

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21 / 03 / 2019

PRONOUNCED ON: 18 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.163 OF 2014
AND MP NO.1 OF 2014

R.Sheela ... Appellant /Petitioner

Vs.

Radhalakshmi ... Respondent/3rd Party

PRAYER: Civil Miscellaneous Appeal filed Order 43 Rule 1 of Code of Civil Procedure, 1908, against the fair and decreetal order in I.A.No.511 of 2013 in probate O.P.143 of 2009 on the file of the I Additional District Court, Salem, dated 04.12.2013.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.T.S.Vijaya Raghavan

J U D G M E N T

Inveighing the order of revocation of probate granted in favour of the appellant by the I Additional District Court, Salem, dated 04.12.2013, the present Civil Miscellaneous Appeal has been preferred.

2.Based on the WILL dated 01.06.1984 executed by the paternal grandfather of the appellant, she filed an Original Petition in O.P.No.143 of 2009 for grant of Probate and it was granted on 21.02.2011. Thereafter, she had settled the property in favour of her mother on 23.05.2011. Thereafter, the respondent, who has no caveatable interest, filed an interlocutory application in I.A.No.511 of 2013 for revocation of probate. The application was allowed on 04.12.2013 revoking the probate, against which, the present appeal has been filed.

3.Learned counsel for the appellant would vehemently contend that the respondent is the daughter-in-law of the Testator and she has no caveatable interest in the property and has no locus standi to maintain the petition for revocation. Since she had been married to an outsider, she has no right of succession as

per Hindu Succession Act and she is not entitled to any citation. Further, the revocation of probate was sought on the ground that the testator bequeathed the property in favour of his son retaining life interest to the wife. During the lifetime of the mother, son has no right. The son died during the lifetime of the mother. In that event, the daughter-in-law, even as per her own statement, has no right to file an application. On the other hand, the so called WILL executed in favour of her husband itself was disproved in O.S.No.1002 of 2004 on the file of District Munsif Court, Salem. Therefore, the application filed by the respondent was not maintainable and the order passed by the Court below is liable to be set aside. Hence, the respondent neither a beneficiary nor a person having any interest in the estate of the Testator, has no right to maintain the application and the Lower Court ought not to have ordered revocation.

4. In support of his contention, the learned counsel for the appellant would rely on the judgment of this Court in VELAYUDHAM VS. S.PONNAMBALAM [2008 (6) CTC 205] for the proposition that a person, who is a stranger to the scope and object of the Hindu Succession Act, cannot validly claim revocation on the ground that he has got caveatable interest. The order reads as under:

"20. A legal heir to a Testator or Testatrix, who claims right or title to the property bequeathed under the Will as per the provisions of the Hindu Succession Act may have caveatable interest to enter into the arena of Testamentary jurisdiction of this Court challenging the plea of propounder seeking Letters of Administration. Of course, a person, who claims right and title to the property bequeathed under a Will beyond the scope of the Hindu Succession Act cannot validly claim that he has got caveatable interest in the property bequeathed as he is a stranger to the scope and operation of the Hindu Succession Act. He cannot have access to the Testamentary Court claiming caveatable interest in the property bequeathed as his claim for title would be decided by the competent Court. But, based on the passport given to one of the legal heirs of the Testator to challenge the Will on the ground that he has caveatable interest in the property bequeathed, he cannot question the title of the Testator or competency of the Testator to execute the Will, as the forum for such challenge is totally different."

5. For the proposition that a person having no chance of succession cannot file an application for revocation of probate on the ground of absence of citation. Such person is not entitled to get revocation of probate under the purview of "just cause" as stated in Section 263 of the Indian Succession Act, 1925 (Shortly "the Act"). To buttress his arguments, he relied on a Division Bench judgment of this Court in RAMANI U. KRISHNAN VS. DR. AMMINI PRAVEEN JOSHUA @ VEENA [2005 (4) CTC 165] wherein it is observed as under:

" 13. There is no dispute that under the procedure to be followed in the matter of Grant of Probate or Letters of Administration, an affidavit stating the right and interest of the caveator and the grounds of objections to the application has to be filed. Section 263 of the Indian Succession Act, 1925 makes it clear that the Grant of Probate or Letters of Administration can be revoked or annulled only for just cause.

