

A.No.5656 of 2019
in
T.O.S.No.15 of 2007

SENTHILKUMAR RAMAMOORTHY.J

This Application is filed by third parties, who claim to be purchasers of the property bequeathed under the Will, to revoke the probate granted on 15.12.2016 in T.O.S. No.15 of 2007.

2. I heard the learned counsel, Mr.P.J.George, on behalf of the Applicants and the learned senior counsel, Mr.R.Shankaranarayanan, on behalf of the first Respondent/Plaintiff.

3. The first contention of Mr.P.J.George is that the bequest under the last Will and Testament of G.Vimala is in contravention of Section 118 of the Indian Succession Act, 1925(the Succession Act). According to Mr. George, no person having a nephew or niece or any nearer relative shall have power to bequeath any property for religious or charitable purposes, except by a Will executed not less than 12 months before the testator's death and deposited within six months from execution in some place provided by law for the safe custody of the Wills of living persons. As regards the last Will and Testament

of G.Vimala (the Testatrix), he pointed out that the said Will was allegedly executed on 03.11.2005 and the Testatrix died on 09.11.2005. Therefore, the said Will was clearly not executed 12 months before the death of the Testatrix. In addition, the Testatrix had a nephew and, therefore, the bequest was void as per Section 118 of the Succession Act. The second contention of the learned counsel is that there are signature variations in the propounded Will and it has not been signed on all the pages. In support of this contention, the learned counsel adverted to the Will and to the signatures at the bottom of the pages, including the allegedly missing signatures on pages 3,5,7 and 8 thereof. He also pointed out, in this regard, that the Will was allegedly executed on 03.11.2005 when the Testatrix suffered from cancer and she died on 09.11.2005.

4. The learned counsel pointed that the Applicants purchased the property, which is supposedly bequeathed under the Will, from the husband of the Testatrix. The said purchase was made under a sale deed dated 25.01.2007, which was registered as Document No.205 of 2007 on 05.02.2007 in the Office of the Sub Registrar, Adyar. In this regard, he pointed out that the husband of the Testatrix was her only surviving Class – I legal heir because the couple had

no children and the parents of the Testatrix admittedly predeceased her. He also pointed out that the probate was granted much later on 15.12.2016. In the petition for probate, only the husband of the Testatrix was initially joined as a respondent. Subsequently, it was converted into a testamentary suit. The first Defendant died on 12.06.2010 while the testamentary suit was pending. Upon his death, the son of the first Defendant through an earlier marriage was joined as the second Defendant. Later, a lady claiming to be the wife of the first Defendant was joined as the third Defendant. However, he pointed out that the Applicants were not joined as parties although they are the successors-in-title of the property and, therefore, should have been joined upon the death of the Testatrix's husband/first Defendant.

5. The next contention of the learned counsel for the Applicants is that the main beneficiary under the Will is the G.Vimala Foundation Trust, which had not been formed as of the date of the Will, and the executor of the Will is named as one of the Trustees. Therefore, he pointed out that the executor is a person with vested interest in as much as the properties are bequeathed to the Trust and would vest in and be under the control of the executor. The learned counsel also contended that the Will is void because the

second attesting witness, namely, V.V.Subramanian, is a beneficiary under the Will and a sum of Rs.2,00,000/- is bequeathed to him under the Will, and this is in violation of Section 67 of the Succession Act. For all these reasons, he submitted that there are substantial defects in the grant of probate and the probate is liable to be revoked.

6. On the contrary, the learned senior counsel for the first Respondent submitted that the Applicants have failed to make out “just cause”, as per Section 263 of the Succession Act, to revoke the probate. He opened his submissions by contending that the application is barred by limitation in as much as it was filed more than three years after the Applicants became aware about the testamentary proceedings. He rebutted the contention that the bequest is void on account of Section 118 of the Succession Act. For this purpose, he referred to Section 57 of the Succession Act which deals with the Part – VI of the Succession Act and, in specific, as to which provisions of Part – VI apply to Wills and Codicils made by Hindus, Buddhists, Sikhs and Jains. He pointed out that Section 57 provides that only the provisions that are set out in Schedule – III of the Succession Act apply to Hindus. By referring to Schedule – III, he contended that Section 118 is not specified in Schedule – III and,

