

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY THE 13TH DAY OF FEBRUARY 2018

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

A. No.6017 of 2017
in
O.P.No.211 of 2013

In the matter of Indian
Succession Act XXXIX of 1925
In the matter of Last Will
and Testament of
V.Krishnakumar @ V.K.Kumar
Deceased

M.Natarajan
residing at 66/57,
Iyappachetty Street, Manady
Chennai 600 001.

: Petitioner

Vs.

1. K.Sri Vidya
W/o. V.Krishnakumar @ V.K.Kumar

2. K.Anbuselvan (Minor)
S/o. V.Krishnakumar @ V.K.Kumar

3. K.Yuvabarathkumar (minor)
S/o. V.Krishnakumar @ V.K.Kumar
Rep.by their Mother, Natural Guardian & Next Friend
the 1st Respondent
No.132A, New Street, Mannady
Chennai 600 001.

: Respondents

A.No.6017 of 2017

1. Vinoth Kumar (minor)
Adopted son of Late V.Krishnakumar @ V.K.Kumar
Rep.by his mother and natural guardian

2. K.Latha
No.25, Papathi Amman Koil Street
Erukancheri, Chennai 118. : Applicant/Proposed parties

-vs.-

1. M.Natarajan
S/o. Muthiyapillai
No. 66/57,
Iyappachetty Street, Manady
Chennai 600 001. : Respondent/Petitioner

Vs.

2. K.Sri Vidya
W/o. V.Krishnakumar @ V.K.Kumar

3. K.Anbuselvan (Minor)
S/o. V.Krishnakumar @ V.K.Kumar

4. K.Yuvabarathkumar (minor)
S/o. V.Krishnakumar @ V.K.Kumar
Rep.by their Mother, Natural Guardian & Next Friend
the 1st Respondent
No.132A, New Street, Mannady
Chennai 600 001. : Respondents/Respondents

Application praying that this Hon'ble Court be pleased to
revoke the order passed in O.P.No.211 of 2013 on 16.07.2013.

This Application coming on this day before this court
for hearing the court made the following order:-

This application has been filed to revoke the order,
dated 16.07.2013 passed in OP.No.211 of 2013.

2. OP.No.211 of 2013 had been filed, seeking grant of
probate with respect to the last Will and Testament of
V.Krishnakumar @ V.K.Kumar, who died on 20.11.2011. It was
claimed that he had left properties, bearing Door No.25,
Papathi Amman Koil Street, Erukancheri, Chennai-118 and
bearing Plot No.10, RS.No.99/48, 100/2, to an extent of 86
sq.m. It was also claimed that he had left behind him a

Will, dated 16.9.2011.

3. The Petitioner is the father in law of the deceased, V.Krishnakumar @ V.K.Kumar, who died at Apollo Speciality Hospital, Mount Road, Chennai. The Respondents in the OP were the wife of V.Krishnakumar @ V.K.Kumar , by name K.Sri Vidya and her minor sons. The Respondent had filed consent affidavit. Consequently, the matter was referred to the Master for recording evidence.

4. Before the Master, the Petitioner was examined as PW.1. Ex.P1 was the computer the generated copy of the death certificate. Ex.P2 was the copy of the unregistered will of V.Krishnakumar @ V.K.Kumar. Ex.P3 was the legal heirship certificate. Ex.P4 was the xerox copy of the lease cum sale agreement entered into between V.Krishnakumar @ V.K.Kumar and the Tamil Nadu Slum Clearance Board with respect to the property mentioned in the Will. Ex.P5 was the affidavit of assets and Ex.P7 was the consent affidavit. One of the attesting witness, D.Baskar was examined as PW.2. He also gave evidence deposing that the Will was executed in his presence and in the presence of the other attesting witness and he directly saw the Testator signing the Will and he also put his signature in the presence of the Testator. Ex.P6 was his affidavit. In view of the oral and documentary evidence, this Court had granted an order of probate by order dated 16.7.2013.

5. The present application, seeking to revoke the order granting probate, had been filed by Vinoth Kumar, who is a minor and who claimed to be the adopted son of late V.Krishnakumar @ V.K.Kumar and K.latha. In the affidavit of K.Latha, who is the 2nd Petitioner, she claimed that the 1st Petitioner was the lawfully adopted son of herself and her husband, V.Krishnakumar @ V.K.Kumar. She further claimed that she was the lawfully wedded wife and since they had no issues, they had adopted the 1st Petitioner by adoption deed dated 27.3.2001, which was also confirmed by the order of the Principal Judge, City Civil Court, Chennai in ADOP.No.88 of 2001. Subsequent to the adoption, V.Krishnakumar @ V.K.Kumar had developed intimacy with the 1st Respondent in the OP, K.Srividya. On this account, there was a dispute between her and V.Krishnakumar @ V.K.Kumar and consequently, the marriage between them had been dissolved by the Family Court on 27.1.2011 in OP.No.296 of 2010.

