

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

SATURDAY, THE 28TH DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.5724 of 2015

in

O.P. No.610 of 2001

In the matter of Indian  
Succession Act XXXIX of 1925.

And

In the matter of xerox copy Last  
Will and Testament of  
Mr.S.Amirthalingam (deceased)  
(Original Will filed in O.P.  
No.342/2000).

1.S.Subramanian  
No.56, Pillaiar Koil Street,  
Thangam Colony, Anna Nagar West,  
Chennai - 40.

2.S.Elangovan  
No.56, Pillaiar Koil Street,  
Thangam Colony, Anna Nagar West,  
Chennai - 40.

... Petitioners

Vs.

A.Saraswathi  
No.2, 2<sup>nd</sup> Main Road,  
Devaraja Nagar, Saligramam,  
Chennai - 93.

... Respondent

**A. No.5724 of 2015**

S.Ramesh  
S/o.Sundaralingan,  
Plot No.3, Door No.2, Devaraj Nagar,  
Saligramam, Chennai - 600 003.

... Applicant / Third Party

Vs.

1.S.Subramaniam  
No.56, Pillayar Koil Street,  
Thangam Colony, Anna Nagar West,  
Chennai - 40.

... First Respondent / Petitioner

2.S.Elangovan

No.56, Pillaiar Koil Street,  
Thangam Colony, Anna Nagar West,  
Chennai - 40.

... Second Respondent / Petitioner

3.A.Saraswathi

No.2, 2<sup>nd</sup> Main Road,  
Devaraja Nagar, Saligramam,  
Chennai - 93.

... Respondent / Respondent

Application praying that this Hon'ble Court be pleased to revoke the grant of Letter of Administration with Will dated 20/11/1996 annexed of late Amirthalingam in O.P. No.610 of 2001 granted to S.Elangovan.

This application coming on this day before this court for hearing, the court made the following order:

Originally the property belonged to one Mr.S. Amirthalingam, the husband of one Mrs.A. Saraswathi. The said Mr.S.Amirthalingam died leaving behind Mrs.A. Saraswathi as his sole legal heir. Thus, Mrs.A. Saraswathi has become the absolute owner of the property. It is also the case of the applicant that the respondent along with his father Mr.Subramani has filed O.P.No.610 of 2001 for issuance of letters of administration in respect of the alleged Will of late Mr.Amirthalingam, the husband of Mrs. Saraswathi Ammal dated 20.11.1996. It is the case of the applicant that Mrs. Saraswathi Ammal has informed him that her husband did not execute a Will. The applicant also learnt that the respondent and his father has filed O.S.No.1368 of 2001 before the XIII Assistant Judge, City Civil Court, Chennai against the said Mrs.Saraswathi Ammal for permanent injunction. The above suit was dismissed for default on 16.9.2003. Similarly another suit in O.S.No.1738 was filed by the respondent and his father against Mrs. Saraswathi Ammal, one Shanmuga Pandi and another. The above said suit was also dismissed for default on 07.03.2005. Similarly O.S.No.1802 of 2007 was filed by the respondent herein against Tmt. Saraswathi Ammal, Shanmuga

Pandi, Muruga Vanaraj and another. The above suit was decreed exparte by judgment decree dated 06.11.2007. It is the further case of the applicant that on verification he came to know that in O.S.No.1368 of 2001 Tmt. Saraswathi Amal has filed a written statement disputing the alleged Will of her husband. She has also stated in the above written statement that the respondents taking advantage of her widowhood, attempted to grab her property and produced some alleged Will. The respondents also took her to the counsel by name Kulasekaran and Subashini and took her thumb impressions without even informing for what purpose the thumb impressions were taken. Even at that time also she was not informed about the execution of the alleged Will. She was compelled to give evidence before the Court about the execution of the Will by her husband. But she refused to do so. She informed the counsel that she will report to the High Court that her husband did not execute any Will. Therefore, O.P.No.342 of 2000 stated to have been filed by the said Mrs. Saraswathi Ammal was dismissed for default.

