

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2017

DELIVERED ON : 20.04.2017

CORAM

THE HON`BLE MR.JUSTICE T.RAVINDRAN

**T.O.S.No.7 of 2007
in
(O.P.No.524 of 2006)**

1.K.K.Anbazhagan,
2.K.K.Manivasugi

(Impleaded as 2nd plaintiff as per
order dated 13.02.2008 in
A.No.5406/2007 and extended
as per order dt.23.04.2008)

.. Plaintiffs

Vs.

1.C.Kumar
2.East West Benefit Fund Ltd.,
(rep.by its Director)
M.Odaiyappan,
F-41/4, First Main Road,
Anna Nagar East,
Chennai – 600 102.

.. Defendants

Original Petition No.524 of 2006 was filed under Sections 218 and 278 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration. Against this petition a Caveat was filed on 22.08.2006 and 09.11.2006 by the Caveators. The supporting affidavits were filed on 22.08.2006 and 10.11.2006. As per order of Court dated 24.03.2007 in O.P.No.524 of 2006, the original petition is directed to be converted into Testamentary Original Suit No.7 of 2007.

For Plaintiffs : Mr.R.Thiagarajan
For defendant : Mr.T.D.Vasu
No.1
For Defendant : Ms.Zeenath Begum
No.2 for Mr.Rajesh

J U D G M E N T

The petition in O.P.No.524 of 2006 has been laid, in the matter of estate of Mrs.Parameswari, who died intestate, under sections 218 & 278 of the Indian Succession Act, 1925 and Order XXV, Rule 5 of Original Side Rules, seeking for letters of administration to the properties and credits of the above mentioned deceased to have effect limited to the State of Tamil Nadu. In the above said petition, K.K.Manivasugi, K.K.Karpagam, C.Kumar and East West Benefit Fund Limited had been arrayed as respondents 1 to 4.

2. As against the above said petition, caveats have been laid on 22.08.2006 and 09.11.2006 by the Caveators/Defendants with supporting affidavits and consequently, the above said Original Petition had been ordered to be converted into Testamentary Original Suit and accordingly, the above said matter has been registered as TOS No.7 of 2007.

3. As per the order dated 13.02.2008 in Application No.5406 of 2007, K.K.Manivasugi has been transposed as the Second Plaintiff in the Testamentary Original Suit. In the O.P.No.524/2006, the respondents namely C.Kumar and East West Benefit Fund Limited., have been impleaded as respondents as per the order dated 31.08.2006 in Application No.3568 of 2006.

4. The averments contained in the plaint are briefly stated as follows:

The first plaintiff K.K.Anbazhagan is the natural brother of the deceased Parameswari. K.K.Manivasugi, who has been transposed as the second plaintiff is the sister of the deceased Parameswari. The deceased Parameswari died on 16.02.2006 at B.S.S.Hospital, No.200, R.K. Mutt Road, Mandaveli, Chennai – 600 028 and she ordinarily resided at I-4, Rohini Gardens, Santhome High Road, R.A.Puram, Chennai – 600 028 before her death. The deceased left the first plaintiff as her sole surviving legal heir and no other relation exists. The deceased Parameswari died intestate and that, due and diligent search has been made for a Will but none has been found and the petitioners/plaintiffs claim administration of her property estate,

effects and credits as his own. The deceased died issueless and her husband Rathinavelu pre-deceased her on 19.12.1992. The above named deceased had Stridhana properties, which includes self acquired properties as defined under Section 14 of the Hindu Succession Act, 1956, at the time of her death and the details of such properties, which form part of the deceased absolute estate, is more descriptively mentioned in the schedule. The schedule mentioned properties will devolve on Class I heir and failing which upon, Class II heirs of the deceased. The deceased and her pre-deceased husband died issueless and had not adopted any son or daughter during their lifetime. There are no class I heirs available to inherit their property. In the category of Class II heir, the first petitioner/first plaintiff being the only surviving natural brother of the above named deceased has lawful rights to succeed to the estate of the deceased Parameshwari's Stridhana cum self acquired properties / estates as reflected in the schedule. The deceased, at the time of her death, left the first plaintiff alone as her only next of kin residing at No.195/16, Kutchery Road, RCC Apartment, Mylapore, Chennai – 600 004 and amount of assets, which are likely to come to the petitioners' hands, does not exceed in the aggregate the sum of Rs.14,80,000/- and the net amount of the said assets, after deduction, is Nil. The first Petitioner/first Plaintiff

undertakes to duly administer the property and credits of Parameshwari, the said deceased and make full and true inventory thereof and exhibit the same in this Court within 6 months from the grant of letters of administration to him and also to render to this Court a true account of the said property of the deceased and credits within one year from the said date. Hence, the first petitioner/first plaintiff prays for grant of letters of administration to the property and the credits of the deceased.

