

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

A.No.476 of 2016 in O.P.No.417 of 2002

Mr.Rahul Sadagopan

... Petitioner

Vs.

1. Mr.N.Shankara Subramaniam (deceased)

2. Mrs.Rajeshwari Thiyagarajan

3. Mrs/Sandhya Shankar

4. Mr.Vidhwath Shankar

5. Mr.Vaishwath Shankar

[Respondents 3 to 5 are impleaded as legal
representatives of the 1st respondent as per

Order dated 23.03.2016 in A.No.477 of 2016]

... Respondents

Prayer: Application filed under Order XIV Rule 8 of the O.S. Rules & Order 25 Rule 62 of O.S. Rules read with Section 263 of Indian Succession Act to revoke the letters of administration granted by this Court dated 18.12.2002 in O.P.No.417 of 2002.

For Applicant : Mr.Srinath Sridevan

For respondents : Mr.Arvind Srevatsa

ORDER

This application has been filed to revoke the letters of administration granted by this Court by an Order dated 18.12.2002 in respect of the Will dated 23.10.1985.

2. The brief facts of the applicant case is as follows :

It is stated in the application that the applicant's maternal grand mother and grandfather owned properties, both movable and immovable. The applicant's grand father died on 08.03.1979. After his death, the properties devolved on his wife Meenakshi, grandmother and his children, Uma, Rajeshwari and Shankarasubramaniam, applicant's mother, aunt and uncle respectively. After the death of the grand mother, all the properties devolved upon the three legal heirs namely, Uma, Rajeshwari and Sankarasubramaniam. The applicant was informed by his father that his uncle Shankara Subramaniam had approached his father with a story that the applicant's grandmother left behind a Will and the applicant's consent is required for the same. In the year 2000, the applicant was informed by his father that his uncle did not pursue the matter any further and the matter was dropped. The applicant became a major in the year 2001. The applicant heard

nothing more of the matter until 2014. After the death of his uncle Shankara subramaniam on 04.07.2014, the applicant requested his uncle's children for division of the grandmother's properties. Initially there were no response. Thereafter, the applicant was informed that his grand mother has executed a Will bequeathing all her properties to the deceased first respondent. To the best of knowledge of the applicant, no Will could have been executed. As the applicant has suspected foul play, he engaged a counsel to enquire into the matter in the year 2014 for the purpose of filing revocation of the letters of administration. The bundle was misplaced in the office. Only in the year 2015, the counsel gave a consent vakalat to the applicant. Therefore, the present application has been filed through the present counsel. From enquiry the applicant came to know that at the time of filing the Original Petition, the applicant is deliberately shown as a minor, when he was a major. His father Sadagopan appears to be shown as his next friend. In the Original Petition his consent is also said to have been obtained from his father on 11.02.2002. The applicant is shown to be represented by his father and next friend. When in reality he became major on 06.06.2001. There is no application filed by the petitioner in the Original Petition to appoint his father as his next friend. Hence, it is his contention that the consent affidavit is rank forgery

and the letters have been obtained by playing fraud on the Court. Hence, prayed for revocation of the letters of administration.

3. It is stated by the respondents 4 and 5 that Will is valid and the Will was proved by examination of the attesting witnesses. The Original Petition has been ordered on 18.12.2002. At the time the Original Petition was filed, the applicant and his father were living together and the application was filed with an ulterior motive to coerce the respondents to part with monies. The applicant was fully aware of the Will of Mrs.Meenakshi and about the Order passed in the above Original Petition. The applicant is now trying to harass the respondents and their mother by filing this application with false allegations knowing them to be false. The applicant and his father was aware of the proceedings in 2000 itself and they were also aware of the fact that based upon the the letters of administration, the first respondent has dealt with the property and executed registered settlement deeds in their favour. The applicant's father has sworn to an affidavit dated 17.02.2000 itself. The applicant has become major in 2001 and he heard nothing more of the matter until 2014 is false. But he was aware of the entire aspects and the properties have been dealt with by the father. Now this application filed after

15 years is not maintainable in law. Hence, prayed for dismissal of the application.

