

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.10.2018

Judgment Delivered on : 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

O.S.A.No.322 of 2017
and
C.M.P.Nos.19870 of 2017 and 17323 of 2018

1. K.K.Anbazhagan
2. K.K.Manivasugi ... Appellants/Plaintiffs

Vs.

1. C.Kumar
2. East West Benefit Fund Ltd.,
Rep. by its Director,
F-41/4, First Main Road,
Anna Nagar East,
Chennai-600 102. ... Respondents/Defendants

Original Side Appeal filed under Order XXXIX Rule 1 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent against the judgment and decree dated 20.04.2017 passed by the learned Single Judge in T.O.S.No.7 of 2007 (O.P.No.524 of 2006) on the file of this Court.

For appellants : Mr.R.Thiagarajan

For respondents : Mr.Tranquebar Dorai Vasu for R-1

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (O.S.A) has been filed against the judgment and decree dated 20.04.2017 passed by the learned Single Judge in T.O.S.No.7 of 2007 (O.P.No.524 of 2006) on the file of this Court, in and by which, the said T.O.S. was dismissed.

2. The appellants herein are the plaintiffs and the respondents herein are the defendants in the said T.O.S. For the purpose of convenience, the parties are referred to herein as they are ranked in the T.O.S. as plaintiffs and defendants.

3. Originally, O.P.No.524 of 2006 was filed by plaintiffs under Sections 218 and 278 of the Indian Succession Act and Order XXV Rule 5 of the Original Side Rules of this Court with regard to the matter of Estate of Mrs.Parameswari, who died intestate, seeking Letters of Administration in respect of the property and credits of the deceased to have effect limited to the State of Tamil Nadu. The said O.P. was filed indicating the Schedule of Assets and Securities as detailed below:

Assets

Sl. No.	Details of property (Movable and Immovable)	Valuation as on date of Application
1	Immovable property located at Flat No.4, First Floor, Block No.I, Survey No.4304 part of Block No.96, Mylapore Village, Raja Annamalaipuram, Chennai, ad-measuring 65.02 Square Meters	Rs.5,00,000/-
2	Immovable property located at Flat No.5, Second Floor, Block No.I, Corporation Door No.I-5, Rohini Gardens, Raja Annamalaipuram, Chennai-600 028, comprised in R.S.No.4304 part, Block No.96 at Mylapore Division, Raja Annamalaipuram in Madras City ad-measuring 65.02 Square Meters	Rs.5,00,000/-
3	Gold, ornaments, coins and other gold items weighing 950 Grams	Rs.4,50,000/-

Securities

Sl. No.	Description	No. of shares	Total Value
1	Swakath Marine Products Private Ltd.	1500 equity shares of Rs.10/- each	Rs.15,000/-
2	Saravanan Marine Products Private Limited	1500 equity shares of Rs.10/- each	Rs.15,000/-

4. During the pendency of the said O.P., caveat was filed on 22.08.2006 and 09.11.2006 by the defendants 1 and 2 with supporting affidavits and hence, the said O.P. was ordered to be converted as Testamentary Original Suit and numbered as T.O.S.No.7 of 2007.

5. Originally, the said O.P. was filed by the first plaintiff-K.K.Anbazhagan showing his sisters--K.K.Manivasugi and K.K.Karpagam as respondents 1 and 2 and the first respondent-K.K.Manivasugi was subsequently transposed as second petitioner (second plaintiff) as per order dated 13.02.2008 in Appln.No.5406 of 2007 and extended order dated 23.04.2008. The respondents 3 and 4 in the O.P. were impleaded as per order dated 31.08.2006 in Appln.No.3568 of 2006. The respondents 3 and 4 in the O.P. are the defendants in the T.O.S.

6. The case of the plaintiffs as stated in the affidavit filed in support of the said O.P., is as follows:

(a) The second plaintiff K.K.Manivasugi is the wife of K.Muthuswamy and is the natural sister of the deceased Parameswari. The second respondent in O.P., namely K.K.Karpagam is the wife of Ramaswamy and is the natural sister of the deceased Parameswari. The said Parameswari died on 16.02.2006 at B.S.S.Hospital, Mandaveli, Chennai-28 and she ordinarily resided at I-4, Rohini Gardens, Santhome High Road, R.A. Puram, Chennai-28 before her death. The deceased left the first plaintiff-Anbazhagan as the sole surviving legal heir and no other relations exist. The deceased died intestate and that due and diligent search had been made for a Will, but none had been found, and hence, the first plaintiff claims administration of her property/Estate, effects and credits as his own. The deceased died issue-less and her husband Mr.Rathinavelu pre-deceased her on 19.12.1992.