5. The averments contained in the written statement filed by the first defendant are briefly stated as follows:

The Testamentary Original Suit is not maintainable either in law or on facts. The plaintiffs are adopting a short cut method to grab the property of the deceased Parameshwari under the guise of the present Testamentary Original Suit. The plaintiffs have not impleaded all the brothers and sisters of deceased, particularly, K.K.Karpagam, who has been shown as the second respondent in the Original Petition, has not been made as a party in the Testamentary Original Suit. Though another sister of the deceased viz., Jayalakshmi died issueless, her husband is very much alive, but he has not been added as a party. The first plaintiff is not residing in the property shown in the plaint. The

address of the first plaintiff is only the address of the second plaintiff and the first plaintiff is not at all interested in the present proceedings and only at the instigation of the second plaintiff, the case has been instituted. This would be evident from the fact that the second plaintiff has chosen to transpose herself from the defendant's position. The first plaintiff has deliberately omitted to give the details of the adopted son of the deceased Ratnavelu. The first defendant's adoptive mother, the deceased Parameswari died on 15.02.2006 and not on 16.02.2006 as alleged in the plaint. The first defendant's adoptive mother late Parameswari resided at I-3 and I-4, Rohini gardens, R.A.Puram, Chennai-600 028, which is an inter-connected flat and only in this place, all the last ceremonies were conducted. The first defendant is the adopted son of the deceased Ratnavelu and the deceased Parameswari. The first defendant is the son of Chockalingam, who is the brother of the deceased Ratnavelu. The first defendant, being the adopted son of the deceased Ratnavelu and the deceased Parameswari, is the only sole surviving legal heir and has got all the legal rights under the Succession Law and succeeded to her estate as per Section 15 read with Section 16 of the Hindu Succession Act and excludes all other persons. The question of administration of estate will arise only when the plaintiffs establish their legal rights. The plaintiffs

have no legal right to claim the administration of the estate of deceased Parameswari. The deceased Parameswari got married to deceased Ratnavelu on 23.08.1968 and she was employed in the Controller of Telecom Stores (Government of India) and after serving for 27 years, she gave voluntary retirement on 02.07.1987 and in the said department, she has made the first defendant's son K.Saravanan as her nominee. K.Saravanan is her grandson and son of the first defendant. Further, in the group Insurance Scheme of the Central Government Employees, the deceased has made the first defendant as her nominee in the event of her husband predeceasing her. In that document, she has specifically mentioned the first defendant as her adopted son and that document was executed on 03.04.1981 by deceased Parameswari. The deceased Parameswari has not left any Stridhana property at the time of her death and the plaintiffs never respected the deceased Parameswari during her life time and only after her death, with the sole intention of grabbing her properties, they have entered the scene and the properties described in the schedule are the self earned properties of the deceased. The Flat Nos.1-4 and 1-5, Rohini Gardens, R.A.Puram, Chennai-600 028, had been purchased by the deceased under the sale deeds dated 25.05.1988 and 31.08.1998 respectively. Gold items have been purchased by the

deceased Parameswari from her earnings and she mortgaged the same with the second defendant and the same had been redeemed by the first defendant by paying a sum of Rs.4,16,209/-. The Securities shown in the schedule are also self earnings of the deceased and the same are subject matter of C.S.No.128 of 2003. The deceased has not left any Sridhana property at the time of her death. The first defendant is entitled to the estate of the deceased Parameswari in the capacity as her adopted son. The concept of Class I heir and Class II heir are no way relevant to Section 14 of the Hindu Succession Act, 1956. That the first defendant has been taken in adoption by the deceased and her husband, could be seen from the marriage invitation of the first defendant and the photographs taken during the function, wherein, 'Patha Pooja' of the deceased and her husband has been done only by the first defendant during his marriage. The first defendant has also been shown as the adopted son and a member of the family of the deceased in the Stone Tablet at Lord Velleeswar Temple, Mylapore, Chennai. The Plaintiffs and their family have been always giving trouble to the deceased and the sons of the second plaintiff laid a suit against the deceased in O.S.No.81 of 2003 before the Civil Court At Vizhakupattinam and the same got dismissed. The deceased filed a civil suit against the second plaintiff's husband and her sons in

