

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:10.04.2018
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.No.80 of 2018 & CMP.No.4778 of 2018

Smt.R.Saroja Ammal ... Appellant/1st Respondent

Vs

1. R.Karunakaran ... 1st Respondent/Appellant

2. R.Kalavathi

3. D.V.Malarvizhi

4. R.Senthilnathan ... 2 to 4 Respondents/
2 to 4 Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 1 O.S.Rules and against the Decree and Order passed by this Court in A.No.5289 of 2013 in O.P.No.802 of 2010 on 05.07.2017.

PRAYER IN APPLICATION NO.5289/2013: This application filed by the applicant, seeking to revoke the letter of administration granted by this court on 12.03.2013 in O.P.No.802 of 2010.

For Petitioner : Mr.S.Muthudurai

For Respondents: Mr.R.Karunakaran, Party-in-person
for R1

: No appearance for R2 to R4

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The Appellant is the 1st respondent in Application No.5289 of 2013, filed by the 1st respondent herein / applicant therein and the said application is filed seeking for the relief of revoking the order dated 12.03.2013 in OP No.802 of 2010, in and by which, the Letters of Administration was granted in her favour. The said application after contest, came to be allowed on 05.07.2017 and challenging the legality of the said order, the present appeal is filed.

2. It is also brought to the knowledge of this Court that subsequent to the impugned order which is the subject matter of this appeal, the Original Petition has been converted as T.O.S.No.23 of 2017.

3. The facts leading to the filing of this appeal and are relevant and necessary for disposal of the same, are as follows:

[a] The appellant herein filed OP No.802 of 2002 under section 232 and 276 of Indian Succession Act, 1973 read with order XXV Rule 4 and 8 of the Original Side rules praying for Letters of Administration with Will dated 07.03.1996 annexed, to be granted to her as the legatee to the deceased namely her husband Late N.Rathnasababathy Mudaliar. After complying with the procedural formalities, the Original Petition was listed before the learned Single Judge, who has taken note of the evidence of the appellant / petitioner who was examined as PW1 and taking into consideration of Will [Ex.P2] and the consent affidavits given by respondents 2 to 4 - brothers and sisters of the respondents, granted Letters of Administration vide order dated 12.03.2013.

[b] The 1st respondent herein filed OA No.5289 of 2013 for revoking the Letters of Administration by stating among other things that admittedly, the Original Petition was presented as early as on August 2002 which came to be filed nearly after three years after the demise of N.Rathnasababathy Mudaliar on 01.06.1999 and it came to be numbered only in the year 2010 and on account of the long delay in filing the petition for Letters of Administration, there is a suspicious circumstances surrounding him.

[c] It is further averred by the 1st respondent herein that the appellant herein - his mother, also filed a suit for partition in OS.No.3775 of 2006 on the file of the Court of XII Assistant, City Civil Judge Chennai, against him and his two sisters and another brother for partition and separate possession of 1/5th share and other consequential reliefs and the preliminary decree came to be passed on 31.03.2009 as prayed for and thereafter, she filed IA No.15495 of 2011 on 14.10.2011 to pass the final decree, wherein the 1st respondent herein has entered appearance and filed counter affidavit and took a stand the suit for partition itself is not maintainable and barred by law and however, a memo was filed on behalf of the applicant / appellant herein to withdraw the main suit without putting the 1st respondent herein on notice and accordingly, the main suit itself was dismissed as withdrawn and thereafter, three settlement deeds have been executed in favour of his two sisters and another brother and while the appellant was examined as PW1,

the subsequent events have not been brought to the knowledge of this Court and the learned Judge has taken note of all facts and circumstances and has rightly allowed the application and prays for dismissal of the same.

4. The learned counsel appearing for the appellant has drawn the attention of this Court to Ex.P.1-Will and submitted that the property in question was allotted in favour of N.Rathnasabapathi Mudaliar under partition and thereafter, under the Last Will and testament dated 07.03.1996, he bequeathed the property in favour of the appellant herein and in the body of the said Will, he has also indicated that his first son R.Karunakaran - 1st Respondent herein is separated from him after his marriage and he does not contribute any physical or pecuniary help to him and therefore, the appellant has succeeded to the estate of the deceased in its entirety and filed Original Petition for issuance of Letters of Administration and the 1st respondent was though served with notice and filed a caveat petition, it was not represented and he did not enter appearance to oppose the same and the learned Judge after taking into consideration of the oral and documentary evidence, has rightly granted Letters of Administration and in the petition for revocation of the Letters of Administration, the learned Judge has not properly considered the factual circumstances and had erroneously allowed the application, revoking the Letters of Administration.

