

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 03RD DAY OF JANUARY 2018

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

A.No. 3876 of 2017
in
O.P. No.685 of 2003

In the Matter of Indian
Succession Act, 1925
And
In the matter of the Last
Will and Testament of
Smt.Dhanalakshmi Ammal
deceased

Mr.K.Selvam
S/o. Kamalakannan
No.145, Thiruppanthiyur Village,
Thiruvallur Taluk and District. ..Petitioner

A.No. 3876 of 2017:

1. E.Bakthavachalam
2. E.Radhakrishnan
3. E.Mani
All residing at
No.26/3, Perumal Koil Street,
Govindarajapuram, Palavedu,
Chennai - 55. : Applicants/3rd Parties

-Vs.-

K.Selvam
S/o. Kamalakannan
No.145, Thiruppanthiyur Village & Post,
Sunkavachatram Via,
Thiruvallur Taluk. ..Respondent/Petitioner

Application praying that this Hon'ble Court may be
pleased to revoke the letters of Administration granted by
this Hon'ble Court in favour of the respondent in the above
O.P.No. 685 of 2003 dated 23.04.2004.

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 by this Court in favour of the Respondent herein, who is the Petitioner in OP.No.685 of 2003, by order dated 23.4.2004.

2. OP.No.685 of 2003 had been filed, seeking grant of Letters of Administration with the Will annexed, in respect of the last Will and Testament of Dhanalakshmiammal, who died on 11.2.2002 and left behind a Will executed on 10.5.1993 and registered on 12.5.1993. The propounder of the Will, K.Selvam, who was the Petitioner in OP.No.685 of 2003, was the brother's son of the Testatrix, Dhanalakshmiammal. The property, which was the subject matter of the Will, originally belonged to one E.Chakravarthy, who was the husband of Dhanalakshmiammal. He died intestate on 18.5.1991, leaving behind as legal heirs his wife Dhanalakshmiammal and mother, Murugammal. It has been stated that Murugammal died in the year 1997. E.Chakravarthi and Dhanalakshmiammal did not have any issues and consequently, the Petitioner, who is the brother's son of the Dhanalakshmiammal, was looking after her and therefore, out of love and affection, the Will was executed, bequeathing the property in the name of the Respondent herein.

3. In OP.No.685 of 2003, there were no contesting

Respondent. It was specifically mentioned that there were no agnates or cognates and there were no persons interested, on whom notice to be sent or to be shown as the Respondents. After following the due procedure of issuing publications, this Court by order dated 23.4.2004 had granted Letters of Administration.

4. The Will was marked as Ex.P2. The Petitioner in OP.No.685 of 2003 had subsequently sold the property in favour of one Kumar, a third person.

5. This application has been filed by three persons, namely, E.Bakthavatchalam, E.Radhakrishnan and E.Mani, who are the brothers of E.Chakravarthy, the original owner of the property. In the present application, they have stated that they have filed a suit in OS.No.3834 of 2007 on the file of the VI Assistant City Civil Court, Chennai and had also obtained a decree with respect to the very same property. In the said suit, IA.No.19969 of 2014 had been filed by the purchaser of the property, Kumar, to condone the delay of 1471 days in filing the application to set aside the exparte order. The Trial Court, on consideration of the materials on record, had dismissed the said application. It was during the hearing of the said application that the Applicants herein came to know about the Will of Dhanalakshmiammal and the order of this court, granting Letters of Administration. Consequently, they have filed the present application.

6. Notice was directed to be issued to the Respondent herein, who is the Petitioner in OP.No.685 of 2003. Notice was served, but he did not appear. Thereafter, this Court had directed notice to be issued to the learned counsel and learned counsel also did not appear. The name of the Respondent was also printed in the cause list. He still choose not to participate in the judicial proceedings.

7. Irrespective of the fact whether the Respondent appeared or not, the Petitioner was directed to let in oral evidence to substantiate the claim. Accordingly, E.Chakravarthi was examined as PW.1 and he had also filed his proof affidavit. He had stated that in the Will, it has been stated that Dhanalakshmiammal is the only legal heir of her husband, E.Chakravarthy. As a matter of fact, at the time when the Will was registered and executed, the mother of E.Chakravarthy was alive. Further, the Applicants herein, as brothers, were also alive. It is, therefore, seen that the material facts have been wrongly mentioned in the Will.

8. A perusal of the records also does not reveal whether evidence was taken before granting Letters of Administration. At any rate, by revoking the grant of Letters of Administration, the Petitioner in OP.No.685 of 2003 once again has an opportunity of proving the Will and it would only be in his interest if the Will is proved in a manner known to law.

9. For all these reasons, I hold that the Letters of Administration granted in OP.No.685 of 2003 by order dated 23.4.2004 is to be revoked and accordingly, this application is allowed as prayed for. The Petitioner in OP.No.685 of 2003 is directed to file the original citation, granting Letters of Administration into the court.

Sd/.C.V.K.J

03.01.2018

//Certified to be a true copy//
Dated this the day of 2018

JJ 26/04.2018

COURT OFFICER

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