(b) The deceased had Sridhana properties, which include self-acquired properties as defined under Section 14 of the Hindu Succession Act at the time of her death. The details of such properties which formed part of the absolute Estate of the deceased, are tabulated above.

(c) The above said properties would devolve on Class-I Heirs as per the Hindu Succession Act, and failing which, it would devolve upon Class-II Heirs of the deceased own heirs. This is clearly evident from Section 14 of the Hindu Succession Act.

(d) The deceased Parameswari and her pre-deceased husband died issue-less and had not adopted any son or daughter during their lifetime. There are no Class-I Heirs available to inherit the properties. In the category of Class-II Heirs, the first plaintiff being the only surviving natural brother of the deceased, has lawful rights to succeed to the Estate of the

deceased Parameswari's Sridhana-cum-self-acquired properties/Estates, as tabulated above.

(e) The deceased, at the time of her death, left the first plaintiff alone as her only next of kin, residing at No.195/16, Kutchery Road, RCC Apartment, Mylapore, Chennai-4. The amount of assets which are likely to come to the first plaintiff's hands, does not exceed in the aggregate a sum of Rs.14,80,000/- and the net amount of the said assets, after deducting all items which the first plaintiff by law is allowed to deduct, is Nil.

(f) The first plaintiff undertakes to duly administer the properties and credits of the deceased Parameswari and make full and true inventory thereof and exhibit the same in this Court within six months from the grant of Letters of Administration to him and also to render to this Court a true account of the said properties and credits within one year from the said date. Hence, the plaintiffs pray for grant of Letters of Administration in respect of the properties and credits of the deceased, to have effect limited to the State of Tamil Nadu.

7. The first defendant is the son of one Chockalingam, who is the brother of the deceased Rathnavelu, has filed written statement, inter-alia stating as follows:

(a) T.O.S. itself is not maintainable. The plaintiffs are adopting short-cut method in grabbing the properties of the deceased Parameswari under the guise of trying to get an order of administration of the properties of the deceased. The first plaintiff, who is the petitioner in O.P., has not impleaded all the necessary parties in the O.P. itself and the second respondent in the O.P., namely K.K.Karpagam (sister of the deceased) was not made a party in the suit. Similarly, another sister of the deceased, i.e. Jayalakshmi, who died issue-less and her husband who is very much alive, was not added as a party. The act and attitude of the plaintiffs clearly show that the only intention of the plaintiffs is that some way or the other, they are trying to grab the properties of the deceased Parameswari under the guise of administration.

(b) The first plaintiff is not residing in the address given in the petition. In fact, the address given by the first plaintiff is that of the second plaintiff. The first plaintiff is not at all interested in the present proceedings, and only at the instigation of the second plaintiff, the case has been instituted. This is very much clear from the fact that the second plaintiff transposed herself from the defendant's position to that of the plaintiff's position.

(c) The first plaintiff has purposely omitted to give the details of the adopted son of Late Rathnavelu. The first defendant's adoptive mother, the deceased Parameswari, died only on 15.02.2006 and not on 16.02.2006 as alleged by the plaintiffs. On 15.02.2006 at about 00.30 am., Late Parameswari felt uneasiness and immediately she was taken to hospital and

admitted in B.S.S.Hospital, Mandaveli, Chennai, where she died on the same day at 4.30 a.m. The first defendant conducted cremation and last rites to his adoptive mother, the deceased Parameswari. The plaintiffs who are not even aware of the correct date of death of the deceased, are claiming administration of her properties. The deceased resided at I-3 and I-4, Rohini Gardens, R.A.Puram, Chennai-28, which is an inter-connected flat and only in this place, all the last ceremonies were conducted for her.

(d) The first defendant being the adopted son of the deceased Rathnavelu and deceased Parameswari, is the only sole surviving legal heir. The Law is clear that an adopted son is equal to a son and he has got all legal rights under the Succession Law. The first defendant being the adopted son of the deceased Parameswari, succeeds to her Estate as per Section 15 read with Section 16 of the Hindu Succession Act and excludes all other persons. When such is the position, the claim of the plaintiffs that the deceased left the first plaintiff as the sole surviving legal heir, does not arise. The question of administration of the Estate of the deceased would arise only when the plaintiffs establish their legal rights. It is an admitted fact that Late Parameswari, at the time of her death, was having one brother and two sisters, namely the first plaintiff-K.K.Anbazhagan is the brother and the second plaintiff K.K.Manivasugi is the sister. The other sister-K.K.Karpagam is not made as a party in the T.O.S. and she was made as second respondent in the O.P. Yet another sister, namely Jayalakshmi, pre-deceased her, leaving behind her husband as surviving heir. These facts have not been brought to the notice of the Court.