C.S.No.148 of 2003 on the file of this Court and in the said suit, injunction was granted in favour of the deceased. The second plaintiff's husband preferred a criminal complaint against the deceased and subsequently, the said complaint was dismissed in CMP No.1795 of 2003 on 11.09.2003. The same had also been confirmed by this Court in CrI.R.C.No.1460 of 2003 on 26.09.2003. The plaintiffs had always been harassing the deceased during her life time and now, have come forward with false allegations claiming Letters of Administration of the estate of the deceased. It is only the first defendant, who had discharged the loan Account of the deceased with the second defendant as per the orders of this court. Hence, the suit is liable to be dismissed.

6. On the basis of the above pleadings, the following issues are framed for determination.

"(1) Whether the suit is bad for non-joinder of natural sister of the plaintiffs?"

(ii) Whether the first defendant is the adopted son of deceased Parameswari?"

(iii) Whether the properties mentioned in the schedule are the 'Sridhana' properties of the deceased?

(iv) Whether the suit is maintainable?

(v) Whether the plaintiffs are entitled for Letters of Administration of the property and credits of the deceased Parameswari?

(vi) To what relief the plaintiffs are entitled to?"

7. In support of the plaintiffs' case, PW1 has been examined and Exs.P1 to 15 were marked. In support of the defendants' case, DW1 has been examined and Exs.D1 to 37 were marked.

8. Issue Nos.1 to 5

O.P.No.524 of 2006 has been laid by the petitioner K.K.Anbazhagan under Section 218 and 278 of the Indian Succession Act and Order XXV Rule 5 of Original side Rules against K.K.Manivasugi and K.K.Karpagam for the grant of letters of Administration to the property and credits of the deceased to have effect limited to the State

of Tamil Nadu. It appears, on the orders passed by this Court dated 31.08.2006 in Application No.3568 of 2006, C.Kumar and East West Benefit Fund limited., were impleaded as respondents 3 & 4 in the original petition. It is also found that as against the above said petition, caveats were entered on 22.08.2006 and 09.11.2006 by the caveators viz., C.Kumar and East West Benefit Fund Limited., with supporting affidavits and accordingly, it is found that O.P.No.524 of 2006 was ordered to be converted into TOS No.7 of 2007. It is also found that as per the order dated 13.02.2008 made in application No.5406 of 2007, K.K.Manivasugai, who has been arrayed as the first respondent in original Petition has been transposed as the second plaintiff in T.O.S.No.7 of 2007.

9. Section 218 of the Indian Succession Act, 1925, reads as follows:

"218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person:-

(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted

person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased."

10. A reading of the above said Section would go to show that an Administration of the estate of the deceased described therein may be granted to any person, who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

11. The letters of administration of the estate of the deceased Parameshwari has been claimed by the plaintiffs on the footing that they are the natural brother and sister of the deceased. In short,

according to the plaintiffs, they being the natural brother and sister of the deceased Parameshwari and inasmuch as the deceased had died on 15.02.2006 leaving behind the schedule mentioned properties, which according to the plaintiffs, include both her Stridhana properties as well as her self acquired properties and therefore, according to the plaintiffs, they being her natural brother and sister and they falling under the category of Class II heirs as described under the Hindu Succession Act, 1956 and thus according to the plaintiffs, they are entitled to claim the letters of administration of the deceased properties and credits. It is also the specific case of the plaintiffs that the deceased Parameshwari and her predeceased husband Rathinavelu, who died on 19.12.1992, died issueless and they have also not adopted any son or daughter during their life time.

12. The above case of the plaintiffs is stiffly resisted by the first defendant C.Kumar. Mainly, according to the first defendant, the schedule mentioned properties are the self acquired properties of the deceased Parameshwari and the deceased did not leave any Stridhana properties as claimed by the plaintiffs and further, according to the first defendant, the plaintiffs have no legal right to claim the letters of administration in respect of the estate of the deceased and further,

according to the first defendant, he is the adopted son of the deceased Rathinavelu and the deceased Parameshwari and such being the position, according to him, after the death of the deceased, her properties i.e. plaint schedule properties have been inherited and enjoyed by the first defendant and it is only the first defendant, who had discharged the loan in respect of the plaint schedule properties and therefore, according to him, the plaintiffs are not legally entitled to claim the reliefs sought for.

