

HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :06.04.2016

DATE OF DECISION:15.04.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.No.114 of 2009

Smt.Jothi

.. Appellant

Vs.

1. K.T.Rukmani Ganesan Cultural Forum,
rep.by its Trustee Secretary,
C.Ramanatha Rao,
2. Ponnadiyan
3. C.Ramanathan Rao,
4. J.S.Mehta
5. Karmughil
6. Poonghuzhali

.. Respondents

Prayer: Original Side Appeal filed under Order 36 Rule 9 of the Original Side Rules 1956 and Clause 15 of Letters Patent against the Order dated 24.7.2006 made in Application No.3212 of 2005 in T.O.S.No.40 of 1995 on the file of this Court.

For appellant :: Mr.O.R.Abul Kalam

For Respondent No.2 :: Mr.K.Chandrasekaran
Mr.K.S.Vaithianathan

JUDGMENT

M.M.Sundresh, J.

This appeal has been filed by the appellant/plaintiff being aggrieved against the Order dated 24.7.2006 passed by the learned single Judge, by which, the application A.No.3212 of 2005 filed by respondents 1 to 3 herein was allowed by impleading them as defendants No.5 to 7 in T.O.S.No.40 of 1995.

2. From the records, it is seen that the appeal was in fact filed in the month of August 2006, and numbered in the year 2009. Apparently, the appellant has not evinced any interest to bring the appeal for hearing and it is only by the direction of the Court to post the old matters on Board, it has come up.

Though the matter was posted for hearing on 30.3.2016, at the request of the learned counsel for the appellant citing personal inconvenience, it stood posted today.

3. Heard Mr.O.R.Abul Kalam, learned counsel appearing for the appellant and Mr.K.Chandrasekaran, learned counsel appearing for respondent No.2.

4. As rightly observed by the learned single Judge, this case has got a chequered history and certain background facts are necessary before proceeding to merit.

5. There were three parties raising their respective claims to the very same property bearing Door No.29, Padmanabha Chetty Street, T.Nagar North, Chennai, which is situate in the heart of Chennai, and thus, high on value. The property was stated to be originally owned by a popular cine artist by name late K.T.Rukmini. The appellant filed O.P.No.678 of 1992 basing reliance upon an unregistered Will dated 2.12.1992 said to have been executed by late T.A.Ganesan, husband of K.T.Rukmini, allegedly an adopted daughter. Two more petitions have been filed by others viz., Sambasivan and J.S.Mehta in O.P.Nos.451 of 1992 and 747 of 1992. M/s.K.T.Rukmini Ganesan Cultural Forum represented by its Trustee-Secretary filed three caveat petitions in Caveat Nos.121 to 123 of 1992. As all the parties agreed to convert the Original Petitions as Testamentary Suits, by Order dated 28.9.1995, all the Original Petitions were converted as T.O.S.Nos.39, 40 and 41 of 1995. Accordingly, the applications filed by the appellant in application Nos.1409 to 1411 of 1994 to discharge the caveats filed were dismissed as withdrawn. Thereafter, pursuant to an Order dated 25.3.1996 made in Application Nos.5403 and 5404 of 1993 in T.O.S.Nos.39 and 40 of 1995, the property was entrusted to the Deputy Administrator General and Official Trustee, High Court.

6. It appears from the records that the application filed by respondents 1 to 3 herein for impleadment was misplaced by the Registry. It is to be noted that in the other two Testamentary Original Suits-T.O.S.Nos.39 and 41 of 1995, the names of respondents 1 to 3 herein were included as defendants. When the matter was listed before the Court, the learned counsel appearing for respondents 1 to 3 herein sought to implead themselves in the suit. The said request was rejected on the ground that no application has been listed before this Court for their impleadment and the objection raised on behalf of respondents 1 to 3 herein on the evidence being recorded cannot be sustained. Thereafter, application No.3212 of 2005 was filed seeking impleadment. Though a query was raised by the Registry, by the orders of the Court it was directed to be numbered. It is alleged in the application filed that the earlier applications filed along with the affidavits could not be traced

as the Registry has lost them. The learned single Judge while expressing a prima facie doubt on the unregistered Will and noting the objection raised on behalf of the appellant as technical, was pleased to allow the application with a finding that it is imperative to go into the genuineness of the execution of the Will. Challenging the same, the present appeal has been filed.

7. Subsequent to the said order, the respondent Nos.1 to 3 along with two others have also filed a comprehensive Civil suit in C.S.No.757 of 2007, in which, the appellant is also a party defendant.

8. The learned counsel appearing for the appellant contended that there is no caveatable interest in favour of respondents 1 to 3 herein. The earlier Order passed on 21.7.2015 would govern the case. The question of title cannot be gone into in this proceedings. In support of his contention reliance has been made by the learned counsel on the following citations:

'1. Krishna Kumar Birla Vs. Rajendra Singh Lodha and others, ((2008) 4 SCC 300) and
2. Illachi Devi (D) by L.Rs and others Vs. Jain Society, Protection or Orphans India and others, (2003(4) CTC 98)''

9. Learned counsel appearing for respondents 1 to 3 submitted that having withdrawn the application to discharge the caveat it is not open to the appellant to contend to the contrary. Respondents 1 to 3 have filed comprehensive Civil Suit in which the appellant is a party. What is sufficient is the availability of an interest in the estate of the deceased. For the aforesaid purpose the respondents 1 to 3 are relying upon the document executed by the deceased T.A.Ganesan. The word 'interest' will have to be given the maximum flexibility. To buttress his submission, reliance is made on a decision of the Supreme Court in Jagjit Singh and others Vs. Pamela Manmohan Singh ((2010) 5 SCC 157).

10. What has been ordered is a mere impleadment of respondents 1 to 3. By consent, the Original Petition is converted as Testamentary Original Suits by the Order dated 28.9.1995, which has become final. Admittedly, the caveat was not discharged by an order of Court. The appellant has not raised the issuance of non-compliance of Order 25 Rule 51 and 52 of the Original Side Rules of High Court and the provisions of Indian Succession Act on the earlier occasion, which even otherwise, would at best be a technical one. On facts, the learned single Judge found that the Registry has committed a mistake in not placing the matter before the Court in this regard, that too, after failing to trace the records.

11. It is also to be noted that respondents 1 to 3 were impleaded as parties in the other Testamentary Original Suits. Those Suits were said to have been dismissed subsequently. The Order passed by the learned single Judge dated 21.7.2005 would not help the case of the appellant. The said order has been passed on a oral request made by the counsel. It has to be seen thus, in its own context as also seen from the discussion made. Thereafter only, the application was filed. The earlier Order was also passed in ignorance of the misplacement of the application in Diary No.19294 of 1999. The basis of the Order was also different. Therefore, the reasoning of the learned single Judge in this regard is perfectly in order, especially, when the very same learned Judge, who passed the earlier order, has directed the subsequent application to be numbered.

12. Admittedly, the suit filed by respondents 1 to 3 in C.S.No.757 of 2007 is still pending. Thus, the contentions raised by the appellant at best be academic. Considering the facts of the case, certainly, there is a caveatable interest in favour of respondents 1 to 3. Perhaps, that is the reason why the appellant did not raise any objection earlier.

13. For the foregoing reasons, we do not find any merit in this appeal and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Copy to:

The Sub.Asst.Registrar
Original Side
High Court
Madras.

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+1cc to Mr.O.R.Abul Kalaam, Advocate, S.R.No.23613
+1cc to Mr.K.Chandrasekar, Advocate, S.R.No.23513

O.S.A.No.114 of 2009

tej (CO)
srg (26/04/2016)