consequently, Section 118 does not apply to Wills and Codicils made by Hindus, Buddhists, Sikhs and Jains. In this case, the Testatrix is a Hindu. Similarly, he pointed out that Section 67 of the Succession Act, which states that the Will shall not be deemed to be insufficiently attested but the bequest or appointment, as the case may be, shall be void by reason of any benefit thereby given to any person attesting it, also does not apply to Wills and Codicils made by Hindus because Section 67 also does not find a place in Schedule – III of the Succession Act. Even otherwise, he pointed out that if a bequest is made to an attesting witness, the bequest may be void but not the Will. In this connection, the learned counsel referred to and relied upon the judgment of the Hon'ble Supreme Court in **John Vallamattom and Another v. Union of India (2003) 6 SCC 611**, wherein, at paragraphs 26 to 28, Section 118 of the Succession Act was struck down as unconstitutional even in the context of Wills and Codicils of Christians.

7. The next contention of the learned senior counsel was that the husband of the Testatrix, who was the alleged predecessor-in-interest of the Applicants, was joined as a Defendant in the testamentary suit and he contested the suit. Consequently, the Applicants cannot seek to revoke the probate. In

other words, as a person who claims through or under a contesting Defendant in the suit, the Applicants cannot re-agitate the issues that were raised by the person through whom the Applicants claim title.

8. The third contention of the learned senior counsel was that the object and purpose of the Will was to establish the G.Vimala Foundation Trust. This was fulfilled by the executor as per details set out in paragraph 4(o) of the counter of the first Respondent. With regard to the joinder of and issuance of citations to necessary parties, the learned counsel pointed out that, at the time of filing O.P.No.481 of 2006, the Petitioner therein impleaded the Testatrix's husband, Mr.Umesh N.Tahilramani, because he would have inherited the property by operation of law if the Testatrix had died intestate. Mr.Umesh N.Tahilramani filed a caveat affidavit dated 04.07.2007 in which he mentioned at paragraph 11 that he sold the property as the legal heir of the deceased on 05.01.2007. Immediately upon coming to know about the same, by letter dated 24.08.2007, which was addressed by the counsel for the first Respondent to the counsel for Mr.Umesh N.Tahilramani, he was called upon to provide details of the purchasers of the property, the date of sale and document number etc. Even though the said letter was duly acknowledged by the counsel, the information

requested for was not provided. In addition, the learned counsel pointed out that an encumbrance certificate was obtained on 31.08.2008 from the Office of the Sub Registrar, Adyar, but the said encumbrance certificate did not disclose the alleged registration of the sale on 05.02.2007. The first Respondent/Plaintiff, once again, obtained an encumbrance certificate from the Office of the SRO, Adyar, on 29.05.2009 for the period extending from 01.01.2000 to 28.05.2009. The encumbrance certificate for this period also did not reflect the sale in favour of the Applicants. In these facts and circumstances, the learned counsel pointed out that the first Respondent was not in a position to implead the Applicants. In any event, the learned counsel pointed out that the Applicants herein were fully aware about the Will. In order to substantiate this contention, the learned counsel referred to the affidavit filed by the power of attorney of the Applicants herein in November 2011 in I.A.No.14379 of 2011 in O.S.No.12828 of 2010. At paragraph 3,4,6 and 7 of the said affidavit, there are repeated references to TOS.No.15 of 2007 and to the Will dated 03.07.2005. From the averments in the said affidavit, he pointed out that it is abundantly clear that the Applicants were fully aware about the Will in November 2011. In spite of such knowledge, the Applicants remained fence-sitters and did not take any steps to implead themselves in the pending testamentary proceedings. In