2. It is the contention of the applicant that Mrs. Saraswathi Ammal had contested the suit before the City Civil Court denying the Will. In the meanwhile, O.P.No.610 of 2001 was filed for grant of Probate. The respondents have not taken any steps to serve the notice on Mrs. Saraswathi Ammal and obtained the Probate. The address of Mrs. Saraswathi Ammal was also wrongly given and obtained the order. The respondents also filed O.S.No.7057 of 2012 against Mrs. Saraswathi Ammal, arraying her as first defendant. Only when the Court directed to take steps to serve summons on the said Mrs. Saraswathi Ammal, the respondent has filed H.C.P.No.1215 of 2013. Thereafter the police authorities have filed the death certificate of Mrs. Saraswathi Ammal and stated that she died on 12.08.2011. It is the contention of the applicant that Mrs. Saraswathi Ammal is an illiterate women and she did

not know to read and write. She has affixed her left thumb impression in Vakalath, Written Statement, counter, etc., The respondent knowing that Mrs. Saraswathi Ammal was contesting the suit by filing written statement that her husband did not execute any Will, the respondents have not taken steps to serve notice on her in the probate proceedings. Thus the entire circumstance clearly establish the fraud played by the respondent before this Court in obtaining Probate. The applicant came to know about the probate only when the written statement filed by the respondent in O.S.No.7057 of 2012. Hence, the applicant seek revocation of the Probate.

3. The contesting defendant/3<sup>rd</sup> respondent filed counter denying the allegations in the application. It is stated that the deceased Mrs. Saraswathi Ammal had full knowledge about the Will and letters of administration. Only the deceased Mrs. Saraswathi Ammal alone presented the Will before the Court and she has filed O.P.No.342 of 2001. In fact Mrs. Saraswathi Ammal and her husband Mr.Amirthalingam did not have any issues. Mr. Amirthalingam has bequeathed the property to his brother and his brother's son reserving the right of life interest to Mrs.Saraswathi Ammal. Till her death she never raised any complaint against her brother-in-law and his son. The respondent filed a case against her restraining from encumbering the property in O.S.No.1368 of 2001 and O.S.No.1738 of 2001. The written statement purported to have been signed by her was filed by the same Lawyer, who is still dealing with other cases relating to the property including this application. Mrs. Saraswathi Ammal has fallen to the hands of the some real estate people and gangsters and the applicant is one of the member in the above gang. The respondent has filed several proceedings in respect of the suit property. He has also obtained a decree cancelling the sale deed and mortgage deed executed by the said Mrs. Saraswathi Ammal in favour of third parties. He has also

filed a suit as against the applicant in O.S.No.7057 of 2012 to set aside the sale deed. Interim orders also obtained. Mrs. Saraswathi Ammal having filed Original Petition herself for grant of Letters of Administration based on the Will left by the husband abandoned the case and also collected some amount from the respondent. Taking sympathetic view of the old age, the applicant is said to have paid a sum of Rs.8 lakhs for consideration, without any evidence, has now moved this application with an inordinate delay. Hence he prayed for dismissal of the application.

4. Heard both sides. It is the contention of the learned counsel appearing for the applicant that Mrs. Saraswathi Ammal never filed any application for grant of letters of administration. In the subsequent suit filed by the respondent in the year 2001 she has filed the written statement narrating the facts and her thumb impression was obtained by the counsel without informing about her for, what reason the thumb impression was obtained and filed original petition in O.P.No.342 of 1999. The written statement filed by Mrs. Saraswathi Ammal would prove that she never filed any application for grant of letters of administration, only the respondent has filed stating himself is every thing. Thereafter even when the suits are contested the respondents have filed O.P.No.610 of 2001 and they have not taken any effective steps to serve Mrs. Saraswathi Ammal and obtained orders from the Court. The applicant being the owner of the property having purchased the property in the year 2001 and he is having caveatable interest in the property. When the suit was filed in the year 2012, immediately he approached this court for revocation of letters of administration. Hence submitted that the letters of administration granted in favour of the respondent is liable to be revoked.