14. In the light of the above provisions, now let us consider whether the applicant, who is a third party has established her caveatable interest and whether she has locus standi to file the said application. The applicant is neither a legal heir nor would she get an interest in the property, but for the Will. It is a well established principle that only when the person has got some interest in the property but for the Will, for any of the reasons mentioned in Section 263 of the Indian Succession Act, he can file an application for revocation of probate. The above provision makes it clear that the Grant of Probate or Letters of Administration may be revoked or annulled for a just cause, but the case of the applicant claiming right through an agreement of sale will not come under the purview of just cause as stated in Section 263 of the Indian Succession Act.

18. In the case of Dular Kuter vs. Kesar Kuer and others reported in AIR 1964 Patna 518, after referring Sections 263 and 283 (1) (c) of Indian Successions Act, it is held that the person having no possible chance of succeeding to testators estate cannot file an application

for revocation or probate on the ground of absence of citation. In the light of the provisions referred to above, we are in agreement with the above referred decisions. Accordingly, we hold that the applicant does not have any interest or charge over the property and therefore she is not the appropriate person to seek for revocation of order of Probate. To make it clear that a person who seeks for revocation of Probate should have a right to claim citation or to oppose the grant. As rightly concluded by the learned Judge, the applicant does not have a claim to cite or oppose the grant of Probate. Further, a person who is not claiming any right under testator nor a beneficiary of a Will nor who is likely to inherit the estate of the deceased whose claim is adverse to the interest of the testator, cannot file an application under Section 263 of the Indian Succession Act, 1925 for revocation of the Probate. Here, the applicant is claiming neither the right from the testator nor is she the beneficiary under the Will, nor is she likely to inherit the estate of the deceased or her claim is adverse to the interest of the testator. "

6. Per contra, the learned counsel appearing for the respondent would contend that the respondent is the wife of the title holder. As a Class-I legal heir, she has every right to succeed the property and thereby possess caveatable interest. In fact, in the suit filed by the appellant's father for partition, she was impleaded as 9th defendant, as the legal representative of her husband. The decree passed in the said suit has been set aside on appeal, in which she was the appellant. The matter was remanded to trial court for a limited purpose to cross examine the attester of the WILL executed by her husband's father. Therefore, the respondent has caveatable interest over the property. The District Court, after finding that in spite of WILL dated 01.06.1984, which was sought to be probated disclosed the legal heirs of the Testator, the appellant omitted to issue citation to any of them and obtained probate in their absence. Such a fraudulent act squarely falls under "just cause" as per Section 263 of the Act and the District Court has rightly revoked the probate giving liberty to the appellant to apply again after issuing notice to all the interested persons. He would rely on the following judgments in support of his case:-

(i) Judgment of this Court in S.D.PONNUSWAMY MUDALIAR VS. S.K.SOMASUNDARAM [O.S.A.NO.94 OF 1983 DECIDED ON 28.06.1991]

(ii) Judgment of this Court in N.SAROJA VS. SRI VIDYA CHITS AND FINANCE (P) LTD., AND ANOTHER [1996 (2) MLJ 74]

(iii) Judgment of this Court in S.D.RAMANATHAN (DIED) AND OTHERS VS. BABY AMMAL (DIED) AND OTHERS [2013 (3) MWN (CIVIL) 258]

(iv) Judgment of the High Court of Calcutta in SM.ANNAPURNA KUMAR VS. SUBODH CHANDRA KUMAR [1970 AIR (CALCUTTA) 433]

(v) Judgment of the Hon'ble Supreme Court in KRISHNA KUMAR BIRLA VS. RAJENDRA SINGH LODHA AND OTHERS [2008 (4) SCC 300]

(vi) Judgment of the Hon'ble Supreme Court in JAGJIT SINGH AND OTHERS VS. PAMELA MANMOHAN SINGH [2010 (5) SCC 157]

(vii) Judgment of this Court in YASHODHA VS. CHELLAMMAL [2017 (1) CTC 244]

(viii) Judgment of this Court in SELVI VS. K.ALAGARSAMY AND ANOTHER [2010 (2) TN MAC 328]

(ix) Judgment of the Hon'ble Supreme Court in G.GOPAL VS. C.BASKAR AND OTHERS [2008 (10) SCC 489]

(x) Judgment of this Court in E.SANKARAN VS. MRS.KRISHNAVENI AND ANOTHER [2011 (3) LW 841]

(xi) Judgment of this Court in K.KARTHIK AND ANOTHER VS. JAYANTHI IYENGAR AND OTHERS [2015 (1) LW 723]

(xii) Judgment of the Hon'ble Supreme Court in ANIL BEHARI GHOSH VS. SMT. LATIKA BALA DASSI AND OTHERS [AIR 1955 SC 566(1)]

(xiii) Judgment of this Court in T.PONNALAGI VS. RM.RAMACHANDRAN AND OTHERS [2007 (2) MLJ 254]

7.I have heard both sides.

