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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation	14.11.2019
Date of Judgement	13.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

OSA No.409 of 2018
and
CMP No.18524 of 2018

S.Ramesh : Appellant/Applicant/3rd party

Vs.

Subramanian (Deceased)
S.Elangovan : Respondent/Respondent/
2nd Petitioner

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w clause 15 of Letters Patent against the order passed in Appln. No.5724 of 2015 in OP No.610 of 2001, dated 28.04.2018 by the learned single Judge of this court.

For Appellant : Dr.C.Ravichandran
for M/s.C.T.Mohan

For Respondent : Mr.N.A.Kareem

J U D G M E N T

T. KRISHNAVALLI, J

This Original Side Appeal is directed against the order passed in Application No.5724 of 2015 in OP No.610 of 2001, dated 28.04.2018 by the learned single Judge of this court.

2.The short facts of the case are that the suit property originally belonged to one Amirthalingam and he purchased the same by way of sale deed, dated 26.09.1971. The said Amirthalingam died on 10.12.1998 leaving behind his wife Saraswathi as his only legal heir to succeed his estate. The said Amirthalingam has no issues. The said A.Saraswathi being



the wife and the only legal heir of Late Amirthalingam inherited the suit property by way of inheritance and thereafter, she sold the property to one S.Ramesh, the appellant herein by way of sale deed, dated 31.01.2011. The respondent herein filed O.S.No.7057 of 2012 before the II Assistant Judge, City Civil Court, Chennai against the appellant herein S.Ramesh, A.Saraswathi Ammal and others to declare the sale deed, dated 31.01.2011 executed by the first defendant A.Saraswathi in favour of the 2nd defendant S.Ramesh as null and void and to be decredited and for other reliefs. The appellant on receipt of summons appeared before the said Court. On receipt of plaint and other documents in the said suit, the respondent/plaintiff came to understand that the appellant alleged to have been obtained a Letter of Administration (LOA), dated 12.07.2002 as granted by this court, on the basis of the alleged Will, dated 20.11.1990 executed by Amirthalingam. The appellant filed written statement in the year 2014. After filing the written statement he came to know the above LOA issued, he being a purchaser having caveatable interest, filed an application No.5724 of 2015 in O.P No.610 of 2001 to revoke the LOA granted in favour of the respondent. The learned single Judge dismissed the application, by order, dated 28.04.2018. Aggrieved the said order, the appellant/2nd defendant is before this court.

3.Heard both sides and perused the materials available on record.

4.It is admitted on both sides that the suit property originally belonged to one Amirthalingam and he died leaving behind his wife A.Saraswathi.

5.The learned counsel appearing for the appellant/applicant/defendant argued that the wife of Amirthalingam informed him that her husband did not execute the Will and the respondent/2nd petitioner and his father filed O.S.No.1368 of 2001 before the City Civil Court for permanent injunction and further, the respondent/2nd petitioner and his father filed O.S.No.1802 of 2007 against Saraswathi Ammal and others and in O.S.No.1368 of 2001, Saraswathi Ammal filed written statement disputing the alleged Will of her husband and the respondent filed OP No.610 of 2001 for grant of probate for the above Will and in the above OP, the respondents have not taken any steps to serve notice on Saraswathi Ammal and abandoned the probate and Saraswathi Ammal is an illiterate and the entire circumstances clearly establish the fraud played by the respondent in obtaining probate and the applicant came to know about the probate only when the written statement filed by the respondent in O.S.No.7057 of 2012, but Saraswathi Ammal sold the property to the appellant and hence, he filed petition to revoke the probate. For the above, the learned counsel appearing for the petitioner submitted the following rulings reported in (1992)2 SCC 307 (Gufo (Smt) Vs. Atma Singh and others)and (2017)9 SCC



332 (Prakash Soni Vs. Deepak Kumar and another).