5. In support of his contention the learned counsel for the applicant has also relied upon the following

(i) **AIR 1972 MADRAS 212 (V 59 C 72) [G. Jayakumar v. R. Ramaratnam]**

(ii) **1995-2-L.W.831 [Gita alias Gita Ravi v. Mary Jenet James alias M.J.James and others]**

(iii) **2007 (4) CTC 291 [R.V.R.Nallasivam and others v. N. Kuppammal and others]**

6. The learned counsel appearing for the respondent would submit that the application for probate filed after a delay of 14 years is not maintainable and the applicant is not a bonafide purchaser. In fact the death of the executant of the sale deed was known only after the filing of the Habeas Corpus Petition by the respondent. Therefore, the alleged payment of Rs.60 lakhs to the said Mrs. Saraswathi Ammal is highly unbelievable. The Will is holographic Will written by Mr. Amirthalingam in favour of his brother and his brother's son, reserving life interest for his wife Mrs. Saraswathi Ammal. Though Mrs. Saraswathi Ammal originally filed the application for grant of letters of administration, she has fallen prey to the real estate people, thereafter she had started creating encumbrance over the suit property. Hence, the respondents also filed suit restraining from creating encumbrance over the suit property and the respondents also obtained a decree cancelling the document executed by her for long lease and mortgage in favour of one Shanmuga Pandi and Muruga Vanaraj. Now the applicant, who is also a close relative of the said Shanmuga Pandi, got registered the suit property and claim to be bonafide purchaser. The entire sequence of events from the very beginning clearly establish the fraud committed by the applicant and their men to grab the suit property, taking advantage of old age of Mrs. Saraswathi Ammal. Since Mrs. Saraswathi Ammal had abandoned O.P.No.342 of 2000, the respondent being the beneficiaries under the Will executed by her husband has filed a separate application and notice sent to her was purposefully evaded. Thereafter

publication was issued. Deliberately the said Mrs. Saraswathi Ammal was prevented from appearing before the Court. Therefore, she was set exparte and probate was granted; attesting witnesses were also properly examined. The Court after satisfied itself has granted Letters of Administration. There was no defect in obtaining the Letters of Administration. Hence, prayed for dismissal of the application.

7. In the light of the above submissions now it has to be analysed whether the Letters of Administration granted in O.P.No.610 of 2001 is liable to be revoked.

8. Before going to the merits of the matter, it is relevant to extract the factual aspects found on record.

9. The subject matter of the issue relates to the Will executed by one Mr. Amirthalingam dated 20.11.1996 giving life interest to his wife Mrs. Saraswathi Ammal, thereafter to his elder brother Mr. Subramani, after him his son Mr. Elangovan. The said Mrs. Saraswathi Amal originally filed O.P.No.342 of 2000 for grant of Letters of Administration based on the Will of her husband. In fact above Original Petition was filed by a reputed counsel wherein necessary publication also taken. When the O.P. was pending for recording of evidence of the Mrs. Saraswathi Ammal, the same was dismissed for default on 15.10.2000. Typed set filed by both sides reveals that the beneficiary of the Will has filed a complaint on 24.3.2001 itself on the file of the V2 Virugambakkam Police Station against one Mr. Shanmuga Pandi and men of Ramesh for trespassing the suit property besides he has also obtained interim order in the City Civil Court in O.S.No.1738 of 2001. Based on his complaint, FIR was registered on 24.3.2001. This F.I.R. filed in the year 2001 itself is not only against Mr. Shanmuga Pandi but also the men of Ramesh, the applicant herein. Even after the above F.I.R. against Mr. Shanmuga Pandi, Lease Deed was registered by Mrs. Saraswathi Ammal in favour of Shanmuga Pandi on 27.2.2001 for a period of 19 years

in respect of the house property. Only thumb impression of Mrs. Saraswathi Ammal stated to have been available in the lease deed. The respondent 1 and 2 have filed a suit in O.S.No.1368 of 2001 against Mrs. Saraswathi Ammal restraining her in any way dealing with the property, any portion of it by leasing, out for a long period or transferring it by sale or mortgage.