(e) The deceased Parameswari got married to Late Rathnavelu on 23.08.1968 and she got employment in the Controller of Telecom Stores (Government of India) and joined duty in the Department on 02.08.1960 and after serving 27 years, she gave voluntary retirement on 02.07.1987 and in the said Department, she has made the first defendant's son K.Saravanan as her nominee. She has specifically mentioned in the papers submitted to the Department that K.Saravanan is her grand-son, who is the son of the first defendant-C.Kumar. By letter dated 01.06.2009, the Department of Posts communicated to K.Saravanan, in which it has been specifically mentioned that K.Saravanan is the grand-son of the deceased Parameswari. Even in the Central Government Employees Group Insurance Scheme, she has made the first defendant as her nominee in the event her husband-Rathnavelu pre-deceased her. In that document, she has specifically mentioned the first defendant as her adopted son. That document had been executed by the deceased Parameswari as early as on 03.04.1981 itself and in the Telephone Application of the year 1998, the first defendant was shown as nominee (son) of the deceased Parameswari.

(f) The documents submitted to the Government Department make it clear that the first defendant is the adopted son of the deceased Parameswari and Late Rathnavelu. After retirement, she joined the business of her husband-Late Rathnavelu. The first defendant denies that at the time of her death, the deceased had 'Sridhana' properties and the first defendant states that the deceased Parameswari has not left any 'Sridhana' properties at the time of her death. The plaintiffs never respected the deceased Parameswari during her lifetime and knew nothing about her personal life. The plaintiffs had entered into the scene only after the death of the deceased Parameswari, only with the sole intention of grabbing her properties.

(g) The schedule mentioned properties, as tabulated above, are her self-earned properties and item 1 therein relates to a Flat bearing Flat No.I-4, Rohini Gardens, R.A.Puram, Chennai-28, which had been purchased by her in her name by sale deed, dated 25.05.1988 in Document No.1029 of 1988, registered on 06.06.1988 on the file of the Sub-Registrar, Mylapore, and item 2 therein relates to a flat bearing Flat No.I-5, Rohini Gardens, R.A.Puram, Chennai-28, which had been purchased by her in her name by sale deed dated 31.08.1998, Document No.1762 of 1998, registered on 02.09.1998 on the file of the Sub-Registrar, Mylapore. Item 3 therein relates to gold, which had been purchased by her from her earnings and she pledged the jewels with the second defendant through one A.P.Gupta and this had been redeemed by the first defendant by paying a sum of Rs.4,16,209/-.

(h) Insofar as the shares mentioned in the schedule of properties as tabulated above, are concerned, items 1 and 2 therein are the securities, which were also obtained by her through her self-earnings. The companies mentioned in the list of securities, are the subject matter of C.S.No.128 of 2003 on the file of this Court, in which, there is an injunction order and as on today, there is an absolute injunction granted in that suit and the same is still in force. Hence, it is clear that the deceased had not left any 'Sridhana' properties at the time of her death. In any event, the plaintiffs will never succeed to the Estate of the deceased Parameswari, inasmuch as the first defendant is entitled to succeed her Estate in the capacity as her adopted son.

(i) Class-I Heirs and Class-II Heirs are not relevant to Section 14 of the Hindu Succession Act as alleged by the plaintiffs, as the issue involved in the present case is with regard to the properties left by the female. The Law is clear that Class-I Heirs and Class-II Heirs are set out in the Schedule to the Hindu Succession Act, relating to Section 8 therein and those Classes relate only to the order of succession in the case of males. In any event, the first defendant being the adopted son of the deceased Parameswari and late Rathnavelu,

succeeds to the Estate of the deceased Parameswari as her son. The adopted son has got all legal rights as that of a son.

(j) In order to prove that the first defendant is the adopted son of the deceased Parameswari and Late Rathnavelu, it is stated that the marriage of the first defendant itself had been conducted by the said adoptive parents. The marriage invitation had been printed in the name of Tmt. & Thiru.P.Rathnavelu. The marriage of the first defendant with Azhagammal took place in the marriage hall on 09.09.1977 (Deivanai Kalyana Mandapam, belonging to the Lord Muruga Temple of Thiruthani) and the marriage hall was booked in the name of Late Parameswari. In the marriage invitation in Tamil, the first defendant had been specifically mentioned as "Suvikaraputhiran" of Tmt. & Thiru.P.Rathnavelu. Further, in the marriage invitation printed in English, the first defendant had been specifically mentioned as 'adopted son' of Smt. & Shri.P.Rathnavelu. In the Tamil invitation, the adoptive parents mentioned the first respondent as brother's (P.Chockalingam)'s son of Late P.Rathnavelu. Further, the adoptive parents stood for all the religious formalities done at the time of marriage on behalf of the first defendant, including that of the 'Patha Pooja', even though the natural parents were alive at that time. Moreover, the first defendant's natural parents were also present at the time of the marriage. Neither the plaintiffs nor the other two sisters (Jayalakshmi and Karpagam) attended the marriage, though they were invited.

