

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2020

Delivered on : 11.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.6452 of 2015

in

OP.No.852 of 2013

1. M. Kumar

2. Mrs. M. Chinnakulandai

... applicants

vs

G. Sumathy

...respondent

Prayer: Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXV Rule 62 of O.S. Rules read with Section 263 of Indian Succession Act seeking to revoke the probate order dated 27.02.2015 in O.P.No.852 of 2013 on the file of this Hon'ble Court.

For Applicants : Ms. S. Mythreye

For Respondent : Mr. Sudasharam

ORDER

This Application is filed for revoking the probate order dated 27.02.2015 in OP.No.852 of 2013.

2. The applicants are the first and second respondents in OP.No.852 of 2013. For addressing the contentions in the Application, it is necessary to briefly allude to the contents of the Petition seeking probate of the last Will and testament of late M. Marimuthu alias Mariappan, dated 13.09.2006. The petitioner in the OP is the grand daughter of the Testator's brother Chinakannu through his son. The Testator had not provided anything for the respondents, who were the son and wife and in the Will he has assigned reasons as to why he had not bequeathed any property on them. On his death, the respondent herein had filed the Petition for probate and the applicants herein have been shown as respondents and notice has been served on both the applicants. Though the first applicant was represented by the counsel he has not chosen to

contest the matter and the second respondent though served had not entered appearance either in person or through counsel. This Court by order dated 27.02.2015 was pleased to grant the probate in respect of the Will of late M. Marimuthu alias Mariappan, dated 13.09.2006 in favour of the petitioner.

3. After the grant of the probate, the applicants have now come forward with this Application to revoke the probate. The reason for taking out the said Application is that the property in question was allotted to the mother of the second applicant under the Ex-service men quota. The applicants would further contend that on the insistence of the deceased Testator, the allotment was got transferred in favour of the Testator in the year 1985. It was in fact made clear at the time of the allotment that the property would ultimately be given to the second applicant herein, who is the wife of the deceased Testator.

4. The applicants would submit that disputes arose between the second applicant and the deceased testator as a result of which the Testator

had left the said property. Thereafter, the second applicant had made a representation to the Tamil Nadu Slum Clearance Board asking them to change the allotment in her favour. The applicants would contend that they are in possession and enjoyment of the property all this while. A suit was also filed by the deceased Testator against the applicants in O.S.No. 9506 of 1987 before the XIV City Civil Court, Chennai. Since the deceased Testator had passed away, it was dismissed for non-prosecution. No steps have been taken to set aside the said order. The applicants would submit that it is the first-applicant who is in possession of the said property. In the affidavit filed in support of the Application, the first applicant who is the deponent, would submit that the second applicant has been missing since 20.09.2006 and has not been traced to date. He would basically question the Will on the ground that the property did not belong to the deceased Testator, whereas in the guise of this Will, the respondent/petitioner is attempting to grab the property.

5. The respondent/petitioner has filed a counter refuting the allegations contained in the Application and affidavit, contending that the

Testator, who had been suffering from a chronic decease of Cancer had been taken care of by the petitioner's parents and out of his love and affection for the petitioner, he had executed the Will in her favour. She would also submit that the deceased Testator had filed a divorce case against the second applicant. Though originally divorce was granted, subsequently it was set aside and the matter remanded by the High Court to the Trial Court for fresh trial. Thereafter, the OP was dismissed and the Appeal filed by the deceased Testator in CMA.No. 1231 of 2000 was also dismissed. However, the second applicant did not come forward to take care of the deceased Testator. The Will has been voluntarily executed in favour of the respondent/petitioner. The respondent/petitioner would further submit that despite entering appearance in the O.P., the first applicant has not taken steps to file any counter. She would state that late Marimuthu alias Mariappan had paid the entire sale consideration to the Tamil Nadu Slum Clearance Board and what remains is the execution of the sale deed. Since the Testator had bequeathed the property in her favour, the respondent is entitled to have the sale deed executed in her favour.

6. Ms. S. Mythreye, learned counsel appearing on behalf of the applicant would reiterate the contentions made in the application filed for revoking the probate and further submit that the applicants have to be heard, since the property in question has not been registered in the name of the deceased Testator and adequate reasons have been given for not bequeathing the property on the applicants.

7. Per Contra, Mr. Sadasharam, learned counsel appearing on behalf of the respondent would submit that the probate can be revoked only on showing just cause as provided under Section 263 of the Indian Succession Act. “Just cause” has also been detailed under the Explanation to section 263. By no stretch of imagination, the contentions made in the Application for revoking the probate could be construed as just cause. He would therefore submit that the application deserves to be dismissed. He would rely upon the following judgments:

1. *"Anil Bihari Ghosh vs Smt. Latika Bala Dassi*

and Others reported in [1955 AIR 566]"

2. *"R. Sivaganam vs P.L.Sadananda Mudaliar*

[AIR (1978) Mad 265]"

3. *"R. Ramachandran vs G. Hariharan [(2001)2*

MLJ 417]"

8. Both the above judgments of the Division Bench are relied upon to substantiate his case that the Application for revoking the probate already granted has to be on just cause.

9. Heard the counsel and perused the pleading and the documents.

10. Before discussing the merits of the Application, it is necessary to highlight the fact that though the first applicant would submit that his mother has been missing since the year 2006, however he has impleaded her as the second applicant and filed the Petition and there is no explanation as to how she has been shown as the applicant. Coming to the merits of the application, the applicants have come forward with an

application to revoke the probate only on the ground that the property in question has not been sold to the Testator by the Tamil Nadu Slum Clearance Board and therefore since the property did not belong to him he cannot bequeath the same to anyone. The other ground which is raised in the application is that the allotment was originally in the name of the second applicant's mother in her capacity as a widow of an Ex Service Man and since the allotment was made under the Ex-Servicemen quota; it had been agreed that the property would be ultimately given to the second applicant. Except this reason, there is no other reason that has been given in the Application. That apart, the reason given in the application cannot, by any stretch of imagination, be construed to be a just cause for revoking the probate already granted. The applicant has not been able to make out that the order has been obtained fraudulently by making a false/untrue statement or that the same has become useless and inoperative or the Court by which the grant was made had no jurisdiction or the grant was made without citing parties who ought to have been cited or the Will of which probate was obtained was forged or revoked etc. as detailed in the Explanation to Section 263. In the absence of 'just cause' it is held that

the applicant has not made out any ground for revoking the probate already granted. Accordingly, the Application stands dismissed.

11.09.2020

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A.No.6452 of 2015

P.T.ASHA, J.

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Pre delivery Order in
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