6. On the other hand, the learned counsel appearing for the respondent/2nd petitioner argued that Saraswathi Ammal had full knowledge about the Will and the Letter of Administration and Amirthalingam had bequeathed his property to his brother and his brother's son after reserving the right of life interest to Sarawathi Ammal and after her death, this respondent filed several cases in respect of the suit property and Sarawathi Ammal filed Original Petition for grant of Letter of Administration based on the Will left by her husband abandoned case and also collected some amount from the respondent and the petition was filed with an inordinate delay and prays that the original side appeal has to be dismissed.

7. The main contention raised on the side of the appellant is that in the main original petition, the respondents have not taken effective steps to serve notice on Sarawathi Ammal and obtained orders from the court. On the other hand, the contention of the respondent/2nd petitioner is that taking advantage of the widowhood of Sarawathi Ammal, the appellant committed fraud to grab the property from Sarawathi Ammal and Saraswathi Ammal had abandoned OP No.342 of 2000 and the respondent/2nd petitioner being the beneficiaries under the Will executed by Amirthaling has filed a separate application and notice sent to her was purposefully evaded and thereafter, paper publication was effected and deliberately the said Saraswathi Ammal was prevented from appearing before the court and therefore, she was set ex-parte and probate was granted and hence, there was no defect in obtaining the Letters of Administration.

8. At first, Saraswathi Ammal filed OP No.342 of 2000 for grant of Letter of Administration, based on the Will of her husband. But the above OP No.342 of 2000 was dismissed for default. The beneficiaries of the Will filed a complaint against one Shanmuga Pandi and the appellant Ramesh stating that they trespassed into the suit property. Even after the FIR, Saraswathi Ammal executed a lease deed in favour of Shanmuga Pandi in respect of the suit property on 27.02.2001 for a period of 19 years. In the lease deed, only the thumb impression of Saraswathi Ammal was obtained. The respondents 1 and 2 filed a suit O.S.No.1368 of 2001 against Saraswathi Ammal for injunction.

9. On careful perusal of the FIR, dated 24.03.2001, the plaint and the written statement in O.S.No.1368 of 2001 clearly prove that the appellant Ramesh has also well aware of the disputes in respect of the suit property from the year 2001 itself. In the earlier suit, the stand taken by Saraswathi Ammal is that her signature was fraudulently obtained without her knowledge. But the above stand cannot be accepted for the reason that Saraswathi Ammal filed Application before this court in A.No.1106 of 2006 for return of the Will of her husband. Thereafter, in the year 2006,



another counsel appeared for Mrs.Saraswathi Ammal, has filed a Memo requesting the unmarked Will of her husband, dated 20.09.1996 may be returned to her, on her request the Will was taken back by the said Mrs.Sarawathi Ammal. In the above application, the memo is filed by some other counsel engaged by Mrs.Saraswathi Ammal. These facts clearly indicate that Mrs.Saraswathi Ammal is in-fact consciously filed the application for probate of Will of her husband in O.P.No.342 of 2000. Subsequently, for some of other reasons, she abandoned her application and fell in the hands of the third parties and started creating third party right over the suit property. The respondent having realised that Mrs.Sarawathi Ammal has not joined with them in getting the Letters of Administration, they have filed another O.P.No.610 of 2001 with the xerox copy of the Will. But that time, the original Will was already in the custody of the court in O.P No.342 of 2000. Thereafter the Registry was directed to place all the records and ultimately O.P was disposed wherein the said Mrs.Saraswathi Ammal was shown as one of the respondents. Further, notice has not been received by her and ultimately publication has also been effected. Thereafter, she was set ex-parte and one of the attesting witness, who has filed affidavit in O.P No.342 of 2000 and subsequently, in O.P.No.610 of 2001, he was examined as PW2 to prove the execution as well as the attestation. Based on the evidence, this court granted Letters of Administration in the above O.P. From the above narration of the fact, it clearly shows that after having filed the Will in O.P.No.342 of 2000, Mrs.Sarawathi Ammal for some or other reason has gone back and allowed the O.P for dismissal for default. Saraswathi Ammal has not given any complaint stating that her signature was obtained in the blank paper immediately. But stated the above fact in her written statement filed in the suits filed by the respondent. Further, in O P No.342 of 2000, Sarawathi Ammal's new counsel filed a memo on 24.03.2006 for returning of Will of her husband dated 20.09.1996. Hence, it reveals that Saraswathi Ammal had the knowledge of the above Will of her husband. During the above proceedings, Saraswathi Ammal has not raised any allegation that her signature was obtained in the blank papers and further, it reveals that from 2001 itself third party interference established. Further, on the basis of the complaint given by the respondent, the appellant was arrayed as A1. The final report has been filed against the appellant as well as one Shanmuga Pandi. The respondent also filed HCP No.1215 of 2010 alleging that the appellant and other kidnapped Saraswathi Ammal. The order passed in the above HCP shows that Saraswathi Ammal died on 12.08.2001 itself and the above HCP was closed.