8.This Court had the benefit of going through the genealogy of the Testator and the dates and events from the typed-set filed by the respondent. It is beneficial to refer to the family background and the distribution of properties to the legal heirs.

9.Originally, on 23.04.1963, the Testator of the WILL in question M.S.Narayana Rao and his brother M.S.Raja Rao entered into a partition with respect to co-parcenary properties. The said M.S.Narayana Rao, on 13.12.1974, entered into a partition deed with his sons. As per the partition, the property in dispute, bearing D.No.5, Madurai Kuppayyer Street, Shevapat, Salem was allotted to M.S.Narayana Rao along with other properties. All the four sons and the father M.S.Narayana Rao had taken possession and enjoyed the properties allotted to them. In other words, partition deed dated 13.12.1974 was acted upon. It is also submitted that M.N.Radhakrishnan, father of the appellant had sold one of the properties allotted to him in partition.

10.Thereafter, on 28.07.1986, M.S.Narayana Rao executed a registered WILL bearing Document No.50/1986 in favour of his son M.N.Mothilal and bequeathed certain properties to which the other sons namely M.N.Krishnamoorthy (husband of the respondent), M.N.Radhakrishnan and his wife Rajalakshmi stood as witnesses. He executed another registered WILL bearing Document No.51/1986 dated 28.07.1986 in favour of another son M.N.Krishnamoorthy (husband of the respondent) in respect of the property under dispute in the present appeal, bearing D.No.5, Madurai Kuppayyer Street, Shevapat, Salem, which was witnessed by M.N.Mothilal and M.N.Radhakrishnan (father of the appellant). After one year, M.S.Narayana Rao, died on 30.12.1987.

11.In the year 2000, the father of the appellant had filed a suit for partition in O.S.No.572 of 2000 before the Sub Court, Salem, which was later transferred to 2nd Additional District Munsif Court, Salem and numbered as O.S.No.1002 of 2004, without disclosing the partition dated 13.12.1974 and two WILLs' registered as Document Nos.50 and 51 of 1986, but based on the partition deed 23.04.1963 between M.S.Narayana Rao and his brother M.S.Raja Rao. In the suit, the husband of the respondent filed his written statement and examined the witness to WILL one Rukmangathan. During the pendency of the suit, M.N.Krishnamoorthy, husband of the respondent met with a motor accident and died on 01.02.2008. Thereafter, the respondent was impleaded as 9th defendant in the suit. Since the attestor of the WILL executed in favour of M.N.Krishnamoorthy was not cross-

examined, the suit was decreed on 19.10.2011. Against which, it appears that the respondent herein, along with the other legal heirs filed an appeal in A.S.No.20 of 2012 and the same was allowed and remanded back to the Trial Court for a limited purpose of cross-examining the witness to the WILL dated 28.07.1986 executed in favour of M.N.Krishnamoorthy and to let in additional evidence if any, on both sides.

12.While the matter stood thus, a legal notice dated 26.04.2012 was issued by Suryakumari, mother of the appellant addressed to Rajalakshmi, wife of M.S.Narayana Rao, in whose favour life estate was bequeathed and to the respondent setting out the details of Probate, to which the respondent issued a reply notice dated 15.07.2012 and filed the above application for revocation of probate in I.A.No.511 of 2013. The revocation order passed by the Court below is the subject matter of the issue.

13.From the above factual background, it is clear that the present appeal has a checkered history. The main issue to be decided is as to whether the respondent who filed the application has locus standi and whether the ground on which the order is passed is justifiable or not.

