

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
21-06-2018	03-07-2018

Coram:

The HON'BLE MR.JUSTICE **N.SATHISHKUMAR**

Application No.3594 of 2017
in
T.O.S.No.14 of 1998

1. T.V. Rangaraajan
2. T.V. Vijayalakshmi
3. T.V. Jayalakshmi

... Applicants/3rd Parties

Versus

1. R. Veeraraghavan
2. P.V. Rajamannar
3. P.V. Venkatesan

... 1st Respondent/Plaintiff

... 2nd & 3rd Respondents/Defendants

Application No.3594 of 2017 has been filed to revoke the order of probate dated 11.6.2001 granted in T.O.S.No.14 of 1998 in O.P.No.31 of 1995 on the file of this Court.

For Applicants : Mr.J.R.K. Bhavananthan

For Respondents : Mr.S.R. Raghunathan for R1

ORDER

This application has been filed to revoke the order of probate dated 11.06.2011 granted in T.O.S.No.14 of 1998 in O.P.No.31 of 1995 on the file of

this court.

2. The applicants, who are the grand children of one Tmt.Komalammal testatrix, filed the application to revoke the probate, only on the ground that the previous Will left by Tmt.Komalammal was suppressed and consent affidavit of the parties also created one. The Will did not contain specific recital regarding the earlier Will said to have been left by Tmt.Komalammal.

3. Denying the entire allegation, it is the contention of the respondent that the legal heirs of Tmt.Komalammal were added as respondents in O.P.No.31 of 1995 and notice was served on all of them. All the legal heirs who had caveatable interest had given their consent affidavits and the Will has been proved in the manner known to law. To prove the Will, the advocate who prepared the Will and the attesting witness were examined. The applicants in any event would not have any caveatable interest and it is not open for them to contend that too, sixteen years after the probate was granted, that the Will is not genuine and untrue. The application is barred by limitation and the beneficiaries under the Will are not made as parties to this application. Hence, the application is liable to be dismissed.

4. Learned counsel appearing for the applicants submitted that the

probate granted by this Court is liable to be cancelled on the sole ground that the previous Will left by the Testatrix has been suppressed in the subsequent proceedings and the consent affidavits filed by the parties were also forged one. There are lot of suspicious circumstances surrounding the Will. Hence, prayed for revocation of Probate.

5. Learned counsel for the respondents would submit that the Probate was granted in the year 2001 and this application has been filed after a long delay and hence the application is barred by limitation. Further the applicants have no caveatable interest at the time of granting probate. Their mother had also given consent affidavit. Therefore submitted that now the applicants cannot assail grant of Probate. Further there is no material to show that there was a forgery. Hence, prayed for dismissal of the application.

6. In support of his contention, the learned counsel for the respondent placed reliance of the following judgments:

- 1. 2013(4)Mh.L.J. 464 [Nina Agarwalla vs. Ashok Gupta and others]**
- 2. (2008) 4 Supreme Court Cases 300 [Krishna Kumar Birla v. Rajendra Singh Lodha and others]**
- 3. (2018) 1 Supreme Court Cases 271 [Lynette Fernandes**

vs. Gertie Mathias]

7. The applicants are the children of one Mrs.V. Neelaveni, who is one of the daughters of Tmt.Komalammal. The 1st respondent is executor of the Will appointed by Tmt. Komalammal. Respondent Nos.2 and 3 are also legal heirs of Tmt. Komalammal. These facts are not in dispute. This application has been filed to revoke the probate granted by this Court on 11.06.2001 in T.O.S.No.14 of 1998. The main contention of the applicants is that the earlier Will of Tmt. Komalammal, of the year 1977 has been suppressed. That apart consent affidavit of the mother has been forged. It is to be noted that the relationship of the parties is not in dispute and the probate has been granted by this Court after hearing the parties. In fact the mother of the applicants is also made as a party and she has also given consent affidavit to probate the Will of her mother. These facts are on record.