5. It is further submission of learned counsel appearing for the appellant insofar as the stand taken by the learned counsel appearing for the 1st respondent that the Original Petition was filed nearly after three years from the date of demise of the testator, the Limitation Act has no application for the case on hand. Original Side Rules will not prevail and it is in the nature of special rules which will prevail over the same and in support of the said submission, has drawn the attention of this Court to the Judgments rendered by Division Bench of this Court reported in 2016 1 CTC 257 [S.Vatsala Vs. K.S. Mohan and others] and prays for interference.

6. Per contra, 1st respondent / Party-in-Person would submit that on account of the filing of the suit for partition, the appellant has given her right under Ex.P1-Will and a preliminary decree came to be passed, granting 1/5 th share in his favour and for development of the said property by metes and bounds, final decree has also been passed ; whereas he has entered appearance and filed his counter and pendency of the same, the appellant herein has filed a memo for withdrawing the suit itself without putting him on notice and would further contend that such an order should not have been passed, for the reason that once the suit came to be decreed ,it cannot be withdrawn unless appeal is pending against the Judgment and

Decree.

7. It is further submission of the petitioner / Party-in-person that the numbering of the partition suit after passing of the preliminary decree and the final decree application and withdrawing of the same as well as the execution of three settlement deeds in favour of his two sisters and brother have been totally burked during the course of hearing of Original Petition and on that ground, Letters of Administration is liable to be revoked. The learned Judge has allowed the said appeal and would further state that the Original Petition has been converted as Testamentary Original Suit and appropriate direction may be given for expeditious disposal of the same.

8. This Court paid its anxious consideration to the rival submissions and also perused the materials placed before it.

9. Original Petition No.802 of 2010 for issuance of Letters of Administration in respect of Will dated 07.03.1996 was filed during August 2002, the testator viz., N.Rathinasabapathy Mudaliar, died on 01.06.1999 and the OP was filed only nearly after 3 years, ie., during August 2002 and came to be numbered in the year 2010. Incidentally, the question arose for consideration is as to whether the Original Petition is barred by limitation on account of belated filing. The Division Bench of this Court reported in 2016 1 CTC 257 [S.Vatsala Vs.K.S.Mohan and others] cited supra, held that the Limitation Act will have no application for grant of Probate and delay by itself cannot be a ground for refusing the grant of Probate otherwise when there is proof of execution of the Will by acceptable and convincing and documentary evidence. It is further observed that in Para No.13 of the said decision that in the absence of any specific period of limitation, Order 25 Rule 9 of the Original Side Rules only mandates the Propounder to make specific averments explaining the reasons for the delay so caused.

10. A perusal of the petition filed in OP No.802 of 2010 would reveal that no reasons have been assigned in terms of Order 25 Rule 9 as to the belated filing of the petition in Probate. Be that as it may, it is also to be noted at this juncture the suit in OS No.3775 of 2006 was filed by the appellant for partition and other consequential reliefs in March 2006 and admittedly, the preliminary decree passed on 31.03.2009 and to pass the final decree, also filed in I.A.15495 of 2011 wherein the 1st respondent / Party-in-person entered appearance and filed his counter. During the course of enquiry, the appellant herein / applicant therein filed a memo for withdrawing the main suit itself and an order to that effect came to be passed on 11.02.2015, by the 12th Assistant City Civil Judge at Chennai.

11. The Appellant was examined as PW1 on 20.12.2012 and perusal of her evidence would reveal she has not disclosed anything about the filing of the partition suit, preliminary decree passed therein and filing of the final decree application and subsequently, withdrawn the suit itself. No additional affidavit or memo has been filed, by bringing to the knowledge of this Court to the said material fact. The 1st respondent/party in person, being one of the sons of the appellant is also having a caveatable interest.

12. In the light of above facts and circumstances, this Court is of the considered view that the Letters of Administration granted in favour of the appellant has been rightly revoked and OP has also been rejected. It is also brought to the knowledge of this Court that the OP has been converted as TOS No.23 of 2017.

13. This Court on an independent application of mind is of the considered view that there is no error apparent or any infirmities in the reasons assigned by the learned Judge for allowing the application in A.No.5289/2013.

14. In the result, the Original Side Appeal is dismissed confirming the order passed by the learned Single Judge in A.No.5289 of 2013 in O.P.No.802 of 2010 on 05.07.2017. This Court taking into consideration of the relationship between the parties is not inclined to award any cost. Since the appellant is aged about 80 years, the 1st respondent / Party-in-Person, shall file the written statement within a period of two weeks from the date of receipt of copy of this order and the Registry is directed to expedite the disposal of the TOS. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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TO
The sub assistant Registrar,
original side, High Court, Madras.

+3cc to Mr.S.MUTHUDURAI, Advocate, S.R.No. 26703

O.S.A.No.80 of 2018

TR(04/05/2018)