14.At the outset, it is seen that a registered WILL bearing Document No.51 of 1986 dated 28.07.1986 was executed in favour of M.N.Krishnamoorthy, the husband of the respondent bequeathing the property bearing D.No.5, Madurai Kuppaiyer Street, Shevapet, Salem. In the suit filed for partition by the father of the appellant in O.S.No.1002 of 2004, the respondent was impleaded as 9th defendant as the legal heir of the said M.N.Krishnamoorthy. Against the decree passed in O.S.No.1002 of 2004, the respondent also filed an appeal and the same was allowed setting aside the decree dated 19.10.2011. In that event, it can be seen that the respondent has some caveatable interest in the property.

15.The Hon'ble Supreme Court in G.GOPAL VS. C.BASKAR AND OTHERS [2008 (10) SCC 489] has held as under:

"5.The only question that was agitated before us by Mr.Thiayagarajan, learned counsel appearing for the appellant challenging the judgment of the High Court revoking the probate granted in respect of the Will executed by the testator, was that the respondents having no caveatable interest in the estate of the deceased, the application for revocation filed by them could not be allowed. We are unable to accept these submissions made by

Mr.Thiayagarajan, learned counsel appearing on behalf of the appellant only for the simple reason that admittedly the respondents were grand children of the testator and they have claimed the estate of the deceased on the basis of a settlement deed executed by the testator himself which admittedly was revoked by the testator. That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator. "

16.As per the above judgment, if a person who has even a slight interest in the estate of the testator is entitled to file a caveat and contest the grant of probate of the WILL of the testator. If so, the respondent, who was impleaded by none other than the father of the appellant in the suit filed by him for partition clearly show that she has caveatable interest in the property.

17.In the judgment in E.SANKARAN VS. MRS.KRISHNAVENI AND OTHER [2011 (3) LW 841] a Division Bench of this Court has held as under:

"13. The Honourable Apex Court had categorically distinguished the parties who can participate in the probate proceedings and the parties who are affected by the order of grant of probate, who can resort to the provisions of Section 263 of the Indian Succession Act for getting the appropriate relief, which has been categorically found that caveatable interest have a limited effect and they cannot deprive the right of any portion to invoke the provisions of Section 263 of the Act. Therefore, we could find that the revocation application can be filed by any person whose interest is affected by an order of grant of probate to invoke provisions of Section 263 of the Act and if those provisions are satisfied, an order has to be passed under the said Section 263 of the Indian Succession Act. Therefore, we find that it is clear from the dictum of the Honourable Apex Court that theory of requirement of caveatable interest for maintaining an

application for revocation of probate order reached by the learned single Judge, cannot be sustained for any moment.

13A. The appellant who was the applicant before the learned single Judge, had pleaded that the Will has been fabricated by the propounder/first respondent and the first respondent herself had shown to be the sister's daughter of testatrix which was obviously untrue and thereby the respondents had played fraud upon the Court. Apart from that, the brother of testatrix viz., Dharmalingam and sister viz., Mohana were not impleaded or cited as respondents in the probate proceedings. The appellant had prayed for revocation of probate on these grounds.

17. According to Section 263 of the Indian Succession Act, 1925 there should be a 'just cause' for revocation of the probate order and the instances of just cause have also been listed in the explanation. Similar illustrations also given for revocation of probate under Section 263 of the Act. For better understanding, the provisions of Section 263 of the Indian Succession Act has to be explained and the illustrations are extracted below:

"263. Revocation or annulment for just cause.- The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.- Just cause shall be deemed to exist where -

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause

omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B, as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."

18...

19. We have to see whether the commission of fraud and the non-citation of the persons who have got caveatable interest would lead to revocation. According to the explanation given under clause (b), making a false suggestion or concealing something material to the case in order to obtain the grant of probate is also a "just cause". In the illustration No.(ii), it has been clearly pointed out that the persons who ought to be cited as respondents are not cited, would amount to a just cause for revocation of the probate order. As far as this case is concerned, the contents in the Will would show that the first respondent is the sister's daughter of the testatrix whereas the complaint filed by her would show something else that she has obtained the property from the

testatrix from the oral sale through the respondents' ancestors and the said allegations in the complaint were made long after the alleged date of the Will. Therefore, we find that some false suggestions appear to have been made so as to obtain the grant of probate by fraudulent means from the Court. However, the said prima facie finding should be confirmed only in the full-fledged trial by converting the Testamentary Original Petition into a Testamentary Original Suit by impleading the appellant also. Similarly, the testatrix's brother Dharmalingam and sister Mohana ought to have been impleaded as respondents as interested persons, who are the legal heirs. But for the will, their presence is necessary for adjudication of the claim of the respondents before the Testamentary Court. In the said circumstances, the contents to clause (b) and explanation to illustration No.(ii) of Section 263 of the Act would constitute a "just cause" for revocation of the probate order."