this regard, he pointed out that the probate was granted only on 15.12.2016, which is more than 5 years after the date of the affidavit. He also pointed out as to how it is stated in the public notice issued by the prospective purchaser of the property from the Applicants that Mr.Umesh N.Tahilramani misplaced/lost the two original sale deeds dated 04.11.1985 bearing Document Nos.2984 and 2986 of 1985. By contrast, he pointed out that the case of the Applicants herein is that the original title deeds were handed over by Mr.Umesh N.Thahilramani to the Applicants and, thereafter, misplaced/lost by the Applicants. On this basis, he submitted that there are inherent inconsistencies and contradictions in the case of the Applicant. He also stated that the original title deeds were actually with the executor/first Respondent. For all these reasons, he concluded his submissions by stating that the Applicants have failed to establish just cause. He also circulated several judgments but it is sufficient to mention the following: **Krishna Kumar Birla v. Rajendra Singh Lodha, (2008) 4 SCC 300**, wherein the scope of caveatable interest was elucidated; **Joseph Easwaran Wapshire v. Shirley Kathleen Wheeler (Joseph Wapshire)(2019) 5 SCC 58**, wherein, at paragraph 12, it was held that a succession certificate can be revoked only on the grounds set out in Section 383 of the Succession Act; and **Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe 2019**

SCC Online SC 1301 (Ramesh Bhagwat), wherein it was held that Article 137 of the Limitation Act, 1963(the Limitation Act), applies to applications to revoke a grant in testamentary proceedings.

9. By way of rejoinder submissions, the learned counsel for the Applicants submitted that the plea of limitation is misplaced in as much as the limitation period would run from the date of grant on 15.12.2016 and the present Application has been filed on 15.07.2019. He reiterated that Sections 67 and 118 of the Succession Act apply to testamentary dispositions by Hindus. He pointed out that the Testatrix was suffering from cancer and was, therefore, not in a sound disposing state. With regard to the loss of title documents, he pointed out that the public notice was not issued by the Applicants but by the prospective purchaser from the Applicants and, therefore, the Applicants cannot be held responsible for statements made by such prospective purchasers. With regard to joinder of parties, he contended that upon the death of Mr.Umesh N.Tahilramani, the Applicants should have been joined as the successors-in-interest. In summary, his contentions were that the grant is liable to be revoked because there are signature variations and unsigned pages in the Will; the Testatrix was not in a sound and disposing state and died shortly after the

alleged Will was executed; necessary parties, including the Applicants and the nephew of the Testatrix, were not joined; Sections 67 and 118 were contravened; and the Will was allegedly executed during heavy floods in Chennai. All these constitute defects in the execution and proof of the Will or qualify as highly suspicious circumstances and, therefore, there is just cause for revoking the probate.

10. I considered the submissions of the learned counsel/ senior counsel for the respective parties and examined the records.

11. After the conclusion of arguments, as directed by me, the learned counsel for the first Respondent produced the original sale deeds dated 04.11.1985 in favour of the late G.Vimala, the Testatrix, for inspection.

12. The principal question that arises for consideration is whether the Applicants have established “just cause”, as per Section 263 of the Succession Act, to revoke the probate which was granted on 15.12.2016. The admitted position is that the late husband of the Testatrix, Mr.Umesh M.Tahilramani, was joined as a Respondent in O.P.No.481 of 2006. Upon

receipt of notice, he lodged a caveat. Consequently, O.P.No.481 of 2006 was converted into T.O.S. No.15 of 2007. Thereafter, he contested the testamentary suit and raised various defences by filing a written statement. Subsequently, he died while the testamentary suit was pending. Upon his death, his son through his first wife, Mr.Haresh Tahilramani, and Umesh M.Tahilramani's alleged new wife, Mrs.Usha Sharma, were joined as Defendants. After contest, probate was granted on 15.12.2016. In **Joseph Wapshire**, the Supreme Court interpreted Section 383 of the Succession Act and concluded that it is exhaustive of the circumstances in which a succession certificate may be revoked by examining the language thereof. Section 383 opens with the words “A certificate granted under this Part may be revoked for any of the following causes, namely:-”. The language of Section 263 is different in as much as the explanation thereto opens as follows: “Just cause shall be deemed to exist where-”. Thus, in contrast to Section 383, Section 263 specifies circumstances in which it would be deemed that there is “just cause” to revoke the grant. In my view, if an applicant for revocation under Section 263 establishes that her/his case fits into one of the specified circumstances in clauses (a) to (e) of the explanation, the legal fiction would operate and it would be deemed to be “just cause”; otherwise, the burden of proof on the applicant would be heavier. Section 263 was interpreted by a