10.The deceased Saraswathi Ammal died on 12.08.2011 after seven months and after the alleged receipt of Rs.60 Lakhs said to have been paid by the appellant, who is also arrayed as an accused in the criminal case. Hence, it reveals that Saraswathi Ammal fallen prey at the hands of others,



having filed an application for Letters of Administration at the initial stage. Subsequently, merely because she has made some allegation in the written statement about the counsel and denied the Will, it cannot be stated that her allegation is proved. On the other hand, the entire sequences of events narrated above on the basis of the documents filed in the type set show that from the year 2001, she was under the influence of the applicant and other people, who are not charge sheeted. Therefore, the allegation raised by her in the written statement cannot be taken as truth, without any proof of the same. It appears from the above narration, from the year 2001, the applicant is aware of the Letter of Administration filed and obtained by the respondent in the year 2001 itself. Hence, the argument put forth on the side of the appellant stating that he became aware of the Letter of administration filed by the respondent in the year 2012 is not at all acceptable.

11. Admittedly, the civil suit is pending before the court in O.S.No.7057 of 2012. In the civil suit, only the right of the parties could be properly established by adducing evidence and by production of the documents. The mere registration of the document in the name of the appellant itself cannot be taken into consideration to hold that the appellant has caveatable interest in the suit properly and to revoke the Letters of Administration. In this regard, the learned counsel single Judge referred CDJ 2017 SC 1243 (Lynette Fernandes V. Gertic Mathian since deceased by Lrs.), wherein it was held in para 13 as follows:-

"13. One must keep in mind that the grant of probate by a competent court operates as a judgment in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate from the purse of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate. In this matter, as mentioned supra, the appellant was a minor at the time of grant of probate. She attained majority on 09.09.1965. She got married on 27.10.1965. In our considered opinion, three years limitation as prescribed under Article 137 runs from the date of the appellant attaining the age of majority i.e., three years from 09.09.1965. The appellant did not choose to initiate any proceedings till the year 25.01.1996 i.e., a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the appellant to show as to why she did not approach the court of law within the period of limitation. At the



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cost of repetition, we observed that the appellant failed to produce any evidence to prove that the will was a result of fraud or undue influence. The same will has remained unchallenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the court for cancellation or revocation of grant of probate.

12. Admittedly, in this case Mrs. Saraswathi Ammal is the only legal heir of Mrs. S. Amirthalingam, who was already made as a party, notice has been served and publication has been made and orders were passed. It is to be noted that non-service of the notice cannot be taken as serious in this matter, since Mrs. Saraswathi Ammal joined hands of the third parties and possibility of evading of notice by herself cannot be ruled out.

13. In view of the above discussions and factual aspects, we are of the firm view that the application for revocation of Letters of Administration cannot be entertained and the same is liable to be dismissed.

14. In the result, the Original Side Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

er/cs

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras-104.

OSA No.409 of 2018

and
CMP No.18524 of 2018

BS (CO)
GMY (17/06/2020)