18. From the above judgment, it can be seen that anyone who has a caveatable interest or whose right is affected can maintain the application for revocation for want of citation. The appellant, who had knowledge about the other legal heirs, omitted to issue citation to them and obtained the orders with the support of the evidence of a third party. In that event, the respondent having some interest in the property is entitled to file for revocation.

19. In K.KARTHIK AND ANOTHER VS. JAYANTHI IYENGAR & OTHERS [2015 (1) LW 723] this Court has held as under:

"18-6. It is the contention of the learned counsel for the 1st respondent that since the applicants are not the blood relatives to the testator P.D.Rajagopalan, they cannot have any caveatable interest in the estate of the testator P.D.Rajagopalan. But, I am not inclined to accept the said contention of the learned counsel for the 1st respondent, since several documents filed on the side of the applicants would show the close relationship between the testator P.D.Rajagopalan and the applicants' family, for a quite long time.

Therefore, in my considered opinion, as the applicants are having a caveatable interest in the estate of the testator P.D.Rajagopalan, the applicants are entitled to file the present applications for the reliefs as stated supra. In this regard, a reference could be placed in the judgment reported, which was relied upon by the learned counsel for the applicants, in AIR 1973 CAL 433 (Sm.Annapurna Kumar Vs. Subodh Chandra Kumar), wherein it has been held as follows:-

"It is well settled now that any interest, however slightly, and even the bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary paper. Even in a case where the person is not entitled to get a compulsory citation, but the citation is discretionary, the absence of citation to such a person, also would invalidate the grant in certain circumstances."

From the dictum laid down in the above said judgment, it could be seen that even if there is a slightest interest in the property that is sufficient for a party to oppose the testamentary paper. In the instant case, the evidence on record would show that the applicants are certainly having caveatable interest in the estate of the testator P.D.Rajagopalan, they are entitled to seek revocation of Letters of Administration."

20.The judgment of SM.ANNAPURNA KUMAR VS. SUBODH CHANDRA KUMAR [AIR 1973 CAL 433] referred in the above judgment will clearly show that the daughter-in-law cannot be thrown out of consideration. It is observed that any interest, however slightly and even the bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper. In that view of the matter, this Court is of the considered opinion that the respondent does have the caveatable interest.

21.In so far as revocation under Section 263 of the Act, lays down certain grounds for revocation of grant of probate. Section 263 of the Act reads as under:

"263.Revocation or annulment for just cause. -The grant of probate or letters of administration may be revoked or annulled for just cause. Explanation. -Just cause shall be deemed to exist where-

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a latter Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."

22.The familiar judgment of Three Judges Bench of the Hon'ble Supreme Court in ANIL BEHARI GHOSH VS. SMT. LATIKA BALA DASSI AND OTHERS [AIR 1955 SC 566 (1)] holds the field till date. The Hon'ble Supreme Court has categorically observed that the omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant in the following lines:-

"....The omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant. But this is not an absolute right irrespective of other considerations arising from the proved facts of a case. The law has vested a judicial discretion in the Court to revoke a grant where the court may have prima facie reasons to believe that it was necessary to have the will proved afresh in the presence of interested parties. "

23.The District Court has followed the above decision and found that omission to issue citations to other legal heirs namely Rajalakshmi, wife of the testator, M.N.Mothilal, M.N.Chandra Pal, M.N.Krishnamoorthy, sons of the testator and their legal heirs will fall under the ground "just cause" as specified under Section 263 of the Act.

24.The same view was expressed by this Court in its judgment in S.D.PONNUSWAMY MUDALIAR VS. S.K.SOMASUNDARAM [1992 (1) LW 77] which reads as under:

"One of the illustrations of just cause for revocation or annulment is, "the grant was made without citing parties who ought to have been cited". It is easy thus on the facts of the instant case to say that the respondent has undoubtedly some interest in the property which he claimed as purchaser from Rajeswari and the heirs of Indirani. It is possible on the facts

proved to accept that the appellant knew about the two sale deeds executed by Rajeswari and the heirs of Indirani respectively. He for the said reason was a person who ought to have been cited before the probate was granted. On this thesis it would be reasonable to hold that there was a just cause to the respondent to seek revocation of the probate."

