

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE S. BASKARAN

O.S.A. No. 43 of 2018

&

C.M.P. No. 2578 of 2018

1. Ms. Sharmila
2. Mr. Prabhu ..Appellants

Vs.

1. Mr.S. Ramesh
2. Ms. Karthika
3. Mr.Vignesh, Minor
rep. by his natural guardian
Mr.S. Ramesh

4. Mrs.S. Kalavathy

5. Mr.S. Kaushik Raja

(R4 & R5 impleaded suo motu by
Court by order dated 26.09.2018) ..Respondents

Prayer: Original Side Appeal as against the order and decree dated 12.08.2016 in Application No. 1440 of 2014 in O.P. No. 210 of 2011.

A.No.1140/14 in OP.No.210/11:to revoke the orders passed by this Hon'ble Court dt.10.8.2012 in O.P.210/2011.

O.P.No.210/11:the letters of Administration with the will annexed may be granted to the petitioners as the grand children/leegatees under the will of the said deceased having effect limited to the state of Tamil Nadu.

For Appellants :: Mr.K. Sakthivel
For Respondents:: Ms.P. Samundeeswari

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This appeal has been preferred by the original petitioners in O.P. NO. 210 of 2011 as against the order dated 12.08.2016 passed in Application No. 1440 of 2014 allowing the said application filed by the respondents to revoke the order dated

10.08.2012 passed in the above said O.P. filed for grant of Letters of Administration.

2. The facts of the case are as follows:

The appellants filed a petition under Sections 232 & 276 of Indian Succession Act, 1925 for grant of Letters of Administration with the Will annexed, being the grandchildren/legatees under the Will of deceased Mrs.Savithri Ammal dated 24.01.2007. The said Savithri Ammal had two sons, namely, S. Sekar and S. Ramesh. Sekar is the father of the appellants while S.Ramesh is their uncle. The appellants' father Sekar predeceased Savithri Ammal. Moreover, Sekar and his first wife, i.e, appellants' mother had divorced and the appellants' mother was living separately. Therefore, it was the grandmother Savithri Ammal, who looked after the appellants. She had the property at Old No.94, New No.4, Thanthai Periyar Nagar, Ayanavaram, Chennai - 600 023 in her name and she bequeathed the said property by virtue of a registered Will dated 24.01.2007. The said Savithri Ammal died on 07.07.2007. Therefore, O.P. No. 210 of 2011 was filed by the appellants seeking Letters of Administration making their uncle and his children as respondents.

3. The respondents entered appearance and a memo was filed to the effect on 10.01.2012. Since no counter was filed, after recording evidence, Letter of Administration was granted by order dated 10.08.2012.

4. Thereafter only, respondents 1 to 3 filed Application No. 1440/2014 seeking to revoke the order dated 10.08.2012 stating that at the time of granting Letters of Administration, the 3rd respondent attained majority and without declaration of majority, Letters of Administration was obtained and therefore, the said application was filed.

5. The learned Single Judge, after going through the records, found that the respondents had already opposed the grant of Letters of Administration and pending proceedings, though the 3rd respondent attained majority and to that effect, a memo was also served upon the appellants, no steps had been taken to declare the 3rd respondent as major. Thus, the learned Judge, taking into consideration the recording made by the Court as if no objection was given by the respondents, though the 1st respondent had filed a memo in the Original Petition as early as on 09.07.2011 opposing the grant of Letters of Administration and that the memo filed for declaration of majority of the 3rd respondent was not ordered, was of the opinion that the 3rd respondent should be heard after giving an opportunity. Therefore, the application was allowed by the learned Single Judge recalling the order dated 10.08.2012. The said order is

being challenged before this Court.

6. It is evident from the records that the 3rd respondent was shown as a minor in the cause title at the time of filing of petition and subsequently, a memo has been filed bringing to the knowledge of the appellants that the 3rd respondent attained majority. In that event, declaration of majority should have been sought for. Since there was no such declaration, an opportunity to hear the 3rd respondent was lost. Therefore, the learned Single Judge rightly allowed the application and the order granting Letters of Administration stands revoked rightly.

