

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 06TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.5280 of 2017

in

O.P.No.261 of 2011

In the matte of Indian succession
Act (XXXIX of 1925) And In the
matter OF Last Will and Testament
dated 09.11.2009 of S.Ganesan
(Deceased)

D.Sugumar,
S/o. Late A.Duraisamy
No.36/6, Kamarajar Street,
Thiruvalluvar Salai,
Vanniya Teynampet,
Chennai 18.

..Petitioner

-Versus-

1. Mrs.Menaka Sadagopan,
W/o. Mr.Sadagopan,
3B, Golden Ivy Apartments,
New No.30 Old No.50,
6th Main road, 2nd Avenue,
Anna Nagar, Chennai 40.

2. Mrs.Bhavani Kuppusamy,

3. Dr.G.Yogeshwaran,

4. G.Sankaran
C/o. Mrs.Menaka Sadagopan,
All are residing in
3B, Golden Ivy Apartments,
New No.30 Old No.50,
6th Main Road, 2nd Avenue,
Anna Nagar, Chennai 40.

..Respondents

A.No.5280 of 2017

T.Sarala
New No.2, Old No.21,
Plot No.19, Chemiers Road
11th Lane, Teynampet
Chennai 600 018.

...Applicant / 3rd Party

Vs

D.Sugumar,
No.36/6, Kamaraj Street,

Thiruvalluvar Salai,
Vannier Teynampet,
Chennai 18.

....Respondent/Petitioner

This Application pleased to pass an order to revoke the Letters of Administration granted in the above O.P.No.261 of 2011 on 25.04.2012 to the respondent/petitioner herein and direct him to surrender the original of the Letters of Administration into this Hon'ble Court forthwith.

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

This application has been filed, seeking to revoke the Letters of Administration, granted in OP.No.261 of 2011, by order dated 25.4.2012 to the Respondent herein and for a further direction to surrender the original Letters of Administration into the court.

2. OP.No.261 of 2011 has been filed with respect to the last Will and testament, dated 9.11.2009 of S.Ganesan, under Sections 232 and 276 of the Indian Succession Act, read with Order XXV Rule 5 of the Original Side Rules, seeking grant of Letters of Administration with the Will annexed.

3. There were four Respondents in the OP. They were, Menaka Sadagopan, wife of Sadagopan, Bhavani Kuppusamy, Dr.G.Yogeshwaran and G.Sankaran. It has been stated that the Testator, S.Ganesan died on 16.10.2010. The Petitioner in the OP is the brother's grand son of the said S.Ganesan and the Respondents were his sons and daughters. It has been further stated that the said S.Ganesan left behind a Will, dated 09.11.2009, registered as Document No.117 of 2009 in the office of the Sub Registrar, Anna Nagar. There were two witnesses

to the said Will, namely, P.Chandrasekar and J.Alexander. The Petitioner in the OP was the beneficiary under the Will, with respect to the property at Old Door No.22, New Door No.2, Chamiers 2nd Lane, then Cooperative Colony Street, Teynampet, Chennai-18. This Will came up for consideration by this court. By order dated 25.4.2012, this court had examined the records and had found that the Petitioner had examined himself as PW.1 and had marked the original Will as Ex.P1 and the death certificate of the Testator as Ex.P2. The affidavit of assets was marked as Ex.P3 and the paper publications stipulated under the Original Side Rules with respect to grant of Letters of Administration were marked as Ex.P4 (series). This court also found that objections were not received from any one. It was also found by this court that one of the attesting witness, P.Chandrasekar was examined as PW.2.

4. On appreciation of the oral and documentary evidence, this court had granted Letters of Administration with the Will annexed to the petitioner along with the usual conditions. The order was dated 25.4.2012.

5. The present application has been filed by a third party to the OP by name, T.Sarala. In the affidavit filed in support of this application, it has been stated that during the life time of the Testator of the Will, namely, S.Ganesan, the mother of the Applicant had purchased a part of the property mentioned under the Will and a residential building was also constructed. The sale consideration was also paid in instalments to the Madras Cooperative Government Servants Cooperative Building Society Limited, Chepauk, Chennai. The Testator had filed OS.No.10471 of 1996 on the file of the 4th Additional City Civil Court, Chennai. The suit was filed

against the father of the Applicant, B.S.Sabapathy. The Applicant was impleaded as the 2nd Defendant after the death of her father. The suit was dismissed. The first appeal in AS.No.654 of 2005 had been filed and the same is pending. Subsequently, the Testator died pending the first appeal and the Petitioner in the OP, by name, Mohan had filed an application to implead himself. It has been stated that Letters of Administration had been granted for the entire property, including the property which was the subject matter of the suit in OS.No.10471 of 1996.