6. It has been further stated that K.Latha and the 1st Petitioner were in actual physical possession of the property mentioned in the Will. The 1st Respondent in the OP, K.Srividya, had attempted to interfere with the possession and a suit in OS.No.2573 of 2012 had been filed and the same is pending in the 14th Assistant City Civil Court, Chennai. Thereafter, K.Srividya, had also filed OS.No.5863 of 2013, claiming that the 2nd and 3rd Respondents

in the OP are the legitimate sons and only legal heirs of the said V.Krishnakumar @ V.K.Kumar. It has been stated that trial is pending. Another suit in OS.No.484 of 2013 was decreed on merits on 6.8.2015 by the 17th Assistant City Civil Court, Chennai. In these circumstances, it has been stated that the Petitioners in this application have a caveatable interest and they were not shown as the Respondents in the OP and they were not served with notice and consequently, it was claimed that the order granting probate should be rejected.

7. A counter affidavit has been filed by the Respondents and they have not denied the pendency of the suits. However, they have stated that the Petitioners herein had given consent in the Family Court proceedings that she will not have any claim against V.Krishnakumar @ V.K.Kumar and consequently, stated that the application itself is mischievous and has to be dismissed.

8. This Court heard Mr.K.S.Madhavan, the learned counsel for the Petitioners and Mr.S.Manickam, the learned counsel for the Respondents.

9. A perusal of the facts of the case reveals that the Petitioners' claim that the 1st Petitioner Vinoth Kumar was the adopted son of the 2nd Petitioner, K.Latha and V.Krishnakumar @ V.K.Kumar. She has also very specifically claimed that the said adoption had been recognised by a deed

of adoption dated 27.3.2001 and also by the order of the Principal Judge, City Civil Court, Chennai in ADOP.No.88 of 2001. The 2nd Petitioner, K.Latha also claimed to be the legally wedded wife of V.Krishnakumar @ V.K.Kumar . There had been differences of opinion between them resulting in filing of OP.No.296 of 2010 and the marriage was dissolved on 27.1.2011.

10. A receipt had been produced by the learned counsel for the Respondents. It was dated 4.2.2003. This receipt was executed by V.Krishnakumar @ V.K.Kumar and he had described the 2nd Petitioner herein, K.Latha as his wife. Receipt cannot be referred for any other purposes. Both V.Krishnakumar @ V.K.Kumar and K.Latha had jointly presented HMOP.No.296 of 2010 under Section 13(b) of the Hindu Marriage Act, seeking to dissolve the marriage.

11. In HMOP.No.296 of 2010, they had mentioned that they had adopted a son by name K.Vinoth Kumar by an adoption deed dated 23.2.2011, which was also recognised by the Principal Judge, City Civil Court, Chennai in ADOP.No.88 of 2001. Consequently, on facts, it is established that the 2nd Petitioner had been the legally wedded wife of the deceased V.Krishnakumar @ V.K.Kumar and the 1st Petitioner Vinoth Kumar was their adopted son. These facts were also confirmed in the order of the Additional Family Court in OP.No.296 of 2010, dated 27.1.2011 wherein also reference had been made to

the 1st Petitioner and who had been described as adopted son and as a matter of fact, custody had been given to the 2nd Petitioner. All these facts established that what are pleaded in the affidavit with respect to relationship of the Petitioners with V.Krishnakumar @ V.K.Kumar are true. Thereafter, the 2nd Petitioner and the 1st Respondent in the OP, Srividya appear to have involved themselves in a series of litigations. They are involved in OS.No.2573 of 2012, OS.No.5863 of 2012 and OS.No.484 of 2013. The suits are pending and consequently, it may not be appropriate to enter into a discussion regarding the merits of the three suits. It is suffice to point out that at least the 1st Petitioner has made out a very good case to be categorised as next of kith and kin of V.Krishnakumar @ V.K.Kumar .

12. In the petition filed in OP.No.211 of 2013, very significantly, a formal paragraph relating to declaration that all the next to kith and kin have been impleaded and which is statutorily provided in Form 55 of the Original Side Rules is missing. Consequently, very format of OP.No.211 of 2013 is defective. Since the Petitioners had made out a very good case to be heard for deciding the validity or otherwise of the Will in question, the order, granting probate, in favour of the Petitioner, dated 16.7.2013 has to be rejected.

13. In the result, this application is allowed, as prayed for. The order of this Court, granting probate, in

favour of the Petitioner in OP.No.211 of 2013, dated 16.7.2013 is set aside. The Petitioner is directed to return the Probate Order No costs.

Sd/.C.V.K.J

13.02.2018

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

JJ 27/04.2018

COURT OFFICER

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