Division Bench of this Court in **G. Shanmugham Chetti v. Chinnammal (Shanmugham Chetti)**, AIR 1978 Mad 304, wherein it was held that the specified circumstances are illustrative and not exhaustive. Another Division Bench of this Court in **R.Sivagnanam v. P.K. Sadananda Mudaliar**, AIR 1978 Mad 265, held, at paragraph 6, that a probate is not liable to be revoked on account of procedural irregularities and there should be a substantive defect in the grant in order to justify revocation. In the order dated 25.02.2020 in A.No.6768 of 2019 in O.P. No.29 of 2018, I examined the “just cause” threshold by comparing and contrasting it with the “sufficient cause” threshold in provisions like Order IX, Rule 13 CPC and Section 5 of the Limitation Act. Upon discussion and analysis, I concluded that the “just cause” test is different because it shifts the focus on the substantive defects in the grant or the implementation thereof as opposed to the adequacy of the explanation of the applicant concerned for failure to duly contest proceedings earlier, which is the focus of the “sufficient cause” test. Thus, it is a more stringent test. This application should, therefore, be decided in this legal context.

13. At the outset, the plea of limitation is dealt with. On this issue, as correctly contended by the learned counsel for the Applicants, the limitation

period for an application for revocation would run from the date of grant and, if so computed, the application is within the period of limitation as per Article 137 of the Limitation Act. The main contentions of the learned counsel for the Applicants are dealt with now. The first contention is on the basis of non-joinder. As stated above, the person with caveatable interest was Mr.Umesh M.Tahilramani. He was admittedly joined as a Defendant. Upon hearing about the sale of the property by Mr.Umesh M.Tahilramani, the first Respondent issued a notice to the Advocate for Mr.Umesh M.Tahilramani and requested for details of the purchaser so as to take steps to implead such purchaser. However, such details were not provided. All these facts are set out at paragraph 4(o) of the counter of the first Respondent and the relevant documents are on record. Upon the death of Mr.Umesh M.Tahilramani, his son was impleaded as the legal representative. Subsequently, the alleged new wife was impleaded as a party. Therefore, it cannot be said that the grant is defective on the ground of not joining necessary parties.

14. With regard to such non-joinder, it is also relevant to note that the Applicants were clearly aware about the testamentary proceedings as is evident from the affidavit filed by the Applicants in I.A.No.14379 of 2011 in

O.S.No.12828 of 2010 (Pages 101 to 104 of the typed set of papers filed by the first Respondent/Plaintiff). In spite of being aware about the Will and testamentary proceedings, the Applicants did not take steps to implead themselves in the proceedings which culminated in the grant of probate on 15.12.2016.

15. The learned counsel for the Applicants raised the contention that the probate is liable to be revoked because the bequest is void as per Sections 67 and 118 of the Succession Act. With regard to Section 118, the learned counsel for the first Respondent/Plaintiff pointed out as to how Section 118 does not apply to a Will or Codicil made by Hindus, Buddhists, Sikhs and Jains by inviting my attention to Section 57 read with Schedule – III of the Succession Act. Upon examining the aforesaid provisions, I concur with the contention that Section 118 does not apply to Wills and Codicils made by Hindus, such as the Testatrix in this case. In any event, he pointed out that Section 118 was struck down by the Hon'ble Supreme Court in **John Vallamattom**(supra). The other contention, in this regard, is that the bequest is void on account of Section 67 of the Succession Act, which deals with the provision of benefits to an attesting witness. Once again, the learned counsel

pointed out that Section 67 does not apply to Wills and Codicils by Hindus. Even otherwise, I find that Section 67 only provides that, in such event, the bequest in favour of such attesting witness would be void and not that the will would be void. This is clear from the stipulation therein that the Will would not be deemed to be insufficiently attested. Therefore, this contention does not constitute just cause.