(k) The first defendant succeeds to the Estate of the deceased Parameswari in the capacity as her adopted son. It is established that the plaintiffs have no legal rights to administer the properties of the deceased, inasmuch as the first defendant succeeded to the Estate of the deceased legally as per the Succession Laws in force.

(l) In the Stone Tablet relating to "Kudamuzhagu" function for the "Raja Gopuram" of Lord Velleeswar Temple, Mylapore, Chennai on 05.07.2000, the name of the first defendant comes under the family of the deceased Parameswari, from which it is clear that the first defendant is the adopted son of the deceased. Further, every year, the 'Pithru Kattallai' is being done by the first defendant from 1993 for his Late adoptive father Rathnavelu at Madya Kailash Temple at Taramani Road, near Adyar, Chennai and in the said "Pithru Kattallai", maintained by the Temple, the first defendant had been referred to as the son of Late Rathnavelu in Document No.1122. It was the desire of the deceased that the annual ceremony in the said Temple be done by the first defendant as the adopted son of Late Rathnavelu and the deceased Parameswari. In the Fixed Deposits in the names of grand-children of the deceased Parameswari, the name of the first defendant is clearly stated therein.

(m) The various cases filed by the relatives of the deceased Parameswari against her, show that she was given trouble and not

treated well by the plaintiffs' family during her lifetime. In any event, the plaintiffs have not approached this Court with clean hands. Further, the first defendant has demonstrated in the written statement that Late Parameswari and Late Rathnavelu died issue-less and the first defendant is the only issue of the deceased Parameswari and Late Rathnavelu and he succeeds to the Estate of Late Parameswari as per the provisions of the Hindu Succession Laws. The plaintiffs, calling themselves as the natural brother and sister of the deceased Parameswari, never bothered to mention about the other natural sisters, namely Jayalakshmi and Karpagam for the best reasons known to them. The plaintiffs have no legal right to succeed to the Estate of the deceased Parameswari, inasmuch as the first defendant is the adopted son of her. The plaintiffs are not the next of kin of the deceased Parameswari at the time of her death and the first defendant alone is the sole legal heir who succeeds to her Estate as per the provisions of the Hindu Succession Laws.

(n) The value of the properties given in the schedule tabulated above, is not reflecting the true value and the affidavit of assets filed in support of the petition/plaint also do not reflect the true value, which is only for the purpose of avoiding payment of proper/actual Court fees. The plaintiffs' imagination that the assets will come to their hands, is not sustainable in law. It is an admitted fact that all the last rites were done by the first defendant to Late Rathnavelu and Late Parameswari. The plaintiffs do not have any connection with the family of the deceased Parameswari and Late Rathnavelu during their lifetime, and hence, they are not in a position to state as to what is legally deducible under Law.

(o) As regards the Companies mentioned in the securities column in the schedule of assets and liabilities as tabulated above are concerned, there is an injunction order in C.S.No.128 of 2003 on the file of this Court and as on today, there is an absolute injunction granted in that suit and the same is still in force. With regard to the properties in Flat Nos.I-4 and I-5 of Rohini Gardens, they are in the possession of the first defendant and when the plaintiffs attempted to dis-possess the first defendant from these flats through rowdy elements, the same was legally resisted by the first defendant and he also obtained suitable orders from this Court in W.P.Nos.9173 and 9174 of 2007. The said Writ Petitions in W.P.Nos.9173 and 9174 of 2007 were disposed of by this Court on 08.04.2008 with a direction to the first defendant to deposit a sum of Rs.7,500/- every month to the credit of the present T.O.S.No.7 of 2007, which is being complied with by the first defendant till date.

(p) Inasmuch there is a specific injunction order with regard to the Company, the question of appointing an Administrator does not arise. Inasmuch as the properties are in possession of the first defendant, the property tax and water tax are promptly paid by the first defendant. The first

defendant is not acting detrimental to the interest of the Estate of the deceased Parameswari. (q) With regard to the loan account of the deceased, which stood with the second defendant, the details are as follows:

HF 263 = Flat No.I-4, Rohini Gardens

HF 264 = Flat No.I-3, Rohini Gardens

HF 265 = based on HF 263 & HF 264 further loan advanced.