7. Further, one another aspect has not been brought to the notice of the learned Single Judge i.e, Sekar's second wife S. Kalavathy and her son S. Kaushik Raja were not made as parties in the original proceedings itself. They are present before this Court and since they are also legal heirs of late Sekar, they should be made as parties. Hence, this Court, suo motu, impleads, " S. Kalavathy, W/o. Late S. Sekar, "A" Type 7/122 54th Street, Sidco Nagar, Villivakkam, Chennai -600 049 and S. Kaushik Raja, S/o. Late S. Sekar, "A" Type 7/122 54th Street, Sidco Nagar, Villivakkam, Chennai -600 049" as respondents 4 & 5, both in the OSA as well as in the O.P. Ms.Samundeeswari, learned counsel for respondents 1 to 3 undertakes to file vakalath on behalf of the newly impleaded parties. Their appearance is recorded.

8. Since the order granting Letters of Administration has been recalled, all the parties should have opportunity to contest the O.P. by filing counter statement as well as by adducing evidence. The parties are at liberty to request the learned Single Judge to expedite the hearing of the matter.

9. In the result, the appeal stands dismissed. No costs. Connected C.M.P. is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar

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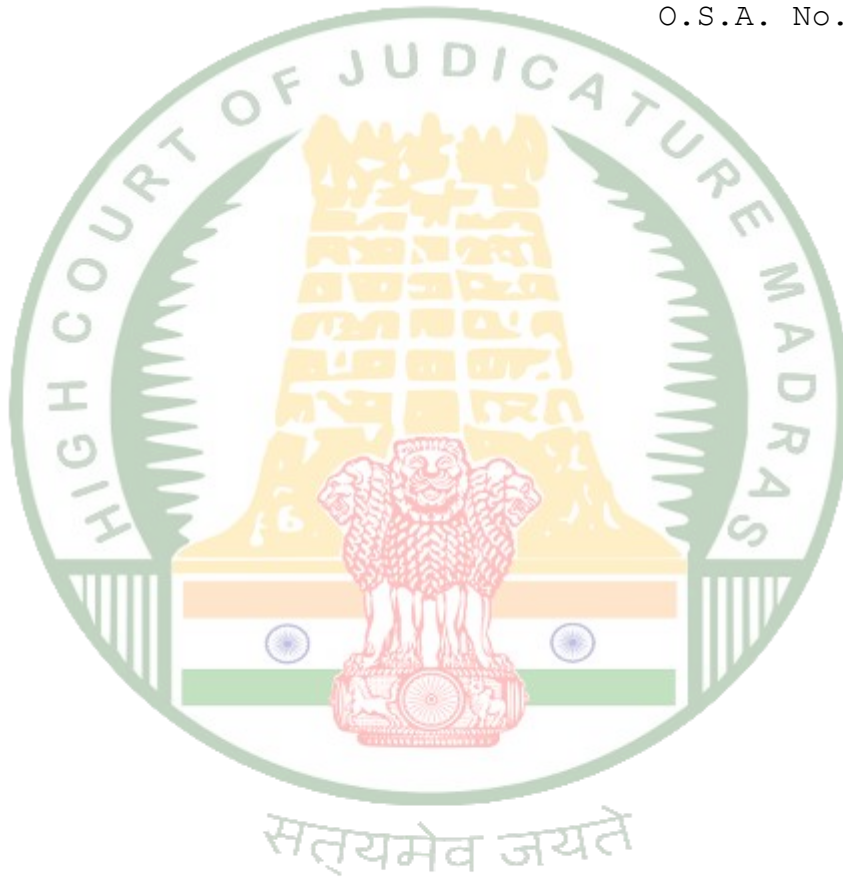
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+1cc to Mr.K.Sakthivel, Advocate Sr.No.67144

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KJ(CO)
sm:13.11.2018

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