

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

WEDNESDAY, THE 31ST DAY OF JANUARY 2018

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

A.No.355 of 2014

in

TOS.No.19 of 2001

In the matter of Indian
Succession Act,XXXIX of
1925,

and

In the matter of the Last
Will & Testament of
G.Krishnappa Naidu
-Deceased

1.K.Sankar,
S/o.G.Krishnappa Naidu (Late)

2.Navaneethammal,
W/o.Krishnappa Naidu
1&2 are residing at No.10,
1st Link Street, Mandavalipakkam,
Chennai -28.

...Plaintiffs/ Petitioners

Vs

1.T.Chamundeeswari,
Plot No.11, M.T.H.Road,
Ambattur O.T.,Chennai-600 053.

2.Seethalakshmi (deceased)

3.Rajageetham
G-1, Grahalakshmi Apartments,
Old Township Road, Ambattur,
Chennai-600 053.

4.Mathan, (D2's Husband), (*)

5.M.Harish D2's Son), (*)

6.M.Kirupaul (D2's Son), (*)

7.M.Rumesh (D2's Son), (*)

D4 to D7 brought as LR's of the
Deceased 2nd defendant in A.No.1620 of 2011
4 to 7 are residing at No.470,

Plot No.11, M.T.H.Road,
Ambattur, Chennai-53.

...Caveators/Defendants

(*) Amended as per the order in A.No.1620 of
2011 dated 16.09.2011.

A.No.355 of 2014

Mrs.RAJAGEETHAM

W/o.Mr.K.Hemachandran

Plot No.14, 5th Left, 1st Right Street,

Manikandapuram, Thirumullaivoyal,

Chennai -600 062

..Applicant/3rdDefendant/
3rd Respondent

Vs

1.Mr.K.SANKAR

W/o.B.Thiruvengadam,

Old No.7, New No.18,

Chinna Reddy Street, Egmore, Chennai-8

2. Mrs.T.CHAMUNDEESWARI

W/o. B.Thiruvengadam,

Old No.7, New No.18,

Chinna Reddy Street, Egmore,

Chennai -8.

3.Mrs.SEETHALAKSHMI

(Deceased and Rep by 4th to 7th Respondents)

W/o.Mr.S.P.MADAN

470, Plot No.11, MTH Road,

Ambattur, Chennai - 600 053.

4.Mr.S.P.MATHAN

Husband of late Mrs.Seethalakshmi

470, Plot No.11 MTH Road,

Ambattur, Chennai-600 053.

5.Mr.M.HARISH

S/o.Mr.S.P.Madan and late Mrs.Seethalakshmi

470, Plot No.11 MTH Road,

Ambattur, Chennai-600 053.

6.Mr.KIRUPAUL

S/o.Mr.S.P.MADAN and late Mrs.Seethalakshmi

470, Plot No.11 MTH Road,

Ambattur, Chennai-600 053

7.Mr.M.RAMESH

S/o.Mr.S.P.Madan and late Mrs.Seethalakshmi

470, Plot No.11 MTH Road,

Ambattur, Chennai-600 053.

..4th to 7th Respondents/
Defendants/Respondents

Application praying that this Hon'ble Court be pleased to revoke the probate order dated 15/07/2013 made in T.O.S.No.19/2001 probating the Will dated 20.02.1980.

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 on 15.07.2013 in TOS.No.19 of 2001, probating the Will dated 20.02.1980.

2. The Applicant herein is the 3rd Defendant in TOS.No.19 of 2001. TOS.No.19 of 2001 came up for consideration before this Court on 15.7.2013. This Court had observed that the Plaintiff had originally filed OP.No.27 of 2001 for grant of Letters of Administration. It was further observed that since a caveat had been filed, the OP was converted into TOS.No.19 of 2001. This Court had also examined the facts in the case and had found that the 1st Plaintiff was the son, 2nd Plaintiff was the wife and the 1st to 3rd Defendants were the daughters of the Testator, G.Krishnappa Naidu.

3. The 2nd Plaintiff died pending the suit. The 2nd Defendant also died pending the suit. The legal representatives of the 2nd Defendant were brought on record as the 3rd to 7th Defendants. The Defendants were served. They did not file a written statement. They were, therefore, called absent and set Exparte on 3.10.2012.