It is stated by the first defendant that he had discharged HF 265, by fully paying a sum of Rs.2,43,725/-. Insofar as Flat No.I-3 of Rohini Gardens is concerned, the same is not the subject matter of the present proceedings. Further, as per the order of this Court, dated 25.06.2008 in O.A.No.554 of 2008 and A.Nos.2491 and 2492 of 2008, the first defendant has fully discharged the mortgage loan created by the deceased Parameswari with the second defendant and the second defendant has issued Closure Certificate, dated 31.12.2008 in respect of payment of the total sum of Rs.6,69,708/-. The first defendant is taking all steps to safeguard the interest of the properties of the deceased Parameswari and the correspondences with the second defendant expose the truth. As far as Flat No.I-4 of Rohini Gardens is concerned, it is in the possession of the Company called M/s.Swagath Marine Products Private Limited, in which the first defendant is the Managing Director. Earlier, the plaintiffs gave trouble to the deceased Parameswari in running the said Company, in which she was the Managing Director. For all the above reasons, the first defendant prayed for dismissal of T.O.S./O.S.A.

8. By order dated 08.09.2009 in T.O.S.No.7 of 2007, the learned Single Judge has framed the following issues for consideration:

(i) Whether the suit is bad for non-joinder of natural sister of the plaintiffs ?

(ii) Whether the first defendant is the adopted son of deceased Parameswari ?

(iii) Whether the properties mentioned in the schedule are the "Sridhana" properties of the deceased ?

(iv) Whether the suit is maintainable ?

(v) Whether the plaintiffs are entitled for Letters of Administration of the property and credits of the deceased Parameswari ?

(vi) To what relief the plaintiffs are entitled to ?

9. In order to prove the plaintiffs' case, the second plaintiff examined herself as P.W.1 and marked Ex.P-1 to Ex.P-15. On the side of defendants, the first defendant examined

himself as D.W.1 and marked Ex.D-1 to Ex.D-37. The learned Single Judge, after considering the oral and documentary evidence, dismissed the T.O.S., against which the present O.S.A. is filed by the plaintiffs.

10. Learned counsel appearing for the appellants/plaintiffs submitted that the learned Single Judge has dismissed the T.O.S. on misconception and the plaintiffs are not entitled for Letters of Administration. Though the learned Single Judge has observed in favour of the plaintiffs on certain points, ultimately, the learned Single Judge has answered the issues, holding as follows:

"27. For the reasons aforementioned, I hold that the properties described in the plaint schedule are the self acquired properties of the deceased Parameswari. As regards whether the first defendant is the adopted son of the deceased Parameswari, the said issue is not answered. As regards the issue whether the suit bad for non joinder of the natural sisters of the plaintiffs, though the other natural sisters of the deceased are not impleaded, inasmuch they are not shown to be entitled to claim the letters of administration of the estate of the deceased, it is found that the suit cannot be termed as bad on account of their own non joinder as contended by the first defendant. I also hold for the reasons afore mentioned that the plaintiffs are not entitled to for the grant of letters of administration of the properties and credits of the deceased Parameshwari. The defence has been taken by the first defendant that in the absence of a testament or Will, the question of filing a testamentary suit would not arise and therefore, contended that the suit is not maintainable. However, inasmuch as the present suit has been laid for the grant of letters of administration of the property of the deceased as provided under Section 218, it is found to be maintainable as such. Accordingly, issues 1 to 5 are answered.

28. Issue No.6: The suit is dismissed with costs"

11. Learned counsel for the appellants/plaintiffs further submitted that insofar as the testamentary proceedings are concerned, the Court, while considering the grant of Letters of Administration, prima-facie, has to consider as to whether a

person claiming Letters of Administration in respect of the goods, shall be entitled to claim a share or not. The Court appoints an Administrator to administer the Estate so that the affairs and administration of the Estate are not left in lurch. The Estate of the deceased cannot remain un-administered, inasmuch as, such a situation would create a vacuum, which cannot be filled up at a later date.

12. Learned counsel for the appellant/plaintiffs further contended that it is settled law that the Testamentary Courts do not decide the disputed question of title or entitlements. A person who claims administration, is an officer of the Court on being appointed by the Court, and the Administrator is expected to execute a Bond in favour of the Court, and as such, he/she is expected to file accounts within a period of six months and an inventory within a period of one year from the date of such grant. If the Administrator(s) misconducts himself/herself, they are liable to be removed. It is oft-quoted dictum of Law that the Testamentary Courts are "Courts of Conscience" and they do not decide the question of title, nor entitlements and the Testamentary Court is only concerned about the right of representation and cannot determine the question of succession. Further, for the proposition that if there are rival claims, the Court can grant or issue joint grant, the learned counsel for the appellants/plaintiffs relied on a decision of the Bombay High Court reported in AIR 1929 Bombay 397 (Yashwantibai Eknath Vijaykar, In re).

