

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.08.2016

CORAM :

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

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.176 of 2016

and

C.M.P.No.13092 of 2016

1.V.R.Anusuya Devi
2.V.R.Malathi
3.V.R.Bharathi
4.V.R.Jayanthi

.. Appellants

-vs-

1.R.Bharathy
2.P.V.Suriya Narayanan

.. Respondents

Appeal filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent Act, against the order dated 20.01.2016 made in Application No.3553 of 2015 in T.O.S.No.11 of 2008 (O.P.No.860 of 2007)

For Appellants : Mr.H.Nazirudeen

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J U D G M E N T

(Order of the Court was made by The Hon'ble Chief Justice)

The appeal is directed against the impugned order of the learned Single Judge dated 20.01.2016 rejecting Application No.3553 of 2015 filed by the appellants for condonation of delay of 1573 days in filing the application to set aside the ex parte judgment and decree dated 01.12.2010 passed in T.O.S.No.11 of 2008.

2.The appellants are the progenies of the testatrix who is stated to have executed the last Will and Testament dated 29.07.2005 in respect of her properties. The Will is duly registered. The testatrix died on 07.02.2006.

3.The appellants and other legal heirs were all served and lodged caveat and thus, the original petition was converted into

a T.O.S. on 20.03.2008. The appellants entered appearance through counsel, but chose not to file their written statement for nearly two years and consequently, were proceeded ex parte. Thereafter, the Executor of the Will was examined as P.W.1 and the Attestor of the Will as P.W.2 with the original Will being marked as Ex.P-1. The Court, after satisfying itself about the veracity of the Will, passed an ex parte decree dated 01.12.2010.

4. In the endeavour to open up the case once again and seek condonation of delay, the blame is sought to be put on the then counsel. We may note, as recorded in the impugned order, that neither any complaint was made against the counsel nor any affidavit of the counsel filed. The only plea is that the appellants kept on enquiring about the case and only now knew its fate as the lawyer did not inform them.

5. The unbelievable story is sought to be spun of the negligence of counsel by these parties who now seem to have acquired some greed for the additional property. If the counsel had been negligent, there would have been some complaint. We do not even believe the story for the simple reason that the appellants at least knew that they had to file their objections to the Will and the admitted position is that no written statement was also filed. Not only that, thereafter also for years together the appellants have kept quiet. The Limitation Act, 1963, still exists on the statute and the purpose of the said Act is to give certainty to litigation. The argument cannot be countenanced that no prejudice would be caused to the respondents as the rights in the property would naturally be disturbed after so many years. The very basis, if one may say, of the Limitation Act is that even if a party has a good case, the same can be lost on account of the said Act if parties are not vigilant. Much less vigilant, here the appellants paid no attention to the litigation whatsoever from day one.

6. The learned Single Judge has rightly referred to the judicial pronouncements of the Hon'ble Supreme Court in H.Dohil Constructions Co. Pvt. Ltd. vs. Nahar Exports Ltd., 2015 (5) CTC 534 (SC) and has come to the conclusion that there is total lack of bona fides on part of the appellants. In fact, even condonation of delay in re-filing is not to be dealt with casually (reference was also made to Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy, 2013 (5) CTC 547).

7. Learned counsel for the appellants seeks to contend that the appellants have a right under Section 263 of the Indian Succession Act, 1925, as according to them, the Will is forged. The said Section reads as under:

263.Revocation or annulment for just cause. - The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. - Just cause shall be deemed to exist where -

- (a) the proceedings to obtain the grant were defective in substance ; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.'

8. In our view, the section does not come to the aid of the appellants. Firstly, the right to claim revocation is based on 'just cause'. As to what is the 'just cause' is set forth in the explanation. A reading of the explanation shows that the case of the appellants does not fall within those categories as the original Will was produced, the Will was registered, the Executor and witness were examined and all necessary formalities to prove the Will stands completed. We, thus, reject this submission.

9. We are, thus, of the view that there is no ground whatsoever to interfere with the impugned order and it has been a reckless endeavour on part of the appellants to keep on agitating the issue. It is appropriate that judicial time must be valued and parties wasting the judicial time must be penalised.

10. We, thus, dismiss the appeal with costs quantified at Rs.3,000/- (Rupees three thousand only) to be deposited with the Tamil Nadu Mediation and Conciliation Centre, Madras High Court

Campus, in a period of three (3) weeks from today. Consequently,
C.M.P.No.13092 of 2016 is also dismissed.

sra

Sd/-
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Sub Asst. Registrar

To

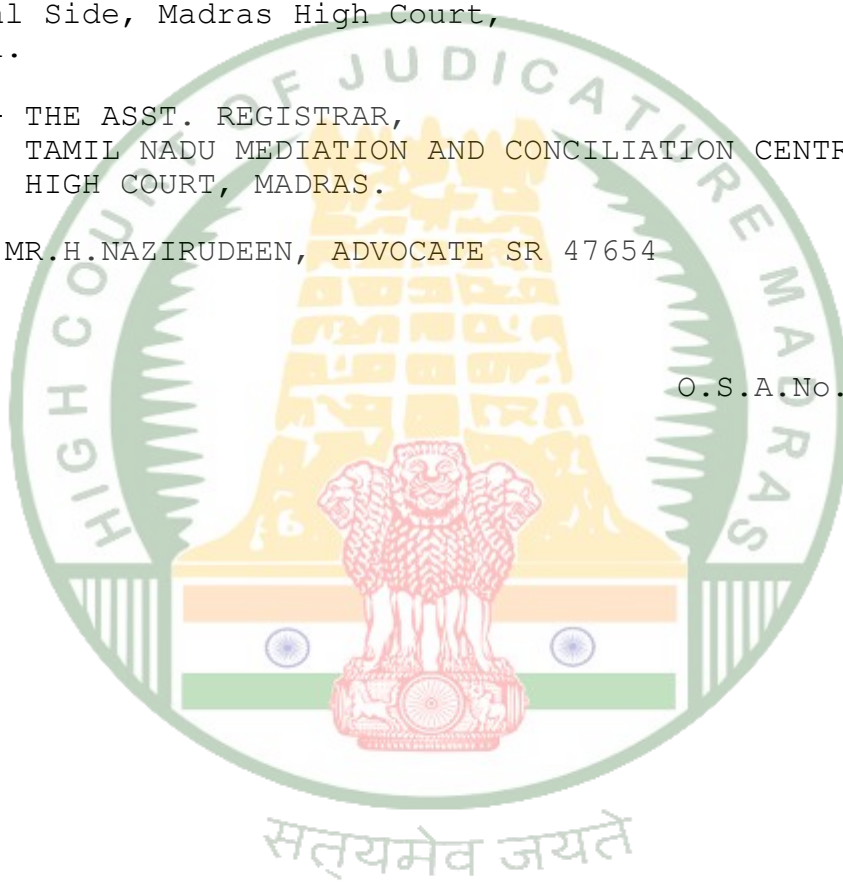
1. The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

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TAMIL NADU MEDIATION AND CONCILIATION CENTRE,
HIGH COURT, MADRAS.

+ 1 CC TO MR.H.NAZIRUDEEN, ADVOCATE SR 47654

KR/6/9/16

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