6. It has been stated that the Petitioner in the OP was aware that the Applicant herein was in peaceful possession and that the Applicant herein had not been impleaded as a party to the OP. It has been stated that the Applicant has a caveatable interest and that pendency of AS.No.654 of 2005 on the file of this court has been deliberately suppressed. In these circumstances, it was stated that the Letters of Administration granted must be revoked.

7. A counter affidavit has been filed by the Respondent. It has been stated that the Applicant/ third party does not have any caveatable interest and that she is a stranger to the administration of the estate of the deceased. It has been further stated that AS.No.654 of 2005 is still pending on the file of the High Court, Madras. It has been stated that the Petitioner in the OP was permitted to prosecute AS.No.654 of 2005 and that the application has been filed to protract the case pending in AS.No.654 of 2005. It has been stated that the application should be dismissed.

8. This court heard Mr.M.S.Mani, the learned counsel for the Applicant and Mr.D.Balachandran, the learned counsel for the Respondent.

9. Section 263 of the Indian Succession Act provides circumstances under which revocation of grant of probate may be granted. This application has been filed invoking the provisions of Section 263 (a), (b) and (d) of the Indian Succession Act, which are as follows:-

"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)

(d) the grant has become useless and inoperative through circumstances;"

10. During the arguments, it had been projected that the building, which was the subject matter of OS.No.10471 of 1996, had been constructed by the Applicant herein, but the land belonged to the Testator. The learned counsel for the Applicant has relied on the judgement in OS.No.10471 of 1996 dated 27.10.2003. Even though a judgement had been delivered about 14 years ago, the present application, seeking to revoke the Letters of Administration had been filed only recently. That itself may not be a ground to accept the contention of the learned counsel for the Applicant. But, it certainly raises issues of bona fide in filing the application after such a long period of time.

11. It is also to be pointed out that AS.No.654 of 205 is ripe for hearing by this court. It is a commonly admitted fact that the appeal suit is a continuation of the Original Suit and the first appellate court has every right to examine the pleadings and also the evidence on record. The judgement of the Trial Court cannot be taken as the end of any civil litigation. In fact, it is only a beginning. Revocation of probate is mainly sought on the ground that since OS.No.10471 of 1996 had been dismissed, the Testator has lost all rights over the property, which he had bequeathed and consequently, the grant of Letters of Administration has to be revoked. However, a perusal of the copy of the Will itself shows that the Testator has mentioned about AS.No.654 of 2005 and had also bequeathed the right to continue the proceedings against T.Sarala, wife of Thiyagarajan, who is the Applicant herein.

12. The learned counsel for the Applicant has relied on 1992 1 LW 77 (S.D.Ponnuswamy Mudaliar Vs. S.K.Somasundram) wherein it has been stated that a purchaser had a just cause to seek revocation. The learned counsel has also relied on 2008 10 SCC 489 (G.Gopal Vs. C.Baskar and others) wherein the grand children of the Testator, who claimed the estate on the basis of a settlement deed, were determined to have a caveatable interest. The learned counsel stated that in this case, there was a decree of the court. The learned counsel has also relied on AIR 2011 Madras 269 (E.Sankaran Vs. Krishnaveni and another) wherein it was held that the decree granting possessory rights can be recognised by a court.

13. In the present case, I am unable to agree with the learned counsel for the Applicant herein because the judgement, which is the basis for seeking revocation

14. For all these reasons, I hold that the Applicant herein has approached this court with an oblique motive only to impress upon the court that she has a right, which right is the subject matter to be decided in AS.No.654 of 2005. This court cannot be used as a tool for such purposes.

15. In the result, this application is dismissed. No costs.

06.12.2017

//Certified to be a true copy//

Dated this th day of 2018.

COURT OFFICER

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