8. The contention of the applicants is that the consent affidavit of the mother is forged or fraudulently obtained cannot be countenanced without any materials. The revocation of Probate or Letters of Administration can be ordered only when the proceedings were defect in substance or probate was obtained fraudulently by making a false suggestion or by concealing the material facts or, when it was obtained by means of untrue allegations of a fact essential in point

of law or when the grant has become useless. Only on the grounds set out under Section 263 of the Succession Act, the probate or Letters of Administration may be revoked. Merely because previous Will said to have been executed by the Testatrix is not found mentioned in the subsequent Will, we cannot assume that there was a fraud committed while obtaining the probate. On record, this Court found that the mother of the applicants also filed consent affidavit agreeing for grant of probate. Therefore, it is too late for the applicants to contend that the consent affidavit given by mother was a forged one. It is also to be noted that for the alleged forgery, there is no material whatsoever available. Mere alleging forgery is not sufficient. Those allegations must be established by convincing evidence by producing the materials to show that the signature of the mother itself was found to be forged by some other. In the absence of any relevant materials, mere allegations of the forgery will not be sufficient to countenance their contention.

9. It is further to be noted that the application has been filed with undue delay. In this regard the Apex Court in **Lynette Fernandes vs. Gertie Mathias** reported in **(2018) 1 Supreme Court Cases 271**, has held as follows:

“19. One must keep in mind that the grant of probate by a Competent Court operates as a judgment

in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate. In this matter, as mentioned supra, the appellant was a minor at the time of grant of probate. She attained majority on 09.09.1965. She got married on 27.10.1965. In our considered opinion, three years limitation as prescribed under Article 137 runs from the date of the appellant attaining the age of majority i.e. three years from 09.09.1965. The appellant did not choose to initiate any proceedings till the year 25.01.1996 i.e., a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the appellant to show as to why she did not approach the Court of law within the period of limitation. At the cost of repetition, we observe that the appellant failed to produce any evidence to prove that the Will was a result of fraud or undue influence. The same Will has remained un-challenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the Court for cancellation or revocation of grant of probate.”

10. Admittedly at the time of grant of probate in the earlier proceedings, the mother of the applicant was very much alive and even at the

time when the probate was granted they being the grand children of Testatrix, the applicants had no right over the property as long as their mother was very much alive. Therefore, they had no right in the property at the relevant point of time. In this regard it is useful to refer the Judgment of the Bombay High Court in ***Nina Agarwalla vs. Ashok Gupta and others, 2013(4)Mh.L.J. 464***. The relevant portion of the judgment is as follows:

"13 The Appellant has not been able to show any evidence to establish that the citation was not served upon her. We find it difficult to accept on her mere statement that the citation was not served upon her, particularly in view of the records of the testamentary department of the Court and the fact that probate was granted more than 38 years ago. So far as the decisions of the Supreme Court in the matter of Kunvarjeet Singh (supra) is concerned, the same dealt with the issue of grant of probate and not with revocation of probate. In any case, in the facts of the present case in the absence of the Appellant being able to show that citations were not served upon her and she was kept in dark about the Will dated 28 March, 1964, the provision of Section 263 of Indian Succession Act, 1925 is not satisfied. Moreover, one must keep in mind that a grant of probate by a Competent Court operates as a judgment in Rem and once the probate to the Will is granted, then the said probated Will is good not only in respect of the parties to the proceedings, but against the whole world. Therefore, if the probate is granted, the same operates in Rem and time runs from the date of the grant of the probate for purposes of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate. "

11. Having regard to the above judgment and on going through the facts of the present application and pleadings, I am of the view that the allegation found in the application will not make out a case of just cause for any indulgence to revoke the probate granted by this Court in the year 2011. Hence, this application lacks merit and the same is liable to be dismissed.

12. In the result, Application No.3594 of 2017 in T.O.S.No.14 of 1998 is dismissed. No costs.

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Index : Yes/No

Internet : Yes/No

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N. SATHISH KUMAR, J.

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