13. It is the case of the plaintiffs that the properties left behind by the deceased include both Stridhana properties as well as her self acquired properties. As seen from the evidence adduced in the matter, particularly Ex.P15, which is marked as affidavit of assets of the deceased, describe certain items of the properties including Gold Articles, two flats at Rohini Gardens and Government securities and equity shares.

14. As adverted to earlier, it is the specific case of the first defendant that all the properties left behind by the deceased are her self acquired properties and she has not left behind any Stridhana property. In such view of the matter, as rightly contended by the first

defendant's counsel, it is for the plaintiffs to establish as to what are the properties shown in the plaint schedule are the Stridhana properties of the deceased and what are the properties shown in the plaint schedule are the self acquired properties of the deceased. However, with reference to the above position, the plaintiffs, in their plaint, have not clearly stated as to which of the properties described thereunder are the Stridhana properties and self acquired properties. In para 7 of the plaint, they would state that the deceased had Stridhana properties, which include self acquired properties as defined under Section 14 of the Hindu Succession Act, 1956, at the time of her death. This is all that is stated about the nature of the properties left behind by the deceased. When the defence has been taken by the first defendant that all the properties of the plaint schedule are only the self acquired properties of the deceased, the plaintiffs having come forward with the case that some properties shown in the plaint schedule are also her Stridhana properties, it is for the plaintiffs to establish that which are properties are the Stridhana properties and which are the properties are the self acquired properties of the deceased. However, with reference to the above position, there is no clear cut evidence adduced on the side of the plaintiffs.

15. In support of the plaintiffs' case, it is found that only the transposed second plaintiff viz. K.K.Manivasugi has chosen to examine herself as PW1. The first plaintiff K.K.Anbazhagan, who had initiated the lis, had not chosen to enter into the witness box. It is also the case of the first defendant that K.K.Anbazhagan has no interest in prosecuting this matter and only at the instigation of K.K.Manivasugi, the transposed plaintiff, he had instituted the lis. Be that as it may, it is now found that the transposed second plaintiff has adduced evidence as P.W.1. PW1 even during the course of her chief examination has deposed that her elder sister, the deceased Parameshwari was working as a clerk in postal department and retired as superintendent and she did not leave any testamentary disposition and she had purchased the properties described in the affidavit of assets when she was in service. Therefore, even as per the admission of PW1, the properties shown in the affidavit of assets viz. Ex.P15 are acquired by the deceased. That apart, it is also found that PW1 has deposed that the deceased Parameshwari purchased the schedule mentioned properties out of her own earnings. It is, therefore, evident that all the properties shown in the plaint are only the self acquired properties of the deceased. Though PW1 would also depose that the deceased was also possessed of Stridhana properties at the time of her

demise, she has not chosen to point out or establish as to which of the plaint schedule properties are the Stridhana properties of the deceased and which of the plaint schedule properties are the self acquired properties of the deceased. Other than vaguely stating that the deceased Parameshwari was also possessed of Stridhana properties at the time of her demise, no material or proof has been placed to establish the same. In such view of the matter, when there is no material to hold that the deceased left behind any Stridhana property, the inevitable conclusion that could be taken in the matter is that all the properties left behind by the deceased and shown in the plaint schedule are the self acquired properties of the deceased.

16. It is also relevant to note that as far as the immovable properties shown in the plaint schedule i.e. 2 flats at Rohini Gardens, they are found to have been acquired by the deceased under the sale deeds dated 31.08.1998 and 25.05.1988 marked as Exs.P5 and P7, other items shown in the plaint schedule are Gold articles and the securities. In the light of the above discussions, it has to be held that all the properties shown in the plaint schedule are only the self acquired properties of the deceased. The plaintiffs claim right for the grant of letters of administration of the estate of the deceased on the

footing that they are the natural brother and sister of the deceased. According to them, in the absence of class - I heirs, they being class - II heirs as detailed under the Hindu Succession Act, 1956, are entitled to legally administer the estate of the deceased and further, according to them, the deceased and her predeceased husband Rathinavelu were issueless and have also not adopted any son or daughter during their life time and thus being the situation, according to them, as per Section 218 of the Indian Succession Act, 1925, they being the persons entitled to the grant of letters of administration of the deceased as per law applicable to the deceased, according to them, they should be granted the letters of administration on the footing that they are the class - II heirs.

