

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.5126 of 2019

in

O.P.No.172 of 2017

**In the matter of Indian
Succession
Act XXXIX of 1925 and
In the matter of Last Will and
Testament of
Mr.J.Suryanarayana(Deceased)**

1. MR.J.ABHIMANYA MURTHY
S/o.Mr.J.Ramachandra Rao

2. MR.J.RAMA MURTHY
S/o.J.Ramachandra Rao

both are residing at Old No.31/2,
New No.63, Apparsawamy Koil Street,
Mylapore, Chennai-600004.

..Petitioners

-Vs-

MR.J.RAMA CHANDRA RAO
S/o.Ramamurthy, Old No.31/2, New No.63,
Apparswamy Koil Street, Mylapore,
Chennai-600004.

.. Respondent

A.No.5126 of 2019:

1. KOTIPALLI ALIVELUMANGATAYARU
W/O.KOTIPALLI RAMAKRISHNA RAO

SAI RESIDENCY, FLAT NO.301
MIDILAPURI VUDA COLONY,
VASUNDRA NAGAR,
POLICE STATION ROAD,
CAR SHED CENTRE,
MADHURAWADA,
VISAKHAPATNAM,
ANDHRA PRADESH-530 048.

..Applicant / 3rd Party

-Vs-

1. MR.J.ABHIMANYA MURTHY
S/O.MR.J.RAMACHANDRA RAO

2. MR.J.RAMAMURTHY
S/o.MR.J.RAMACHANDRA RAO,
BOTH ARE RESIDING AT
OLD NO.31/2, NEW NO.63,
APPARSWAMY KOIL STREET,
MYLAPORE, CHENNAI-600 004.

..1ST AND 2ND
RESPONDENTS/PETITIONERS

3. MR.J.RAMACHANDRA RAO
S/O.RAMAMURTHY
OLD NO.31/2, NEW NO.63,
APPARSWAMY KOIL STREET,
MYLAPORE, CHENNAI-600 004.

..3RD RESPONDENT / RESPONDENT

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Prayer: Judges summons filed under Order XIV Rule 8 of the Original Side Rules, Section 263 of the Indian Succession Act praying to revoke and annul the order dated 06.09.2017 made in O.P.No.172 of 2017 passed by this Hon'ble Court, wherein the letters of Administration to the 1st and 2nd respondents herein to administer the estate left behind by deceased

For Applicant : Mr.J.Kannan

For Respondents : Mr.G.Sudhagar

ORDER

The above application is filed for revoking the letters of Administration granted in O.P.No.172 of 2017. The ground on which the revocation is sought for is that the applicant who is also a Class II heir of the deceased Testator, Surya Narayana and who has a caveatable interest in the estate left behind, deliberately not been made a party to the proceedings. This is the sum and substance of the grounds pleaded by the applicant. The applicant has questioned the Will on the Ground that its very creation is shrouded with suspicion and that apart the non impleadment of the applicant who is a Class II legal heir only fortifies the case that the Will in question is a fabricated one.

2. The applicant has also questioned the claim of the respondents 1 and 2 / petitioners 1 and 2, that they were the adopted sons of the deceased Testator. The applicant in her application would submit that if the two were the adopted sons of the deceased Testator, in the registered partition deed dated 04.07.2017 this fact would have been highlighted and further the Will would also have found a mention. Therefore, in order to bring out these details and considering the fact that she is a Class II heir having a caveatable interest, letters of administration granted without impleading her

has to be revoked.

3. The respondents have filed their counter inter alia contending that since the Testator died without leaving Class I heir, as adopted sons they are under the genuine impression that they need not implead any other persons much less an applicant. They would submit that since the factum of the said adoption and execution of Will by the deceased Testator is well known to the applicant, the respondents thought to not implead the applicant.

4. Heard the learned counsel and perused the papers.

5. Admittedly, the applicant is a Class II heir of the deceased Testator. Even in the deed of partition dated 26.09.2016 it has been clearly stated that the 3rd respondent and the applicant are the brother and sister and their other siblings are no more. Therefore, it is only the applicant and the 3rd respondent who are the Class II heirs of the deceased Testator. In the petition for grant of letters of administration, a categorical statement has been made which reads as follows:

“10. The petitioners have impleaded the respondent as the next of kin interested party herien, who is the brother of testator being his only Class II legal heir. There is no other next of kin or other person interested to be impleaded.”

6. This statement is *per se* false more particularly when the applicant is very much available. Therefore to an extent there has been a suppression on the part of the respondents. The respondents having made one of the Class II legal heir as the respondent in the petition, ought to have impleaded the applicant as well. The fact that they have only impleaded their father would give rise to a suspicion that there is Collusion between the parties and therefore the order granting letters of administration without impleading all the persons having caveatable interest is liable to be revoked, accordingly revoked.

7. The applicant shall file necessary caveat so as to enable this Court to convert the Original Petition into the Testamentary Original Suit.

Sd/.P.T.A.J.
04.09.2020

//Certified to be a true copy//

Dated this the day of 2020.

SU.10.09.2020 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.