25. In yet another judgment of this Court in T. PONNALAGI VS. RM. RAMACHANDRAN AND OTHERS [2007 (2) MLJ 254] the same was expressed, in the following lines:

"28. Just cause shall be deemed to exist when the proceedings in the O.P. are defective and also when the

grant was obtained by concealing from the courts something material to the case. It is also important that the necessary parties should be made as parties to the petition for grant of letters of administration."

Therefore, it is clear that the grant of probate was obtained by the appellant, without putting the interested parties on notice and by not disclosing the litigations involving subsequent partition and registered WILLS' which are material to consider the grant of probate, will fall under the ground "just cause".

26. From the factual background of the case, even assuming that the WILL executed in favour of M.N. Krishnamoorthy is not proved, the property will fall in the common hotchpot where all the legal heirs will have appropriate shares. In that view of the matter, the property which was an absolute property of the testator, after the partition between him and his son, dated 13.12.1974, will be inherited by his legal heirs. The respondent, being a Class - I legal heir of M.N. Krishnamoorthy is entitled to a share in the property. In view of the above finding, the judgments relied on by the learned counsel for the appellant are not applicable to the facts of the case.

27. Therefore, viewing from any angle, it is proved that the respondent possesses a caveatable interest in the property and she is entitled to maintain the application for revocation. The omission to issue citation to the respondent will fall under the ground "just cause" as per Section 263 of the Act and the order of the Court below revoking the grant of probate is absolutely legal and justified. Therefore, I do not find any merit in the appeal and accordingly inclined to dismiss the same.

28.In fine, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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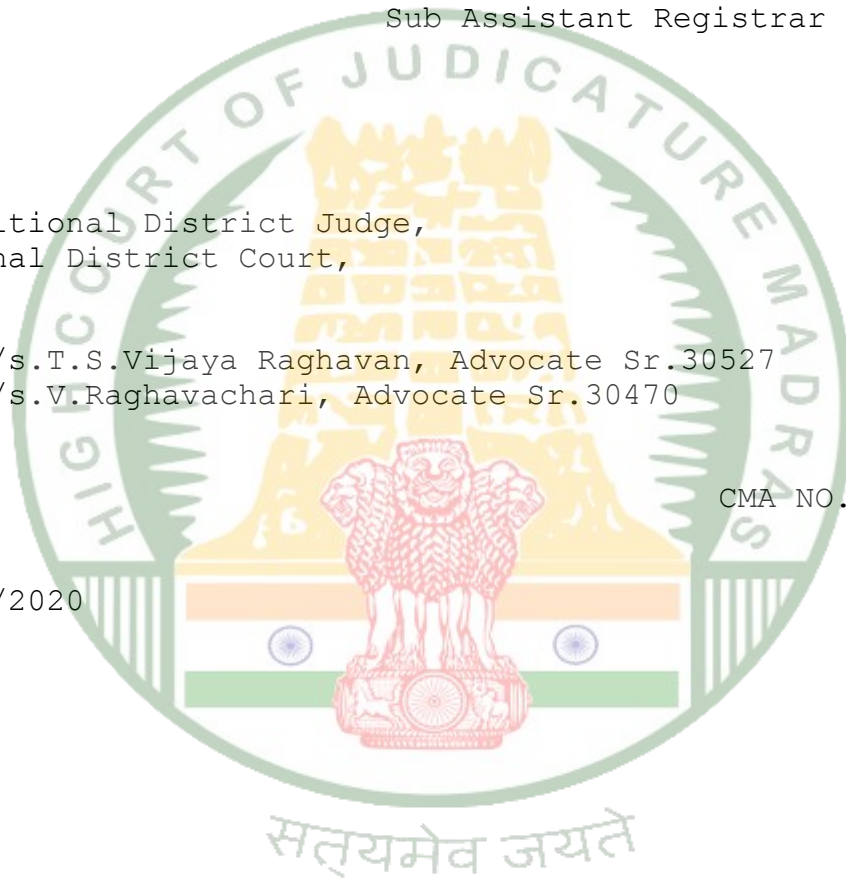
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