17. However, the above case of the plaintiffs as such cannot be accepted. Before advertng to the claim of the first defendant, it has to be seen at the first instance whether at all the plaintiffs would be entitled to legally seek the letters of administration of the estate of the deceased.

18. The first defendant claims to be the adopted son of the deceased Rathinavelu and Parameswari. It is also the specific case of

the first defendant that he is the son of P.Chokkalingam, who is the brother of the deceased Rathinavelu. In other words, according to the first defendant, he is the son of the deceased husband's brother and as to the claim of the first defendant that he is the son of the deceased Parameshwari husband's brother, there is no dispute. The plaintiffs have controverted the above said relationship of the first defendant with the deceased. Therefore, it could be seen that the first defendant is the heir of the deceased Parameshwari's husband i.e. he being the brother's son of the deceased Rathinavelu.

19. The deceased Parameshwari being a female and when the fact remains that she had left behind the plaint schedule properties as her self acquired properties, it has to be seen as to, in law, who would be entitled to succeed to her estate. The deceased Parameshwari being a female Hindu and she having died intestate, it could be seen, as contended by the first defendant's counsel, the application of the class - I and class - II heirs given in the schedule to the Hindu Succession Act, 1956, would not govern the issue. As rightly contended by the counsel appearing for the first defendant, the order of succession amongst the class - I and class - II heirs given in the schedule would come into play as regards the properties of male Hindu dying intestate

as provided under Section 8 of the Hindu Succession Act, 1956. But in so far as our case is concerned, the deceased Parameshwari being a female Hindu and having died intestate, it could be seen that the order of Succession amongst class - I and class - II heirs given in the schedule would not be applicable and on the other hand, the Rules of succession in the case of female Hindu dying intestate as provided under Sections 15 & 16 of the Hindu Succession Act, 1956, would operate. Therefore, it has to be seen as to who would be, as such, entitled in law, to succeed to the estate of the deceased Parameshwari on her death.

20. Admittedly, the deceased Rathinavelu and his wife the deceased Parameshwari died issueless and the first defendant claims to be their adopted son. But the said fact, as such, as rightly put forth by the plaintiffs' counsel cannot be gone into by this court sitting in the testamentary jurisdiction. Keeping the above position in mind, it has to be seen whether under the General Rules of Succession in the case of female Hindu dying intestate as provided under the Hindu Succession Act, 1956, whether the plaintiffs would be entitled to succeed to the estate of the deceased or the first defendant as such would be entitled to succeed to the estate of the deceased Parameshwari Section 15 of

the Hindu Succession Act, 1956, reads as follows:

"15. General rules of succession in the case of female Hindus:-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) lastly, upon the heirs of the mother.

(2)Notwithstanding anything contained in sub-section(1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs

referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

21. In the light of the above discussions, it is found that the property of a female Hindu dying intestate shall devolve firstly upon her son and daughters (including the children of any predeceased sons or daughter) and her husband. In so far as the deceased Parameshwari is concerned, admittedly, she and her husband died issueless and further her husband had predeceased her. Therefore, clause - a of Section 15 of the Act would have no application to the present case. In the absence of heirs falling under clause - a of Section 15, it is found that the next in line of succession is the heirs of her husband. As seen above, it is not in dispute that the first defendant is the son of the deceased husband's brother. Therefore, it could be

seen that in the line of succession, it is found that the first defendant would have priority to succeed to the estate of the deceased. Only after the heirs of the husband, the persons, who fall under the clause – (d) and (e) (clause – C not applicable) viz., the heirs of the father and mother would come into picture. The plaintiffs being the brother and sister of the deceased would fall under clause - d of Section 15. Therefore, even as per Section 218 of the Indian Succession Act, 1925, it could be seen that as per the rules/law applicable to the distribution of the estate in the case of the deceased Parameshwari, as per the law applicable to her, it is found that it is only the first defendant, who is admittedly, the son of the deceased husband's brother, who would be entitled to succeed to estate of the deceased and in such view of the matter, it could be seen that the plaintiffs cannot have any precedence or priority to seek the grant of Letters of Administration to the estate of the deceased Parameshwari, by passing or circumventing the claim of the first defendant.