13. Learned counsel for the appellants/plaintiffs also contended that number of documents have been filed on behalf of the plaintiffs as well as the first defendant and the one and only question that would arise for consideration is as to whether the plaintiffs are entitled for Letters of Administration in respect of the goods of the deceased Parameswari. He further contended that insofar as the brother and sister of the deceased Parameswari, who are the plaintiffs, who are entitled to administer the Estate/properties and also for grant of Letters of Administration, are concerned, it is an interesting question that requires consideration of this Court in the line of succession and the Court has to deal with such a situation strictly in accordance with law, and such of those properties being absolute properties of the deceased Parameswari, should go to her brother(s) and sister(s) and if the properties are inherited from her mother or father, it should go to the heirs of the father. If the deceased Parameswari had inherited the Estate from her husband, it should revert back to the husband's legal heirs. Admittedly, in the present case, the properties have been acquired by the deceased Parameswari out of her employment and as such, the intrinsic question that may arise for consideration by this Court is as to

whether the properties held by the deceased are self-acquired properties, and whether it should revert back to her husband's legal heirs or to her legal heirs, namely brother(s) and sister(s). In this regard, learned counsel for the appellants/plaintiffs made detailed submissions by inviting the attention of this Court to Sections 14 to 16 of the Hindu Succession Act. For all the above reasons, learned counsel for the appellants/plaintiffs prayed for grant of Letters of Administration in favour of the plaintiffs.

14. Learned counsel for the appellants/plaintiffs also brought to the attention of this Court with regard to the petition filed by the appellants/plaintiffs in C.M.P.No.17323 of 2018 in O.S.A.No.322 of 2017 seeking permission to file the following documents as additional evidence:

Sl.No	Date	Description of documents
1	29.06.2006	Legal Heirship Certificate issued by the Tahsildar, Mylapore-Triplicane
2	10.02.2007	Proceedings in S.M.A.No.F3 14440/06
3	12.02.2007	Cancellation order passed by the District Collector, Chennai, in Ref.No.N.K.No.F3/14440/06
4	08.03.2007	Copy of the FIR No.90/2007 from E-5 Police Station, Pattinapakkam, Chennai
5	25.05.2007	Cancellation order passed by ARO, Chennai Corporation
6	25.08.2008	Order in Crl.O.P.No.20433 of 2008
7	14.07.2014	Complaint details issued by Corporation of Chennai
8	26.08.2014	Property details of Kumar
9	26.08.2014	Property details of Kumar
10	26.08.2014	Property details of Kumar
11	19.09.2014	Property details of Parameswari (reinstated)
12	19.09.2014	Property details of Parameswari (reinstated)
13	19.09.2014	Property details of P.Rathinavelu (reinstated)
14	15.10.2014	Legal notice to M/s.East West Benefit Fund Ltd.

15. Relying on the affidavit filed in support of the abovesaid C.M.P.No.17323 of 2018, learned counsel for the appellants/plaintiffs submitted that during the pendency of the proceedings, there were also Writ proceedings in respect of the properties in question, initiated by the first defendant, in which he was directed to deposit a sum of Rs.7,500/- every month to the credit of T.O.S. by way of rental for his use and occupation of the two flats belonging to the Estate of Late Parameswari and the said Writ proceedings in W.P.Nos.9173 and 9174 of 2007 were disposed of by this Court on 08.04.2008. Insofar as the jewellery and other articles are concerned, the jewellery which was pledged with the second defendant-East West Benefit Fund Limited, should not be dealt with by the first defendant, but contrary to the orders of this Court, the jewelleries were converted into Gold Ingots and they were subsequently secreted by the second defendant-East West Benefit Fund Limited.

16. Countering the above submissions of the learned counsel for the appellants/plaintiffs, the learned counsel for the first respondent/first defendant submitted that during the lifetime of the deceased Parameswari, the second appellant/second plaintiff and her husband, one way or the other, gave trouble to the deceased and she was never allowed to live peacefully. The appellants/plaintiffs have not made out any specific ground for grant of Letters of Administration. In this regard, learned counsel appearing for the first respondent invited the attention of this Court to Section 218 of the Indian Succession Act and submitted that as per Section 218(1), if a deceased had died intestate and was a Hindu, the administration of the Estate of the deceased may be granted to any person, who according to the Rules for the distribution of the Estate, applicable in the case of such deceased, would be entitled to the whole or any part of such Estate of the deceased. In the case on hand, it is a case of death of a female.

