

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH  
AND  
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. Nos. 405 & 406 of 2013

O.S.A. No. 405 of 2013

J.M.A. Mohammed Ismail  
Represented by (Power of Attorney)  
Shernaaz Begum  
No. 169 Kumalaya Street,  
Koothanallur  
Thiruvavarur District ...Appellant

(Cause title accepted vide order of this court dated  
18.12.2013 in MP.1/13 in OSA.SR100833/13)  
Vs.

1. The Official Liquidator,  
High Court Madras as  
Official Liquidator of  
M/s. Aziz Company Private Limited
2. T.A. Sahabudeen
3. T.A. Munavardeen
4. T.A. Sirajudeen
5. T.A. Salavudeen
6. T. A. Bathurudhin
7. T.A. Afta Begum ...Respondents

Prayer: Appeal under Order XXXVI Rule 1 of O.S. Rules read  
with Clause 15 of Letters Patent against order of this  
court dated 23.10.2013 made in Company Application No. 856  
of 2013 in C.P. No. 37 of 1960

This Company Application praying this Court:

- a) Report be taken on record.
- b) To permission be accorded to vary the list of  
contributories by incorporating the name of T.A.Sahabudeen,

T.A.Munavardeen, T.A.Sirujudeen, T.A.Salavudeen, and T.A.Bathurudhin and T.A. Afta Begum in the ration of 2/11 for the first five and 1/11 for the last in respect of 41 shares held in the name of deceased Jalma Nachia which will come to 7.64 shares each for the first five and 3 shares for the last ( $7.64 \times 5 = 37.20 + 3.80$  shares = 41 shares)

c) Directions be given to respondent no.1 to refund a sum of Rs.7,30,750/- taken by falsely posing himself to be the rightful recipient in the estate of Jalma Nachia along with interest at such rates as this Court may deem fit and proper from the date of receipt till date of payment.

d) Directions be given to respondent No.2 to 7 to claim their shares of return of capital from the Registrar of Companies, Tamilnadu in respect of 4 shares which has been deposited in accordance with section 555(1) of the Companies Act, 1956.

O.S.A. No. 406 of 2013

J.M.A. Mohammed Ismail

Represented by (Power of Attorney)

Shernaaz Begum

No. 169 Kumalaya Street,

Koothanallur

Thiruvavarur District

...Appellant

Vs.

1. The Official Liquidator,  
High Court Madras as  
Official Liquidator of  
M/s. Aziz Company Private Limited

2. L.M.A. Zubaida Nachiya

3. J.M.F. Abdul Nazar

4. J.M.F. Niyas Ahmed

5. J.M.F. Nazrana Begum

... Respondents

Prayer: Appeals under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against order of this court dated 23.10.2013 made in Company Application No. 721 of 2013 in C.P. No. 37 of 1960

This Company Application praying this Court:

a) Report be taken on record.

b) To permission be accorded to vary the list of contributories by incorporating the name of respondent Nos.2 to 5 in place of late J.M.A.Mohamed Farooq in manner.

c) Directions be given to respondent No.1 to refund a sum of Rs.11,25,750/- taken by it by falsely posing himself to be the rightful recipient in the estate of late J.M.A.Mohamed Ameen along with interest at such rates this Court may deem fit and proper from the date of receipt till date of payment.

d) Directions be given to respondent No.2 to 5 to claim their shares of return of capital from the Registrar of Companies, Tamilnadu in respect of 173 shares which has been deposited in accordance with 555(1) of the Companies Act, 1956.

For Appellant : Mr. A.P. Surya Prakasam  
in both appeals

For Respondents : Mr. S. R. Sundar  
for 1<sup>st</sup> respondent  
in both appeals

Mr. B. Ramamoorthy  
for respondents 2 to 7  
in OSA.405/2013  
and  
for respondents 2 to 5  
in OSA.406/2013

C O M M O N J U D G M E N T  
(Delivered by M.M.SUNDRESH, J.)

This case has got a chequered history. The history involves various orders passed by this Court. It appears that on one of the earlier occasions, allotments have been made pursuant to the orders of this Court. Now the appellant before us made a claim based upon the affidavit stated to have been signed in the year 1968. This affidavit also speaks about the exchange of properties.

2. The learned Official Liquidator, on an earlier occasion, sought to send the documents to the expert. The Division Bench of this Court permitted the learned Official Liquidator to do so, though the actual prayer sought for was different. The learned Official Liquidator having found that the documents under his possession are not originals and could not be sent for comparison with the admitted signature, filed another application before the learned Single Judge. The learned Single Judge permitted the Official Liquidator to proceed and adjudicate the matter.

3. An adjudication was made by the learned Official Liquidator based upon the materials, including a succession certificate obtained as mandated under Rule 280 of the Companies Court Rules. This adjudication was put under the challenge before the learned Single Judge.