22. The evidence adduced in the matter would go to show that it is only the first defendant, who is dealing with the properties of the deceased and also in the possession of the properties left behind by the deceased. It is also noted that the deceased had obtained loan in

respect of the immovable properties and the Gold ornaments described in the plaint schedule and evidence has also been adduced that it is only the first defendant, who had discharged the loan account of the deceased and redeemed the properties. It is also found that as per the orders passed in various proceedings, which have been exhibited in the matter, the first defendant had been directed to discharge the loan amount of the deceased and consequently, the title deeds of the immovable properties belonging to the deceased are ordered to be deposited in the court and wait for the final outcome of the present proceedings. It is also seen that the first defendant had redeemed the gold jewels, after discharging the loan in respect of the same. In this connection, it is not out of place to mention here the evidence of PW1. With reference to the same, PW1 during the course of cross examination has admitted that it is correct to state that the first defendant has filed two writ petitions viz. W.P.Nos.9173 and 9174 of 2007 and it is correct to state that the Hon'ble Court in the final disposal order had directed the first defendant to remit a deposit of Rs.7,500/- every month till the disposal of TOS.No.7 of 2007 and further, it is correct to state that the flat bearing Nos.13 & 14 are mortgaged with the second defendant and that she did not pay any amount to the second defendant in respect of the above said mortgage

and it is correct to state that the first defendant had discharged the mortgage amount to the second defendant and as such, he had redeemed the flat Nos.13 & 14 from the mortgage. She has also admitted that she is aware that the first defendant had paid a foreclosure mortgage amount to the second defendant and also aware that the Hon'ble court had passed an order in O.A.No.554 of 2008 and application Nos.2491 & 2492/2008 directing the first defendant to remit the balance final foreclosure amount under the mortgage and also directed the second defendant to deposit the original title deeds of the said two flats in the Hon'ble court. She has also admitted that the loan was repaid by the first defendant C.Kumar and in spite of her objection, he had repaid the loan. Thus, it could be seen that it is only the first defendant, who had taken all the efforts to discharge the loan amount of the deceased Parameshwari in respect of her estate and has also obtained necessary orders from the Court and accordingly, discharged the loan amount and redeemed the properties of the deceased from the second defendant and also paid the amount in the Court regularly as ordered by this Court. In this connection, the documents marked as Exs.D17, 18, 20, 22 , 23, 24 to 35 and 37 would also clearly indicate that it is only the first defendant, who had been dealing with the properties of the deceased and also taking every

steps to discharge the loan of the deceased in respect of her estate and accordingly, redeemed the properties as directed.

23. Now coming to the question as to the claim of the first defendant as the adopted son of the deceased Parameshwari and her husband, it is found that even though the first defendant has claimed to be the adopted son of the deceased, as to when he was taken in adoption by the deceased and her husband, under what mode and in whose presence and whether the ceremonies had been conducted with reference to the same etc., no details are forthcoming, as regards the same, from the first defendant either in the written statement or during the course of evidence. In this connection, the first defendant examined as DW1 had also admitted that he has not filed any declaratory suit with regard to the status as the adopted son of deceased Rathinavelu and Parameshwari and there was no ceremony or rituals regarding adoption. Therefore, it could be seen that when it has not been established by way of clear and acceptable evidence that the first defendant had been taken in adoption by the deceased Parameshwari and her husband both factually as well as legally, the claim of the first defendant that he is their adopted son as such cannot be determined in this proceedings. That apart, as rightly

argued by the plaintiffs' counsel, this Court citing in the testamentary jurisdiction would also not be empowered to decide the issue of title as such as to whether the first defendant is the adopted son of the deceased Parameshwari and her husband and whether in that capacity, he would be entitled to succeed to the estate of the deceased Parameshwari. No doubt, some evidence has been projected by the first defendant that he has been shown as the nominee in some of the Government records and that, he conducted the Padha Pooja of the deceased and her husband at the time of his marriage and that, his name has also been included in the name of the family of the deceased in the stone pillar of the temple and that, he had also performed the death ceremony rights of the deceased periodically. However, those would not automatically lead to the conclusion that he is the adopted son of the deceased Parameshwari and her husband in the absence of necessary recitals and proof with reference to the same. That apart, as seen above, this Court is not legally entitled to decide the said issue and also refrain from going into the issue as to whether the first defendant is the adopted son of the deceased Parameshwari and her husband. However, considering the reasons aforementioned, in the light of the position as per law, when the first defendant is higher in the order of succession to succeed to the estate of the deceased