4. The learned counsel Mr.Srinath Sridevan appearing for the applicant mainly submitted that though the applicant was major at the time when the letters was granted, he was shown as a minor in the petition and even when the evidence was given by the father of the applicant, he was a major. Therefore, it is his contention that though several grounds were raised in the application, letters has to be revoked in view of the fact that the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently. Hence, it is his contention that the applicant has become major on 06.06.2001 and his birth certificate also indicate the same. Whereas, the father of the applicant, who is said to be representing the applicant has filed affidavit on 11.06.2002 and he has given evidence on 03.12.2002 stating that the applicant is only a minor. Hence, it was an untrue allegation and the grant of letters of administration has to be revoked. He has also placed much reliance on the following judgments :

**Lanka Sanyasi Vs. Lanka Yerran Naidu (dead) and
others reported in Vol.XXIX The Law Weekly 455 and**

E.Sankaran Vs. Krishnaveni and another reported in

2011 (5) CTC 117

to contend that when the grant was obtained by some false allegations made, can be revoked for a just case.

5. Whereas, the learned counsel Mr.Arvind Srivatsan appearing for the respondents submitted that the affidavit was signed much before the applicant became major and it was filed. The Original petition was presented on 25.09.2000. At the time of the filing the Original Petition, the consent affidavit of the father was filed in the year 2000 itself. Whereas it is now stated that the affidavit was filed in the year 2002 by making corrections. It is his further contention that the father of the applicant never questioned and even after the applicant became a major in the year 2001, he was living with his father and the property was dealt by others. Therefore, it cannot be said that he has no knowledge of the letters of the administration granted. The letters of the administration has not been obtained by untrue allegations. Hence, it is his

contention that in the entire affidavit, there is no whisper as to the nature of the just cause. Further, it is submitted that the application is filed with a huge delay. Hence, prayed for dismissal. In support of his contentions, he relied on the following judgments :

Lydia Agnes Rodriques Nee D'Cunha Vs. Joseph

Anthony D'Cunha reported in 2014 (3) Mah. L.J. 508

Pashupati Sadukhan V. Janaki Nath Mukherjee &

Others reported in AIR 1942 Cal 236

T.V.Rangaraajan and others V. R.Veeraraghavan and

others reported in 2018 SCC Online Mad 1995

6. The main contention of the applicant is that the grant was obtained even after the applicant has become a major, showing him as a minor and the consent affidavit has been filed by his father even after he became a major with untrue allegation. Therefore, the grant in favour of the respondents has to be revoked as per Section 263 of the Indian Succession Act. A perusal of subsection (c) of section 263 of Indian Evidence Act shows that if letters of administration was obtained by untrue allegations grant of letters to be revoked. It is the contention of

the applicant that the consent affidavit was obtained from his father on 11.02.2002 and the applicant has been shown as a minor and his father has been represented as his next friend. When in reality, he has become a major on 06.06.2001.

7. On a perusal of the entire allegations, when the Original Petition is seen, it appears that originally the petition has been presented on 25.09.2000. It appears from the records, particularly the endorsement made by the registry while returning the petition at the first instance on 29.09.2000. One of the return endorsement dated 23.01.2002 namely, the endorsement 15 seen, it is stated that affidavit of R2 to be typed on both sides with prescribed form or it may be condoned by an Order of the Master. The above endorsement makes it clear that the affidavit of R2 has been filed when the petition has been filed on 29.09.2000, much before the applicant attained majority. The applicant has become major on 06.06.2001. Therefore, the consent affidavit of the minor has been filed by his natural guardian. Though the father was not appointed separately as a guardian, the fact remains that he was a natural guardian at the relevant point of time and filed the consent affidavit. Therefore, it cannot be said that the affidavit of the father has been obtained after the applicant has attained majority. The way the correction made in

the year makes it clear that 2000 has been corrected as 2002 and the same appears to be corrected for the purpose of the applicant to bring the application within the ambit of Section 263 (c) of the Indian Evidence Act.

