



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2018

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P. (NPD) (MD) No.2436 of 2018**

WEB COPY

1.Santhosh @ Rajkumar  
2.Minor R.Helvien Beena  
3.Minor R.Hailey Benita

... Petitioners

[Minor petitioners 2 & 3 are represented  
by their guardian & father - the first petitioner herein]

vs.

1.S.P.S.Anandhan  
2.Minor Nansi Iswarya Mary  
3.Minor Ragan Abishek  
4.Minor Premkumar

... Respondents

[Minor respondents 2 to 4 are represented  
by their guardian & father - the first respondent]

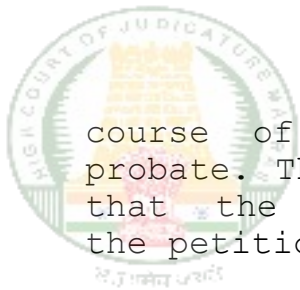
**PRAYER:** Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 03.03.2018, made in E.P.No.47 of 2015 in Probate O.P.No.2 of 2008 on the file of Principal District Judge, Karur.

For Petitioners : Mr.P.Thiagarajan

### ORDER

This civil revision petition has been filed by the petitioners challenging the order passed by the Court below in the execution petition.

2. The respondents herein, being the beneficiaries of a Will, filed Probate O.P.No.2 of 2008 seeking issuance of probate. An application for probate can be filed only by an executor of a Will and not by the beneficiaries. However, the application filed by the respondents herein was entertained, because, there was no respondent in that application. Thereafter, the petitioners herein have filed I.A.No.597 of 2009 to revoke the probate that was already issued. The said IA was allowed and the respondents herein were directed to surrender the probate and to take steps to convert the Probate OP into a suit. However, the respondents herein failed to comply with the said order and therefore, the petitioners herein have filed E.P.No.47 of 2015. As per Section 296 of the Indian Succession Act, when a grant of probate is revoked, the person to whom the grant was made shall immediately surrender the probate, failing which, he is liable for punishment. Instead of invoking this provision, the petitioners have filed E.P.No.47 of 2015. However, this EP was also entertained by the Court below and during the



course of proceedings, the respondents herein surrendered the probate. Therefore, the Court below has terminated the E.P. holding that the probate has been surrendered. Questioning the said order, the petitioners are before this Court.

3. The learned counsel appearing for the petitioners submitted that the first respondent, instead of surrendering the probate, has applied for a gun licence before the District Collector, Karur, using the probate as proof of his residence and only after the said fact was brought to the notice of the Court, the respondents surrendered the certificate of probate during the course of enquiry in the execution proceedings in the year 2018, which clearly amounts to contempt of Court and therefore, the Court below ought to have imposed punishment to the respondents and ought not to have terminated the execution proceedings based on such delayed surrender of certificate of probate by the first respondent. Thus, he prayed to set aside the impugned order and to punish the respondents.

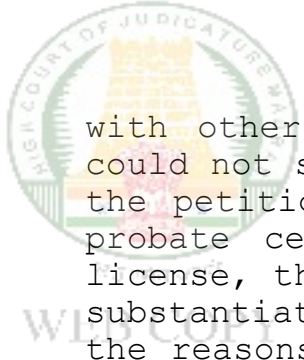
4. Heard the learned Counsel appearing for the petitioners.

5. A perusal of record shows that the EP was filed to execute the order that was passed in I.A.No.597 of 2009, in and by which, the respondents were directed to surrender the probate certificate. The respondents were also directed to take steps to convert the probate as suit, pay necessary Court fees and implead the petitioners as necessary parties within 30 days. But, the respondents failed to surrender the probate certificate and take steps to convert the probate as suit.

6. As stated earlier, the petitioners, without invoking the provision of Section 296 of the Indian Succession Act, has filed execution petition. Pending execution proceeding, the said probate certificate was surrendered by the respondents. According to the petitioners, the first respondent has surrendered the certificate belatedly and therefore, he should be punished with contempt. The Court below has held in paragraph No.6 as follows:

"6) This E.P. has been filed only to execute the order passed in I.A.No.597 of 2008 and the order was to direct the respondent to surrender probate. The probate has been surrendered. This E.P. is not for any other reliefs. Therefore, I am of the opinion that once the probate has been surrendered, E.P. should be terminated. Already a probate O.P which ought not to have been taken on file has spawned many applications. I do not want this to continue. E.P. is terminated."

7. It is seen that the first respondent has filed counter affidavit, dated 26.10.2016, to the execution proceedings, in which he has stated that while shifting his Advocate's Office, the entire case bundle along with the original probate certificate was mingled



with other bundle and they could not trace out and therefore, he could not surrender the probate certificate before the Court. Though the petitioners have stated that the first respondent has used the probate certificate as proof of his residence for obtaining gun license, the petitioners have not produced any documents in order to substantiate the same. In view of the above and also considering the reasons assigned by the Court below, this Court is not inclined to interfere with the order passed by the Court below.

8. In the result, this Civil Revision Petition is dismissed at the stage of admission itself. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal District Judge,  
Karur.

+1cc to Mr.P.Thiagarajan, Advocate Sr.No.94659

GCG

VB/SV/SAR1/13.12.2018/3P/3C

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