16. The other basis of challenge to the grant is that there are signature variations and that all the pages of the Will were not signed. I examined the original Will and found that all the pages were signed by the Testatrix. In this connection, it is relevant to note that the executor was examined as PW1, one of the attesting witnesses, K. Balasubramaniam, was examined as PW2. PW2 deposed that the Will was executed by the Testatrix in Room No.213 at Chennai Kaliappa Hospital in his presence and that she was in a sound state of mind while executing the Will. On this issue, the learned counsel for the Applicants contended that the Testatrix was suffering from cancer and was not in a sound disposing state when the Will was executed. In support of this contention, the learned counsel for the Applicants refers to the fact that the Will was executed on 03.11.2005 and the Testatrix died on

09.11.2005. The aforesaid indicates that the Testatrix was physically unwell when the Will was executed and this is corroborated by the statement in the Will and the fact that the Will was executed when she was a patient in a hospital. But there is no indication that she was not in a sound and disposing state of mind, memory and understanding at the time of execution of the Will. Moreover, as stated earlier, the Testatrix's husband contested the Will unsuccessfully by raising various grounds. The Applicants herein, who are the purchasers of a property from the husband of the Testatrix, cannot re-agitate these issues. I also find that the Testatrix disclosed in the Will that she was not on good terms with her husband and that a divorce petition was pending on the file of the Family Court, Chennai. This statement is corroborated by the other documents on record and is cited in the Will as the reason for not making a bequest in favour of her husband. In the facts and circumstances, it cannot be said that the disinheritance of the husband is unnatural.

17. The other aspect is with regard to the original title deeds for the property. The learned counsel for the first Respondent/Plaintiff pointed out as to how there are inconsistencies and contradictions as between the statement of the Applicants that the original title deeds were received by them and

subsequently lost and the statement in the public notice of the prospective purchaser to the effect that Mr.Umesh M.Tahilramani lost the original title deeds. Especially when viewed in the context of the production of the original title deeds for inspection by the first Respondent/Plaintiff, I find that the statement of the Applicants lacks credibility and it is probable that Mr.Umesh M.Tahilramani executed a sale deed in favour of the Applicants without being in possession of the original title deeds. Although the validity of the said sale is not and, indeed, cannot be the subject matter of this proceeding, it indicates that the Applicants have not come to Court with clean hands. In this context, the wise words of Justice Jayasimha Babu, who spoke for the Division Bench of this Court in **Corra Vedachalam Chetty v. V. Janakiraman (Vedachalam Chetty), 2001 (3) CTC 283**, come to mind when he held, in paragraph 25, that “the testamentary court is a court of conscience. It is not a court of suspicion....” Thereafter, in paragraph 26, the Court held, in relevant part, that “.... in this context, the conduct of the persons who raise the alleged ground of suspicion is also to be looked at, to know as to how credible are the grounds for suspicions sought to be raised by such persons....” This Court cited **Vedachalam Chetty** in the judgment in T.O.S. 15 of 2007 and, thereafter, recorded a finding, in paragraph 17, that the written statement of the first

Defendant lacked substance. The Applicants herein seek to revoke the grant as the alleged successors-in-interest of the first Defendant. As per Section 263 of the Succession Act, a grant is liable to be revoked only if “just cause” is shown. The explanation to Section 263 specifies illustrations of deemed “just cause”. On perusal, it is clear that each of the illustrations deals with substantive defects in the grant or the implementation thereof. As stated earlier, in my view, “just cause” is a more stringent test than “sufficient cause” in as much as it is not enough for the Applicants to provide adequate reasons for failing to contest the proceedings earlier. The Applicants should establish that the interest of justice or fairness justifies revocation. By applying the test of “just cause”, I find that the Applicants herein have completely failed to establish “just cause” to revoke the probate.

18. In the result, the application to revoke the probate is dismissed.

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Speaking order

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SENTHILKUMAR RAMAMOORTHY, J.

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