8. It is also to be noted that though it is the contention of the applicant that he has entrusted the papers in the year 2014 to his previous counsel and the bundle was misplaced and thereafter only in the year 2015 the bundle has been traced and thereafter, the bundle has been entrusted to the present lawyer, such contention is bereft of any details, who is the lawyer, name of the lawyer and when the papers were entrusted also not been averred in the affidavit. It is also to be noted that the applicant had attained majority in the year 2001. He was living with his father and the properties are dealt by the respondents on the basis of the probate. Therefore, it cannot be said that he has no knowledge at all. Hence, even assuming that the father had given a consent, on attaining majority, he ought to have taken steps within three years to avoid any such action of the father, the natural guardian, which has not been done by the applicant herein.

9. Further in the entire application it is not averred anything that the Will is forged one or fabricated one. What is stated is that the Will could not have been executed. Except stating that, there is no allegation with regard to the execution of the Will. Whereas in para 18 of the affidavit, the only contention of the applicant is that the consent affidavit has been filed by the father and there was rank forgery. To substantiate such contention only the father of the applicant has to come before the court but he was keeping silent and remained exparte. That itself clearly indicate that it is a clear collusion between the father and the son. Though the letters of administration has been granted by this Court in the year 2002, after the applicant attained majority, merely because amendment was not brought in the cause title to show that the applicant is a major, which is only a technical defect, that itself cannot be a ground to non suit the letters of administration granted more than 19 years back. When the applicant himself has not challenged the grant within three years after attaining majority, now on some technical ground, he cannot seek for revocation of the letters of administration.

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10. The Division Bench of this Court in **E.Sankaran Vs. Krishnaveni and another** reported in **2011 (5) CTC 117** has held that making false suggestions or

concealing something material to the case in order to obtain grant of probate is also just cause. Absolutely, there is no dispute with the above proposition. The fact remains that the consent affidavit was filed as early as in the year 2000. It is not the case of the applicant that his father has given evidence suppressing the fact that the applicant has attained majority. Whereas, much reliance has been placed by the applicant that first respondent in his evidence has stated that the father of the second respondent has given consent affidavit on behalf of the minor.

11. On a perusal of the evidence, though the evidence was given on 03.12.2002, much after the applicant attained majority, in the entire evidence, what is stated is that the father of the second respondent has given consent affidavit on behalf his minor son. In fact, such evidence cannot be interpreted to mean that at the relevant point of time, i.e., on 03.12.2002, the applicant was a minor and his majority has been suppressed and the letters was obtained. The evidence of P.W.1 infact indicate that the father of the minor has filed the consent affidavit. It is to be noted that infact, the father of the applicant has filed the consent affidavit when the applicant was minor in the year 2000. Therefore, such contention cannot be taken advantage to contend that letters have been obtained by suppressing material facts.

12. In the judgment in **Lanka Sanyasi Vs. Lanka Yerran Naidu (dead) and others** reported in **Vol.XXIX The Law Weekly 455**, it has been held that on a compromise entered into by the guardian ad litem, such compromise even if sanctioned by the Court, could not be binding, since, when there is a major capable of entering into a contract apart from any question of agency, any contract entered into or purported to be entered into on his behalf by some other person could not be regarded as binding on him. But the fact remains that in this case, the father of the applicant is aware of the proceedings and on attaining majority, the applicant is residing with the father all along and the properties have been dealt with. Further, this application has been filed with an inordinate delay.

13. In **Pashupati Sadukhan V. Janaki Nath Mukherjee & Others** reported in **AIR 1942 Cal 236**, it has been held that the Court has to consider whether the proceedings are substantially defective. On a perusal of the entire proceedings, as indicated earlier, in this petition, the father is the natural guardian

and merely on the technical issue that he was not appointed by the Court as a guardian, it cannot be said that the entire proceedings is substantially defective. It is not the case of the applicant that the father has not acted in the interest of the minor, when he was minor and no allegations has been made as against the father also. From the above, this Court is of the view that the application to revoke the letters of administration is not maintainable and is liable to be dismissed.

14. Accordingly, this application is dismissed.

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Internet: Yes/No

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