10. In the above suit Mrs. Saraswathi Ammal has filed a counter before the XVI Assistant City Civil Court, Chennai, alleging that she was taken to the counsel by name one Mr.Kulasekaran, thereafter he become Honourable Judge of the High Court and took her signature even without informing for what purpose her signatures were taken. It is the specific pleading of the respondent that Mrs. Saraswathi Ammal before vacating herself from one portion. she has introduced one Mr.Ramesh to the tenants a local real estate businessmen and he was appointed to manage the property and collect the rents from the tenants. Though she denied in her counter about the handing over of powers to Mr.Ramesh at the specific point of time, the F.I.R. Dated 24.3.2001 referred above and the allegations in the plaint and counter affidavit of the parties clearly prove one fact that Mr. Ramesh, present applicant is also well aware of the disputes in the year 2001 itself. Stand taken by Mrs. Saraswathi Ammal in the earlier suits that her signature was obtained fraudulently in the office of Mr.A.Kulasekaran, later he became Judge of the High Court, without her knowledge, cannot be countenanced for the simple reason that O.P. has been abandoned by the petitioner and dismissed for default on 15.11.2000. Thereafter, said Mrs. Saraswathi Ammal filed Application before this Court in A.No.1106 of 2006 for return of the Will of her husband. Thereafter in the year 2006 another counsel appeared for Mrs. Saraswathi Ammal, has filed a Memo requesting the unmarked Will of her husband dated 20.09.1996 may be returned to her.

On her request the Will was taken back by the said Mrs. Saraswathi ammal. In the above application the memo is filed by some other counsel engaged by Mrs. Saraswathi Ammal. These facts clearly indicate that Mrs. Saraswathi ammal is in fact consciously filed the application for Probate of Will of her husband in O.P.No.342 of 2000. Subsequently, for some or other reason she abandoned her application and fell in the hands of the third parties and started creating third party right over the suit property. The respondent having realised that Mrs. Saraswathi Ammal has not joined with them in getting the Letters of Administration, they have filed another O.P.No.610 of 2001 with the xerox copy of the Will. By that time the original Will was already in the custody of the Court in O.P.No.342 of 2000. Thereafter the registry was directed to place all the records and ultimately O.P. was disposed wherein the said Mrs.Saraswathi Ammal was shown as one of the respondents. Further, notice has not been received by her and ultimately publication has also been effected. Thereafter, she was set exparte and one of the attesting witness, who has filed affidavit in O.P.No.342 of 2000 and subsequently, in O.P.No.610 of 2001 he was examined as P.W.2 to prove the execution as well as the attestation. Based on the evidence this court granted Letters of Administration in the above O.P.

11. From the above narration of the facts it clearly shows that after having filed the Will in O.P.No.342 of 2000, Mrs. Saraswathi Ammal for some or other reason has gone back and allowed the O.P. for dismissal for default. After filing such application, she has started alleging that her thumb impression were taken by her counsel by name Mr.A.Kulasekaran and Ms. Subashini without informing for what purpose her thumb impression was taken. It is to be noted that such allegation cannot be countenanced for the simple reason that the person referred as Mr.A.Kulasekaran is the former Judge of this High Court and the allegation that he took the thumb impression is

