

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..01..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Original Side Appeal No.112 of 2013

and

M.P.No.1 of 2013

Smt.B.Sulochana ... Appellant

-Versus-

1.Y.Subbulakshmi @ Subbu

2.B.Mahesh

3.Mrs.Renuka

4.R.Sabapathy

.... Respondents

Original Side Appeal under Order 36, Rule 9 of Original Side Rules r/w Clause 15 of Letters Patent, praying to set aside the order and decretal order dated 10.12.2012 made in Application No.4146 of 2012 in O.P.No.31 of 2010.

For Appellant : Mr.P.H.Arvinth Pandian for
Mr.I.Abrar Md. Abdulla

For Respondents: Mr.K.P.Gopalakrishnan for
R1 to R3
Mr.P.Valliappan for R4

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU. J.)

The original petition in O.P.No.31 of 2010 has been filed by the appellant herein seeking to grant letter of

administration based on the Will dated 26.12.1997 executed by Mr.P.Jayaram. A learned single Judge of this court by order dated 15.04.2010 granted letters of administration. Seeking to revoke the same, an application in Appl.No.4146 of 2012 was filed by the 1st respondent herein. By order dated 10.12.2012, the learned single Judge allowed the application and revoked the letter of administration, however, with liberty to the 1st respondent to contest the suit in T.O.S.No.42 of 2002. Challenging the above said order of revocation, the appellant has come up with the present appeal.

2.The suit in T.O.S.No.42 of 2002 came to be filed in the following circumstances. According to the 1st respondent, Mr.Jayaraman had executed a Will dated 26.12.1997 in favour of her. Seeking grant of probate of the Will, she filed O.P.No.525 of 2002. Since it was contested by one Mr.P.Bhupathy, who is the husband of the appellant herein, it was converted as T.O.S.No.42 of 2002. We are informed that the said suit in T.O.S.No.42 of 2002 has ripen for trial.

3. We have heard the learned senior counsel appearing for the appellant; learned counsel appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent and we have also perused the records carefully.

4. As of now, there is no controversy that T.O.S.No.42 of 2002 has been pending from the year 2002 whereas O.P.No.31 of 2010 came to be filed after eight years. The learned single Judge of this court has observed that in O.P.No.31 of 2010, the 1st respondent was not even added as party and the pendency of T.O.S.No.42 of 2002 was not even stated. For these reasons, the learned single Judge has revoked the letter of administration. We find no reason to interfere with the same.

5. In T.O.S.No.42 of 2002 the contest is in respect of the earlier Will allegedly executed by Jayaraman. When that is on contest, there cannot be any letter of administration granted in a subsequent proceedings like O.P.No.31 of 2010 behind back of the plaintiff in T.O.S.No.42 of 2002. It is not as though the 1st respondent was not aware of T.O.S.No.42 of 2002. In those circumstances, in our considered view, the learned single Judge was right in revoking the letter of administration. But, at the same time, we are of the view that O.P.No.31 of 2010 shall also be converted as T.O.S. and the same should be tried along with T.O.S.No.42 of 2002. Except the above said relief, the appellant is not entitled for any other relief. Thus, we do not find any merit at all in this appeal and the same deserves only to be dismissed.

6. In the result, the original side appeal is dismissed, however, with direction to covert the original petition in

O.P.No.31 of 2010 as T.O.S. so that the same shall be tried jointly with T.O.S.No.42 of 2002 by the learned single Judge of this Court. Considering the nature of the claim made, there shall be no order as to costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

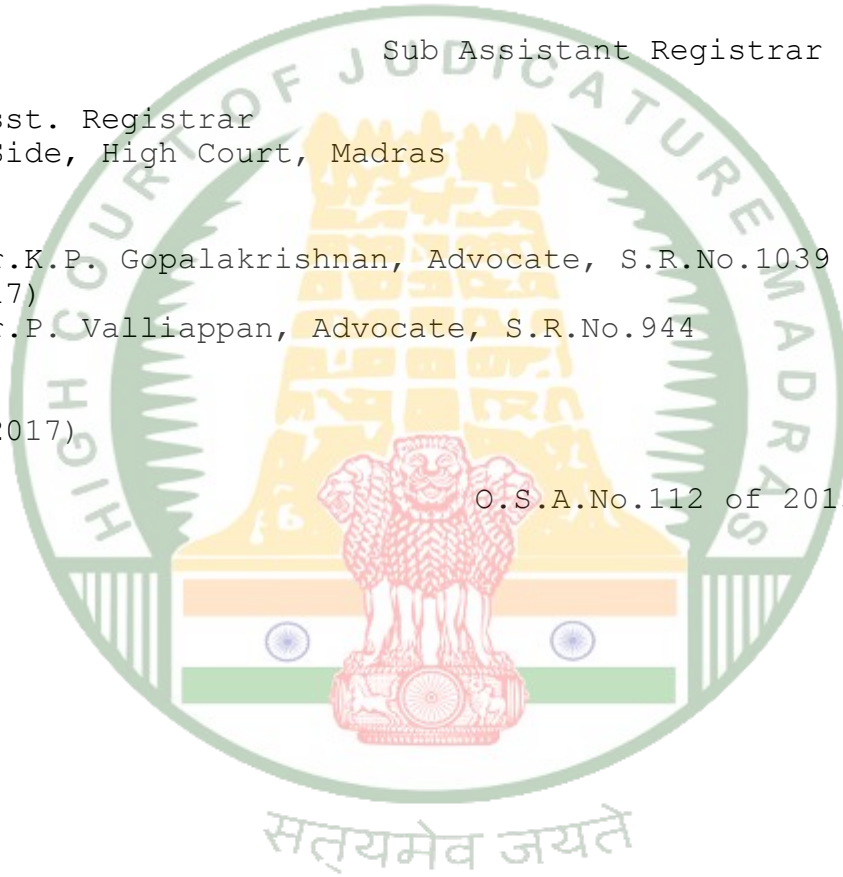
To
The Sub Asst. Registrar
Original Side, High Court, Madras

+2cc to Mr.K.P. Gopalakrishnan, Advocate, S.R.No.1039
(01/03/2017)

+1cc to Mr.P. Valliappan, Advocate, S.R.No.944

pk(CO)
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O.S.A.No.112 of 2013



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