Thereafter, this Court had required the Plaintiff to let in evidence.

4. The 1st Plaintiff had examined himself as PW.1 and one of the attesting witnesses, S.P.Muthu Achari, as PW.2. The original Will dated 20.02.1980 was marked as Ex.P1. The death certificate of the Testator, G.Krishnappa Naidu was marked as Ex.P2. The consent affidavit of the 1st Defendant, Chamundeeswari, dated 24.5.1982 was marked as Ex.P4. The consent affidavit of the 2nd Defendant, Seethalakshmi, dated 10.1.1982 was marked as Ex.P5. The consent affidavit of the 3rd Defendant, Rajageetham dated 2.3.1981 was marked as Ex.P6. It was found that the properties were bequeathed in favour of the 2nd Plaintiff, K.Navaneethammal, who was the wife of G.Krishnappa Naidu. Thereafter, it was to devolve absolutely on the 1st Plaintiff, K.Sankar. During the pendency of the suit since the 2nd Plaintiff died, the wife of the 1st Plaintiff also filed her consent affidavit.

5. Considering all those documents and the oral evidence, this Court had granted Letters of Administration to the 1st Plaintiff with respect to the estate of the deceased, G.Krishnappa Naidu, by judgement dated 15.7.2013. Thereafter, this application has been filed in the year 2014 by the 3rd Defendant, seeking to revoke the grant of Letters of Administration.

6. According to the 3rd Defendant, there were

differences in the family. Among other properties, G.Krishnappa Naidu was having three commercial shops at 26, Mandaveli Lane, Mylapore, Chennai-4 and a residential house at No.10, 1st Link street, Mandaveli, Chennai-28. It was stated that from the year 2000, there were talks of partitioning the properties. It has been stated that the 2nd Defendant, Seethalakshmi informed the Applicant about the litigation, which was pending. However, after the death of Seethalakshmi, the Applicant did not know the correct details of the case and was not able to participate in the proceedings. It has been stated that notice was served at Manikandapuram, Tirumullaivayal, Chennai-62, though the Applicant was residing at G1, Grihalakshmi Apartments, Old Township Road, Ambatur, Chennai-53. However, she was not residing at that place at that particular point of time. It has been stated that the Plaintiff had not followed the procedure and summons were not issued to her and it has, therefore, been stated that the grant of Letters of Administration should be set aside.

7. The Plaintiff in the suit was served and he has also filed a counter. According to the Plaintiff, the present Applicant had filed her consent affidavit in the suit and the same was also marked as a document. It was also stated that though service was effected to the correct address and she had been properly served, the Applicant herein did not participate in the proceedings and consequently, the Applicant was set exparte. It was stated

that there is no irregularity in obtaining the Letters of Administration.

8. This Court heard the learned counsel on either side.

9. In the initial stage, it was represented before this Court that summons were not served on the Applicant herein. However,, as a fact, that was found to be an incorrect statement. In the earlier proceedings, she had been served in accordance with the procedures.

10. The address of the Applicant was given in the OP as "Smt.Rajageetham, w/o.Hemachandran, G1, Grahalakshmi Apartments, Old Township Road, Ambattur, Chennai-53". She had also given her consent affidavit. In the present application, she had given her address "Plot No.14, 5th Left, 1st Right Street, Manikandapuram, Thirumullaivoyal, Chennai-62." The Applicant had not given the date on which date she had shifted to the present address.

11. Subsequently, it was further urged that the Applicant did not give her consent to grant of Letters of Administration. On a perusal of the records, it is seen that actually consent was given and the affidavit is also available and it was actually marked as Ex.P6. This Court had an occasion to examine Ex.P6. There seems to be no infirmity in the manner in which the Letters of Administration had been granted. This Court had also noted

that the Defendants did not thought it fit to contest the proceedings and they remained Exparte. Moreover, this application has been filed after a considerable delay. Consequently, I hold that there is no sufficient reasons advanced to revoke the Letters of Administration which was already granted by this Court. Accordingly, this application is dismissed. No costs

Sd/.C.V.K.J
31.01.2018

//Certified to be a true copy//

Dated this the day of 2018.

TE/13/03/2018

COURT OFFICER

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

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