also found to be false on perusal of the original O.P.342 of 2001. In fact in the above O.P. she has signed as Saraswathi. No thumb impression whatsoever found in the original application filed by Mrs. Saraswathi Ammal. The very allegation itself is after thought and appears to have made some how or other to non-suit the respondents. It is also to be noted that O.P.was allowed to be dismissed for default on 14.11.2000 itself. Thereafter, no whisper whatsoever made against the counsel before the court for the alleged conduct of the counsel for the respondent by the said Saraswathi Ammal. She has made an allegation only in the suit filed by the respondent before the Court against her restraining her from creating any encumbrance over the suit property, without making any complaint about the alleged role of the advocate in the year 2000 when the O.P. was filed in the year 2006. The said Mrs. Saraswathi's new counsel filed an application in Application No.1106 of 2006 and also filed a memo on 24.3.2006 for returning of the Will of her husband dated 20.9.1996. These facts clearly show that Mrs. Saraswathi Ammal was very much aware of the Will, having admitted and filed in the proceedings and also has not made any complaint against the counsel who allegedly obtained her thumb impression without her knowledge. She has kept quiet in getting back the documents and Will. All these facts clearly show that the allegation set up by Mrs. Saraswathi Ammal at a later point of time cannot be countenanced. From 2001 itself third party interference established.

12. F.I.R. filed in the year 2001, wherein the name of the applicant also found place. Similarly, in the suit filed by her in the year 2001 in O.S.No.1368 of 2001, a reference has been made against the applicant. In another suit i.e., O.S.No.1738 of 2001 filed by the respondent, it is also pleaded that there was a compromise at the intervention of the police and the real estate people have occupied some portion

and marked it. In the said suit also written statement has been filed by her claiming that she has right to deal with anybody including second respondent one Shanmuga Pandi. Thereafter, the respondent also filed O.S.No.1802 of 2007 as against one Shanmuga Pandi and Muruga Vanaraj. The above suit was also decreed in his favour on 6.11.2007. When doing so, the applicant in the year 2001 is said to have purchased a property from the said Mrs.Saraswathi Ammal for a sum of Rs.60 lakhs by a Sale Deed dated 31.1.2011. In the meanwhile, in the year 2007, the respondent also obtained a decree in O.P.No.1808 of 2007 as against one Shanmuga Pandi and others. Despite the same applicant appears to have purchased the property in the year 2011. It is further to be noted that immediately after the purchase, again there was an attempt to take possession of the property. Therefore, the complaint was filed by the respondent for fraudulent transfer of property. As the police did not take any action, Crl.O.P.No.2816 of 2013 was filed. This Court by an Order dated 17.6.2013 directed the respondent to give a fresh complaint with the police, on such complaint, police is directed to enquire the matter and to proceed in accordance with law. Thereafter, another Crl.O.P. was filed. Since the crime has been registered by the police the above Original Petition was also closed by this Court. Thereafter to transfer the investigation Crl.O.P.No.5415 of 2014 was filed by one of the respondents. Wherein also this Court ordered investigation to be conducted under the supervision of the Deputy Superintendent of police. Thereafter in the year 2015 in Crl.O.P.No.5448 of 2015, this Court accepted the status report of the police and directed the Deputy Commissioner of Police Vadapalani for investigation and directed to file final report within four weeks from the date of receipt of the order. Now, it appears that final report has been laid against the applicant herein and he was arrayed as A1. The final report has been filed before the XXIII Metropolitan Magistrate Court, Saidapet, for the

offences under Section 406, 420 r/w 120 I.P.C. Final report not was only filed against the applicant herein but also one Mr. Shanmuga Pandi, Mr. Muruga Vanaraj, Mr. Punniyakotti and Mr. Manoharan. In the meanwhile, the respondent also filed Habeas Corpus Petition No.1215 of 2015 alleging that the applicant and others kidnapped Mrs. Saraswathi Ammal. The Order passed in HCP shows that the detenu Sarawathi Ammal died on 12.08.2011 itself and the death certificate also filed before the Division Bench of this Court. In view of the same the Habeas Corpus Petition was closed with liberty to the petitioner to work out his remedy in the manner known to law, if he has any grievance.