4. The learned Single Judge was pleased to hold that there is nothing on record to show that the appellant had to furnish the original documents in the form of affidavits to the learned Official Liquidator. An opportunity was also given to the counsel to produce it even at the relevant point of time notwithstanding the order passed by the learned Single Judge which was passed by taking note of the order passed by the Division Bench. The learned Single Judge also took note of the circumstances in which the order of the Division Bench was passed. It was incidentally held that if any grievance is made against the succession certificate, the remedy of the appellant lies elsewhere. Accordingly, the learned Single Judge was pleased to pass the appropriate orders. Challenging the same, the present appeals have been preferred.

5. The sum and substance of the submission of the learned counsel for the appellant is the non-compliance of the order of the Division Bench. We are of the view that the said contention cannot be accepted. As rightly held by the learned Single Judge, the Division Bench merely permitted the learned Official Liquidator to exercise an option of sending the documents to the expert. This could not be done as the experts informed the learned Official Liquidator that the said exercise cannot be done until and unless the originals are produced, which unfortunately were not available with the learned official liquidator. That is the reason why the subsequent order was passed which also has become final. These aspects have been looked into by the learned Single Judge in the order under appeal.

6. The learned counsel appearing for the private respondent also took us to the signature found in the disputed documents as well as the admitted documents. Though we are not willing to exercise the power under Section 73 of the Indian Evidence Act by comparing the signatures, we find that even the letters are different between the admitted documents and the one relied upon by the appellants. Be that as it may, an affidavit cannot be a substitute, even assuming it is true, for the transfer of property. That apart, it is also to be noted that even the properties in question which are the subject matter of the so-called affidavit relied upon are even transferred to the appellant longtime back.

7. Thus, looking from any perspective, we are not able to find any reason to interfere with the order of the learned Single Judge. After all, the appellant is questioning the adjudication done by the learned Official Liquidator who was permitted to do so by the learned Single Judge on earlier occasion, to which proceedings the appellant was a party.

Thus, we do not find any merit in these appeals and the same are accordingly dismissed. No costs.

Sd/-

Assistant Registrar(Cs)

//True Copy//

Sub Assistant Registrar

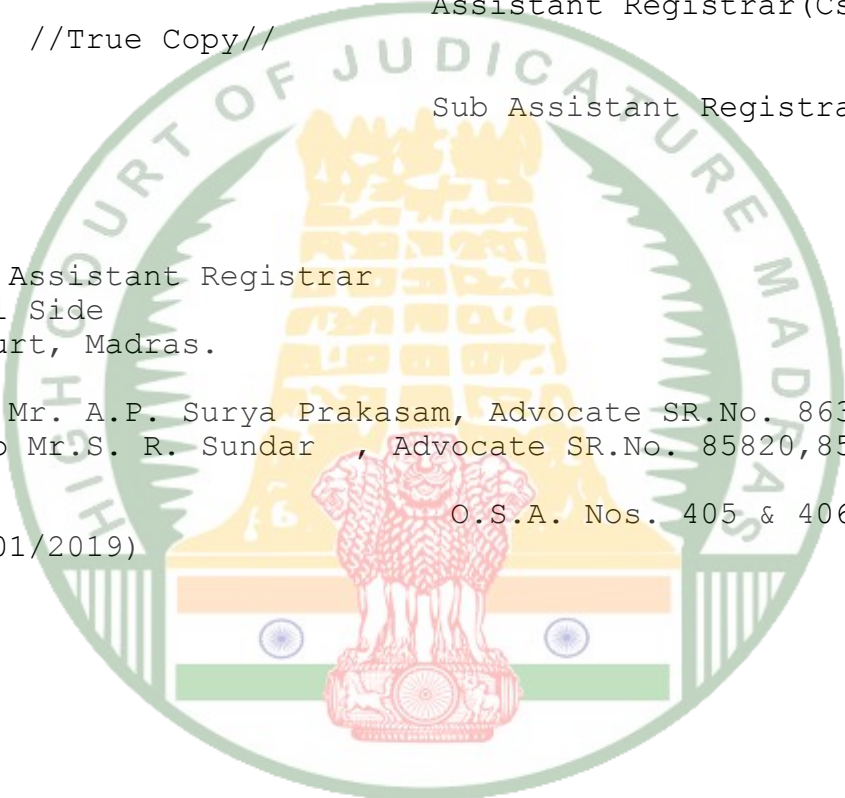
ssm  
To

The Sub Assistant Registrar  
Original Side  
High Court, Madras.

+1cc to Mr. A.P. Surya Prakasam, Advocate SR.No. 86336  
+2ccs to Mr.S. R. Sundar , Advocate SR.No. 85820,85821

O.S.A. Nos. 405 & 406 of 2013

ASK(08/01/2019)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red elephant standing in front of it. The elephant is facing left and has a red circular stamp on its side. The gopuram is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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