17. Learned counsel for the first respondent/first defendant also contended that the first defendant is the adopted son of the deceased, but the learned Single Judge has come to the conclusion that whether the first defendant is the adopted son or not, cannot be gone into in the T.O.S. proceedings. However, learned Single Judge, by adverting to Section 15 of the Hindu Succession Act, which deals with the general rule of Succession in the case of female Hindus, has come to the conclusion that if a female Hindu died intestate, the properties would devolve upon firstly on her son and daughters (including the children of any pre-deceased sons or daughter) and her husband. Learned Single Judge further held that so far as the deceased Parameswari is concerned, admittedly, she and her husband died issue-less and

further, her husband had pre-deceased her and therefore, Clause (a) of Section 15(1) of the Hindu Succession Act would not have application to the facts of the present case. In the absence of heirs falling under Clause (a) of Section 15(1), it is found that the next in line of succession is the heirs of her husband. In this case, the first defendant is the son of the brother of her husband and therefore, by virtue of Section 218 of the Indian Succession Act, it has to be concluded that the brother and sister of the deceased are not entitled for Letters of Administration. Thus, learned counsel appearing for the first defendant submitted that the judgment of the learned Single Judge is a well-considered one and it needs no interference by this Court and prayed for dismissal of T.O.S/O.S.A.

18. So far as the petition filed by the appellants/plaintiffs in C.M.P.No.17323 of 2018 praying to file additional documents, is concerned, the learned counsel for the first respondent/first defendant filed a detailed counter affidavit and submitted that during the pendency of the above T.O.S., the first respondent filed W.P.Nos.9173 and 9174 of 2007 against the second appellant and others challenging the cancellation of the Legal Heirship Certificate issued in favour of the first defendant as legal heir of the deceased Parameswari by the District Collector and for action to be taken on his representation, dated 09.03.2007 by the Commissioner of Police and others, and the said Writ Petitions were disposed of by this Court on 08.04.2008, with the following direction:

"Accordingly, W.P.No.9173/2007 is disposed of with a direction to the petitioner to deposit a sum of Rs.7,500/- every month to the credit of T.O.S.No.7/2007 pending on the file of this Court. The first such deposit shall be made on or before 5th May, 2008 and likewise for every succeeding month.

In view of the order passed in W.P.No.9173/2007, nothing survives in W.P.No.9174/2007 and the same is dismissed as infructuous."

Further, the additional documents could be marked only in accordance with Order 41 Rule 27 of the CPC and the documents could be marked only through examination of witnesses. Any number of documents filed by the appellants/plaintiffs, will not improve their case. Further, as per the provisions of the Hindu Succession Act, the plaintiffs cannot succeed to the Estate of the deceased Parameswari and the cancellation of the Legal Heirship Certificate in respect of the first defendant, would not have a bearing on the issue involved in the present O.P. as to whether the plaintiffs are entitled for issuance of Letters

of Administration. Hence, the first respondent/first defendant prayed for dismissal of the said C.M.P.

19. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have give our anxious consideration to the same and perused the materials available on record.

20. As we have dealt with the factual matrix of the case in detail as above, we are refraining ourselves from reiterating the same any further in this appeal. However, for the purpose of disposal of this appeal, certain facts which are absolutely germane and necessary alone, are reiterated hereunder.

21. Though very many contentions have been raised in this appeal on the factual aspects of the matter, the only question that has to be decided in this appeal is as to whether the plaintiffs are entitled for grant of Letters of Administration or not. If this question is answered based on the legal provisions, that would suffice to decide the issue involved in the present O.S.A.

22. Though it is submitted by the first respondent/first defendant that he is the adopted son of the deceased Parameswari, the Legal Heirship Certificate issued in his favour, was subsequently stated to have been cancelled. Therefore, according to the appellants/plaintiffs, the cancellation order which is sought to be marked as additional evidence, has to be taken into consideration for granting Letters of Administration.