13. The deceased Mrs. Saraswathi Ammal appears to have died on 12.08.2011, after 7 months after the alleged receipt of Rs.60 lakhs said to have paid by the applicant, who is also arrayed as an accused in the final report. The typed set of papers filed have been really indicate that from the year 2001 itself, Mrs. Saraswathi Ammal fallen prey at the hands of others, having filed an application for Letters of Administration at the initial stage. Subsequently. Merely because she has made some allegation in the written statement about the counsel and denied the Will, it cannot be stated that her allegation is proved. On the other hand, the entire sequences of events narrated above on the basis of the documents filed in the type set show that from the year 2001, she was under the influence of the applicant and other people, who are now charge sheeted. Therefore, the allegation raised by her in the written statement cannot be taken as truth, without any proof of the same. It appears from the above narration, from the year 2001 the applicant is aware of the letters of administration filed and obtained by the respondent in the year 2001 itself. Therefore, this contention that he became aware of the Letters of Administration filed by the respondent in the year 2012 is nothing but false statement.

Further, the entire transaction particularly the alleged sale, is not proved through the documents referred above prima facie, in fact that transaction is shrouded with serious doubt and circumstances. When that being the position, mere registration of the document in his name itself cannot be taken into consideration to hold that he has caveatable interest and to revoke letters of administration granted as early as 6.10.2011. Admittedly, Civil Suit is also pending before the Court in O.S.No.7057 of 2012. In the Civil Suit only, the rights of the parties could be properly established by adducing evidence and prima facie on seeing materials produced before the Court, this Court is of the view that the Letters of Administration cannot be revoked at the instance of a third party, whose right in the property itself not properly established and shrouded with serious doubt. Similarly, above sequences of events clearly show that he was aware of the Letters of Administration obtained by the respondent in the year 2001 itself. But he has come up with this application only in the year 2015, after delay of 15 years, which cannot be entertained. In this regard it is useful to refer the judgment reported in **CDJ 2017 SC 1243**

**[Lynette Fernandes v. Gertie Mathias since deceased by Lrs.]**

"13. One must keep in mind that the grant of probate by a Competent Court operates as a judgment in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate. In this matter, as mentioned supra, the appellant was a minor at the time of grant

of probate. She attained majority on 09.09.1965. She got married on 27.10.1965. In our considered opinion, three years limitation as prescribed under [Article 137](#) runs from the date of the appellant attaining the age of majority i.e. three years from 09.09.1965. The appellant did not choose to initiate any proceedings till the year 25.01.1996 i.e., a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the appellant to show as to why she did not approach the Court of law within the period of limitation. At the cost of repetition, we observe that the appellant failed to produce any evidence to prove that the Will was a result of fraud or undue influence. The same Will has remained un-challenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the Court for cancellation or revocation of grant of probate."

14. (i) Learned counsel appearing for the applicant has cited in **AIR 1972 MADRAS 212 (V 59 C 72) [G. Jayakumar v. R. Ramaratnam]** this Court has held that any interest in the estate in respect of which the deceased is alleged to have executed a testament must entitle the holder of that interest to attend and oppose the probate proceedings.

(ii) In **1995-2-L.W.831 [Gita alias Gita Ravi v. Mary Jenet James alias M.J.James and others]** it is held that explanation under 263 of the Indian Succession Act, is only illustrative providing for a legal fiction in the cases set out in clauses (a) to (e) and not exhaustive of the circumstances in which the grant may be revoked or annulled

for just cause.

(iii) The judgment reported in **2007 (4) CTC 291 [R.V.R.Nallasivam and others v. N. Kuppammal and others]** deals with caveatable interest and when the caveat said to have discharged.

The above judgment is any way not helpful to the applicant case here.

15. Admittedly, in this case Mrs. Saraswathi Ammal is the only legal heir of Mr.S. Amirthalingam who was already made as a party, notice has been served and publication has been made and orders were passed. It is to be noted that non-service of the notice cannot be taken as serious in this matter, since Mrs. Saraswathi Ammal joined hands of the third parties and possibility of evading of notice by herself cannot be ruled out.

16. In view of the above discussions and factual aspects, I am of the view that the application for revocation of Letters of Administration cannot be entertained and the same is liable to be dismissed.

17. Accordingly, the application is dismissed.

Sd/.N.S.K.J

28.04.2018

//Certified to be a true copy//

Dated this the      th day of                      2018.

KY/04.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.