Parameshwari than others, particularly the plaintiffs as provided under Section 15 of the Hindu Succession Act and when the claim of the plaintiffs that they only have preferential right to claim the estate of the deceased and the grant of letters of administration of the same is unacceptable in the eyes of law, it is found that the plaintiffs' alleged entitlement to seek the letters of administration of the estate of the deceased on the footing that they are the class II heirs as provided under Hindu Succession Act, 1956, as such cannot be countenanced in any manner.

24. In the light of the above discussions, it is found that the plaintiffs' claim for the grant of letters of administration of the deceased properties as such cannot be accepted.

25. In support of the plaintiff's case, the decisions reported in **2005 (5) CTC 207 (Pentakota Satyanarayana and others Vs. Pentakota Seetharatnam and others), 2010 -1-L.W.835 (M.Ramachandran Vs. M.M.Chandrasekar and two others), and (2008) 4 Supreme Court Cases 300 (Krishna Kumar Birla Vs. Rajendra Singh Lodha and others)** are relied upon. Similarly the defendants' counsel, in support of his case, relied upon the decision

reported in **CDJ 1985 PHC 027 (Estate of Late Shri Gurcharan Dass Puri Vs. State)**. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

26. As seen from the case of the parties and also evidence adduced in the matter, it is found that both parties had been vying with each other to claim the letters of administration of the estate of the deceased one way or the other on certain legal basis. The plaintiffs having come forward with the lis and the claim of the plaintiffs having been stiffly resisted by the first defendant, it is found that the plaintiffs, before seeking the entitlement of the reliefs should establish that they are legally entitled to obtain the same. Considering the relationship of the contesting parties with that of the deceased and in the light of the above discussions, when it is found that it is only the first defendant who is higher in the order of succession to the estate of the deceased Parameshwary than that of the plaintiffs and when it is also found that the first defendant had already been dealing with the properties of the deceased as such and also discharged the loan account of the deceased in respect of the properties left behind by her, either individually or as per the orders of this Court in various

proceedings as discussed above, the plaintiffs even though being aware of the same, had chosen to lay the present suit seeking the grant of letters of administration of the estate of the deceased. However, when their entitlement has not been legally established and on the other hand, when it is found that the first defendant is having higher order of succession to the estate of the deceased as per law and when the disputed question of title as regards adoption, as such cannot be decided in this proceedings and the same has got to be determined only in a regular suit, it could be seen that, as rightly contended by the first defendant's counsel, the plaintiffs, without any basis or legal entitlement have come forward with the present suit seeking the grant of letters of administration of the estate of the deceased.

27. For the reasons aforementioned, I hold that the properties described in the plaint schedule are the self acquired properties of the deceased Parameshwari. As regards whether the first defendant is the adopted son of the deceased Parameshwari, the said issue is not answered. As regards the issue whether the suit is bad for non joinder of the natural sisters of the plaintiffs, though the other natural sisters of the deceased are not impleaded, inasmuch they are not shown to be

entitled to claim the letters of administration of the estate of the deceased, it is found that the suit cannot be termed as bad on account of their non joinder as contended by the first defendant. I also hold for the reasons afore mentioned that the plaintiffs are not entitled to for the grant of letters of administration of the properties and credits of the deceased Parameshwari. The defence has been taken by the first defendant that in the absence of a testament or Will, the question of filing a testamentary suit would not arise and therefore, contended that the suit is not maintainable. However, inasmuch as the present suit has been laid for the grant of letters of administration of the property of the deceased as provided under Section 218, it is found to be maintainable as such. Accordingly, issues 1 to 5 are answered.

28. Issue No.6.

The suit is dismissed with costs.

20.04.2017

Index :Yes/no.
Internet : Yes/no

sms

T.RAVINDRAN.J.

sms

Pre-delivery Judgment made in

T.O.S.No.7 of 2007

(O.P.No.524 of 2006)

20.04.2017

<http://www.judis.nic.in>