23. It is evident that the plaintiffs are the brother and sister of the deceased Parameswari, who died intestate 15/16.02.2006, leaving behind the two immovable properties, securities and gold jewels. It is an admitted fact that the husband of the deceased, pre-deceased her on 19.12.1992 without leaving behind any issue of them. The first respondent/first defendant is the son of the brother of the husband of the deceased. The first defendant claims that he is the adopted son of the deceased, but though the Court has framed an issue on this aspect, the learned Single Judge has correctly come to the conclusion that whether the first defendant is the adopted son of the deceased or not, cannot be decided in the T.O.S. However, ultimately, the learned Single Judge has come to the conclusion that the plaintiffs are not entitled to the issuance of Letters of Administration, by adverting to Section 15 of the Hindu Succession Act, whereas, according to the learned counsel for the plaintiffs, if the properties belong to the lady (female) absolutely, then it had to go to her brother/sister and if the properties are inherited from the mother or father of the

deceased, then it has to go to the heir of the father of the deceased. However, if the deceased had inherited the properties/Estate from her husband, then it has to be reverted back to the husband's legal heirs. Further, according to the learned counsel for the plaintiffs, the properties/Estate had been acquired by her out of her employment, and therefore, it would not be reverted back to her husband's legal heirs.

24. In fact, in the pleadings, the plaintiffs have categorically mentioned that the schedule mentioned properties will devolve on Class-I legal heirs, failing which, on the own heir of the deceased. Thus, the plaintiffs claim right of succession of the properties on Class-I and Class-II heirs based on the Hindu Succession Act. But this claim of the plaintiffs was rejected by the learned Single Judge by observing that the order of succession is mentioned in Class-I and Class-II of the said Act and insofar as this case is concerned, the deceased who had died intestate, the order of succession under Class-I and Class-II of the Act will not be applicable in the case of female Hindu dying intestate. On the other hand, the ingredients as provided under Section 15 and Section 16 of the Hindu Succession Act would operate. We absolutely do not find any infirmity with such findings of the learned Single Judge.

25. To find out the correctness of the said findings, we are of the opinion that it would be appropriate to extract Section 218 of the Indian Succession Act and Sections 15 and 16 of the Hindu Succession Act, as under:

"Section 218 of the Indian Succession Act:
To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted persons:

(1) If the deceased has died intestate and was a Hindu, Muhammadan, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased."

Section 15 of the Hindu Succession Act:
General rules of succession in the case of female Hindus:-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,--

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) lastly, upon the heirs of the mother;

(2) Notwithstanding anything contained in sub-section (1),--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

Section 16 of the Hindu Succession Act: Order of succession and manner of distribution among heirs of a female Hindu: The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:-

Rule 1.-Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2:-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the

time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3:-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section. (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

26. A mere running of an eye on the above extracted Section 218 of the Indian Succession Act would show that if the deceased (female) had died intestate, the administration of her Estate may be granted to any other person who, according to the rules for the distribution of the Estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate. Further as per Section 15(1)(a) of the Hindu Succession Act, firstly, the properties of the female Hindu dying intestate shall devolve according to the rules set out in Section 16,--(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. But, in this case, Clause (a) will not apply. So far as Clause (b) of Section 15(1) of the Hindu Succession Act, in the instant case, the first defendant is the brother's son of the husband of the deceased, and therefore, the property of the female Hindu dying intestate, shall devolve only on the husband's legal heirs in the absence of sons or daughters of the deceased. Therefore, the first defendant would have priority to succeed to the Estate of the deceased.

27. Further, as per Section 218 of the Indian Succession Act, the Rule of distribution of the Estate, if the deceased female died intestate, is applicable in the case of such deceased, who would be entitled to whole or any part of such Estate of the deceased. The Administration of the Estate of the deceased, may be granted to any person, according to the Rules of distribution of the Estate. In the instant case, as observed earlier, since it is a case of female Hindu dying intestate, as per Section 15(1)(b) of the Hindu Succession Act, the first defendant being the brother's son of the husband of the deceased, would be the proper person to succeed to the Estate of the deceased. However, the brother and sister of the deceased, by relying upon paragraph 8 of the affidavit filed in O.P.,

mention that the properties would devolve upon Class-I heirs, failing which on Class-II heirs of the deceased own heirs, i.e. based on the concept of the male dying intestate. The said submission is not legally sustainable, since this is not a case where the properties are left by a male dying intestate. Therefore, we are of the opinion that the plaintiffs are not entitled for grant of Letters of Administration in their favour being the brother and sister of the deceased Parameswari. Considering all the above aspects, the learned Single Judge has dismissed the T.O.S., with which we do not find any infirmity or illegality.

28. Hence, the O.S.A is dismissed. No costs. Consequently, C.M.Ps. are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cs

To

The Sub Assistant Registrar (OS)
High Court, Madras.

+2cc to Mr.R.Thiyagarajan, Advocate Sr.223
+1cc to Mr.Tranquebar Dorai Vasu, Advocate Sr.89427
[21/06/2019]

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