

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

O.S.A. Nos. 26 of 2019

1. K.Vasudevan
2. V.Srimathi

...Appellants

Vs.

1. K.Rangarajan
2. D.Srinivasa Raghavan
3. Nirmala Vijayaraghavan
4. Sabitha Venkatesan
5. Preethy Ashokan
6. Badhri Vasudevan
7. Niranjana Vasudevan
8. Latha Devarajan
9. S.Venugopalan
10. Rohit Rangarajan
11. Maithreyi Eashwar
12. Soundararajan Vijayaraghavan

...Respondents

Prayer: Appeal under Order 36 Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the decree and judgment dated 02.11.2018 passed in Application No.6338 of 2018 in O.P.No.629 of 2018 on the file of this Court.

For Appellants : Mr.K.V.Babu

For State : Mr.P.H.Aravind Pandian,
Additional Advocate General
Assisted by
Mr.Manikandan, Government Advocate
Mr.Shylendran, Government Advocate

J U D G M E N T
(Delivered by M.M.SUNDRESH, J.)

This appeal is filed by the appellants on the rejection of the application filed, in which the Registry was asked to dispense with the procedure contemplated under Section 55 of the Tamil Nadu Court- Fees and Suit Valuation Act, 1955. For the

better appreciation, the aforesaid Section is extracted hereunder:-

"55. Application for Probate or Letters of Administration:-

(1) Every application for the grant of Probate or Letters of Administration shall be accompanied by a valuation of the estate in duplicate in the form set fourth in Part I of Schedule III.

(2) On receipt of such application, the Court shall sent a copy thereof and of the [Valuation of the Collector] of the district in which the estate is situated, or if the estate is situated in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situated."

2. Learned counsel appearing for the appellants has submitted that in view of the amendment made in Schedule I, the maximum amount that is payable for the Probate proceeding is only Rs.25,000/-. If the appellants are willing to pay the said amount, there is no need to fall back upon the procedure contemplated under Section 55. To that extent, the aforesaid provision will have to be declared as redundant, apart from being an empty formality resulting in time consuming process.

3. Learned Additional Advocate General appearing for the State has submitted that the aforesaid provision contained in Section 55 is mandatory and, therefore, in all cases the requirement of sending copy of the application to the Collector and thereafter obtaining the valuation for the properties mentioned thereunder is mandatory. It may not be required to pressed into service in a case where the applicant is willing to pay the maximum amount of court fee fixed - Rs.25,000/-, but the same would be required when it is converted in to Testamentary Original Suit on a caveat being filed involving a caveatable interest. Therefore, the appeal will have to be dismissed.

4. Though the said question is academic, we are of the view that inasmuch as Section 55 has not been removed from the statute, the procedure contemplated cannot be dispensed with. However, we are of the view that in order to get over the delay and the empty formality, the Registry is directed to post the matter after numbering before the appropriate Court dealing with grant of Probate or Letters of Administration, without awaiting the report from the Collector concerned in such cases where the applicant pays the maximum amount of Rs.25,000/-. However, in such cases, when Probate or Letters of Administration gets converted into Testamentary Original Suit, then the applicant is required to pay the aforesaid valuation fixed by the Collector

mandatorily. Thus, we make it clear that once the conversion into Testamentary Original Suit takes place, the Registry will have to issue notices asking the applicant to pay the requisite Court fee on the valuation fixed by the District Collector. In such cases, Order XXV Rules 59 and 60 of the Madras High Court Original Side Rules, which is being followed till now, will have to be complied. Thus, we make it clear that in all cases where the applicant in Probate or Letters of Administration pays the maximum court fee of Rs.25,000/-, the proceeding shall be proceeded further and concluded. However, the procedure contemplated under Section 55 shall go on incidentally.

In view of the above, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Joint Registrar,
Original Side,
High Court, Chennai - 104.

2.The Sub Assistant Registrar
Original Side
High Court, Madras.

+1cc to Mr.K.V.Babu, Advocate, S.R.No.21085

+1cc to the Government Pleader, S.R.No.21675

O.S.A. Nos. 26 of 2019

RSV (CO)

RRS (15/04/2019)

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