executor means the person to whom execution of the last Will of a deceased person is, by the Testator's appointment, confided. Thus, we are in complete agreement with the view taken by the learned Single Judge that the appellant cannot possess a description of either an Administrator or an Executor.

12.We may also notice the nature of civil proceedings, which are before the Court, i.e., a claim by the deceased to set at naught the sale deeds already executed. The question is of an impediment in the way of the appellant to even claim any right in the absence of having initiated any proceedings for probate of the Will due to the law being specific here, as well as the other two Courts of Mumbai and Kolkatta, as compared to a different position in the remaining part of the country. In the four years time, the appellant had taken no steps (we are proceeding on the basis as if no such probate petition has been filed, as that was the plea how this Court should proceed as per the learned counsel for the appellant). The purpose of impleading all the legal representatives arises, as even if there is a dispute of inheritance between the different persons claiming from the deceased, that should not prejudice the proceedings initiated by the deceased and when the inter se rights are determined among the persons claiming estate of the deceased, those could be determined separately or even some time in the same proceedings to come to a conclusion as to who should be the beneficiary of the decree, if any, passed in the suit. In the present case, the appellant would not be able to claim any part of the estate whatsoever even on the basis of the alleged registered Will because he has not taken any steps for obtaining probate. In fact, our question was conveniently evaded.

13.The learned Single Judge has, however, taken the precaution to implead the appellant as a defendant in the suit. The object appears to be that in case the legal heirs impleaded in place of the deceased seek not to prosecute the suit or do not produce material, the

appellant has a status there to do so.

14.We find the appeal, thus, completely meritless and also a proceeding in which ambivalent stands have been taken to somehow get the appeal admitted without answering the Court queries. The aforesaid being a dispute about an estate and thus, commercial in character, we see no reason why the appellant should not be burdened with costs of the present proceeding, which we quantify as Rs.20,000/- (Rupees twenty thousand only), of which half the amount be paid to the respondents / caveators before us and the remaining half be deposited with the Tamil Nadu Mediation and Conciliation Centre, Madras High Court Campus, within a period of fifteen days from today.

15.The Original Side Appeal is, dismissed, in the aforesaid terms. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

2.The Assistant Registrar,
Tamil Nadu Mediation and Conciliation,
Centre, Madras High Court Campus.

+1cc to Mr.R.Ravi, Advocate Sr.49297
+2cc to Mr.N.Srinivasulu, Advocate Sr.48398

O.S.A.No.174 of 2015

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