

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.304 of 2012

1.R.Venkataraman
2.Gunavathi
G.Suseela
4.G.Panchanandan
5.S.Pramila ... Appellants

vs

S.T.Sundari ... Respondent

Original Side Appeals filed under Order XXXVI, Rule II of Original Side Rules read with Clause 15 of Letters Patent against the order dated 12.07.2012 in A.No.5178 of 2011 in O.P.No.359 of 2008 on the file of this Court. Apple No.5178 of 2011 Application praying to pass on order to stay of the operation of order dated 16/07/2009 made in OP.No.359 of 2008 pending disposal of application for revolation.

For Appellants .. Mr.C.P.Sivamohan
for
M/s.Vimal B.Crimson

For Respondent .. Mr.V.Srikanth
for
M/s.K.Elangoo

JUDGMENT

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

Late Thayanayagi purchased the property bearing No.37, Subramaniam Street, West Mambalam, Chennai-33 in pursuance to a registered sale deed dated 04.09.1961. Her husband pre-deceased her in the year 1987. There were no issues from the marriage. The respondent was residing with the deceased Thayanayagi till she passed away on 25.3.1997.

2. The respondent is not in the direct line of succession as per the Indian Succession Act, 1925, but is a paternal cousin sister. The appellants are late Thayanayagi's husband's sister's children, two sons and one is Thayanagagi's brother's daughter.

3. It is the case of the appellants that she executed the last Will and testament dated 30.3.1988, which is duly registered. O.P.No.359 of 2008 was filed for grant of Letters of Administration of this Will and the same was granted on 16.7.2009.

4. The respondent claims ignorance of these proceedings and alleges that on 03.8.2011, her son-in-law was called by the Inspector of the local Police Station, where she found that the appellants were armed with the Letters of Administration. It is thereafter that the respondent filed applications for revocation of probate and for interim order predicated on a subsequent Will, albeit unregistered, dated 11.6.1995.

5. In terms of the impugned order dated 12.7.2012 of the learned Single Judge, the probate granted earlier to the appellants has been revoked on account of the subsequent Will being propounded by the respondent.

6. The learned counsel for the appellant has drawn our attention to the impugned order to contend that the said order is predicated solely on illustration (vi) to Section 263 of Indian Succession Act, 1925, which provides for revocation or annulment for just cause qua the grant of Probate or Letters of Administration. As to what is just cause is in the Explanation as set out. The sixth illustration of the Explanation refers to the case where Probate was granted and a later Will has been discovered.

7. The learned counsel for the appellants contends that the respondent did not have any caveatable interest at the stage when probate was granted of the earlier Will on 16.07.2009, as he was not the successor by reason of the provisions of the Indian Succession Act, 1925. Further, the Will propounded by the appellants was registered, while the subsequent Will was unregistered. The subsequent Will, while making reference to the earlier Will, never mentioned the date of the Will.

8. The learned Single Judge has opined that on perusal of the subsequent Will, it appears that the respondent was looking after the testatrix, which may have caused her to execute the subsequent Will. In the subsequent Will, the testatrix has not denied the shares to the appellants, but only varied the shares

from the earlier Will - while under the earlier Will, the property was to be divided three way, in the subsequent Will, it was to be divided four way, with 1/4th share falling to the respondent. The learned Single Judge found that there was just cause to revoke the Will, in view of the subsequent Will being produced.

9. We are in agreement with the conclusion of the learned Single Judge. We may note that non-pendency of the probate proceedings regarding the subsequent Will does not mean that the subsequent Will is not capable of being propounded, and the grant of probate would depend on as to whether the respondent is able to prove the said Will or not which is a matter of evidence. The subsequent Will being unregistered makes no difference, as the Will is not a compulsorily registrable document and the subsequent Will, albeit unregistered, which if proved, would certainly supersede the earlier Will, which was registered, as per the settled legal position.

10. We are informed that both the cases are at the stage of trial now and in T.O.S.No.25 of 2014 filed by the respondent, witnesses are being examined.

11. The impugned order is well reasoned one and in the factual matrix, we find no reason to interfere with the impugned order.

12. The appeal is dismissed, leaving the parties to bear their own costs.

13. At this stage, the learned counsel for the appellants submits that an endeavour for settlement through the mediation process should be made. We are inclined to do so, but making it clear, the trial in the case will continue.

14. The parties to appear before the Tamil Nadu Mediation and Conciliation Centre, Madras High Court Campus on 19.10.2016 at 2.15 P.M. and the Mediator will endeavour to conclude the mediation process within two months.

15. List for report of the Mediator on 16.12.2016.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

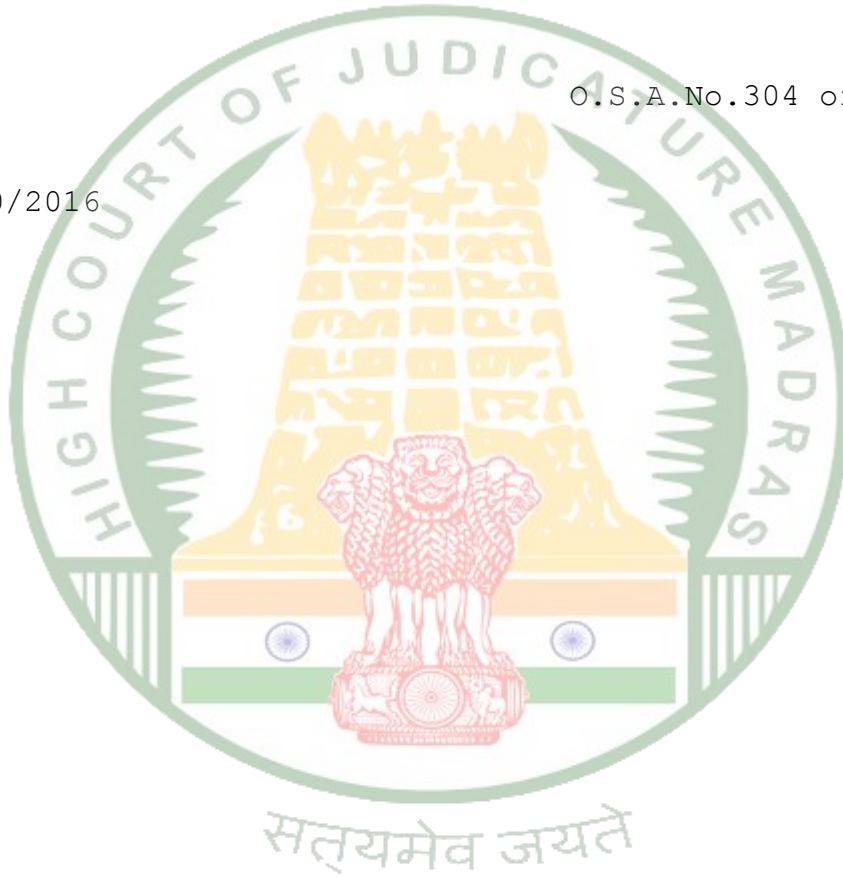
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To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.
2. The Assistant Register,
Tamil Nadu Mediation and Conciliation Centre,
Madras High Court Campus.

O.S.A.No.304 of 2012

SAI (CO)
MD : 14/10/2016



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