



A.No.620 of 2021 in O.P.No.559 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.11.2021

PRONOUNCED ON : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A.No.620 of 2021 in
O.P.No.559 of 2018

R.Gopinath

... Applicant / Respondent

Vs.

S.Nithya Devi

... Respondent / Petitioner

PRAYER in A.No.620 of 2021 : Application filed under Order XIV Rules 8 of Original Side Rules read with Section 263 of Indian Succession Act, 1925 seeking for the following reliefs:

(a) this application should not be treated as urgent; and

(b) this Court should not be pleased to revoke the letters of administration in O.P.No.559 of 2018 dated 15.12.2020 by this court to file of this Court.

For Applicant : Mr.S.Annakodi

For Respondent : Mr.Mukundan



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ORDER

This application has been filed seeking to revoke the letters of administration granted by this Court on 15.12.2020 in favour of S.Nithya Devi, the petitioner in O.P.No.559 of 2018. The applicant is the maternal uncle of S.Nithya Devi in whose favour the letters of administration was granted by this Court in respect of a Will dated 23.04.2008 executed by her grand mother Poora Devi who died on 05.01.2017.

2. Under the Will dated 23.04.2008, the testatrix Poora Devi, the deceased bequeathed the subject property in favour of her grand daughter S.Nithya Devi who sought for grant of letters of administration of the said Will in O.P.No.559 of 2018 and this Court granted the same in her favour on 15.12.2020. While granting the letters of administration, this Court had taken into consideration the oral evidence of PW1 - S.Nithya Devi, the respondent herein and PW2 – Lalitha, one of the attesting witnesses to the Will dated 23.04.2008 as well as the consent affidavit given by Malini Sivakumaran, the mother of S.Nithya Devi, giving no objection for grant of letters of administration in favour of S.Nithya Devi.



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3. The original petition seeking for grant of letters of administration was filed in the year 2018 and since the other legal heir of the deceased testatrix did not give his consent for grant of letters of administration in favour of S.Nithya Devi, notice was ordered to Mr.Gopinath, the son of the deceased Poora Devi who is the applicant herein. The applicant received the notice in the month of December 2019. Only after the application was duly served in O.P.No.559 of 2018, this Court granted the letters of administration on 15.12.2020 in favour of S.Nithya Devi.

4. This application has been filed by R.Gopinath, the son of the deceased testatrix Poora Devi seeking for revocation of the letters of administration dated 23.04.2008 passed in O.P.No.559 of 2018 on the ground that he had engaged an Advocate to contest the case for grant of letters of administration sought for by S.Nithya Devi in O.P.No.559 of 2018 on receipt of the notice in the said O.P. in the month of December 2019. According to him, his Advocate had proceeded to North India and therefore, he could not immediately attend to the case. It is also contended by the applicant that due to Covid Pandemic, proper steps could not be taken by the applicant to contest the petition filed by his sister's daughter S.Nithya Devi seeking for grant of letters of administration. It is also his case that by using



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her undue influence, S.Nithya Devi obtained the Will in her favour from her grand mother.

5. A counter affidavit has been filed by S.Nithya Devi, the grand-daughter of the deceased Poora Devi in whose favour letters of administration was granted by this Court on 15.12.2020 in O.P.No.559 of 2018 denying the allegations of the applicant. According to the respondent S.Nithya Devi, the applicant was very well aware of the Will executed by Poora Devi in the year 2017 itself much prior to the filing of the petition O.P.No.559 of 2018 by S.Nithya Devi seeking for grant of letters of administration. According to her, the applicant herein and his father K.Raju are the partners in the partnership firm and after the demise of K.Raju, the grandfather of the respondent S.Nithya Devi, as per the terms of the partnership firm, the partnership has to be dissolved and the share of K.Raju will have to be settled between his legal heirs and as per the same, Poora devi, the petitioner in O.P.No.559 of 2018 is entitled to 1/3rd share.

6. According to the respondent, since R.Gopinath, the applicant herein failed to act as per the terms of the partnership deed, Poora Devi, the grand mother of S.Nithya Devi filed a suit C.S.No.440 of 2000 which was renumbered as



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O.S.NO.14056 of 2010 which came to be decreed in part in favour of Poora Devi, against the applicant and the same was taken up on appeal by the applicant herein. According to the respondent, during the pendency of the appeal, Poora Devi died on 05.01.2017 and applications were filed by her in CMP.Nos.10076 & 10077 of 2017 in A.S.No.167 of 2012 seeking to set aside the abatement caused due to the death of Poora Devi and to bring her on record as the legal heir of the deceased Poora Devi and even in those applications also, the existence of the Will dated 23.04.2008 in her favour was disclosed. According to the respondent, despite having the knowledge of the Will in the year 2017 itself and even after the receipt of the notice in O.P.No.559 of 2018 in December 2019 itself, the applicant neither chose to file a caveat objecting the grant of letters of administration in favour of the respondent nor did he file any application to revoke the letters of administration granted in favour of the respondent immediately after passing of the order dated 15.12.2020 in O.P.No.559 of 2018. Therefore, according to the respondent, no just cause has been shown for revocation of letters of administration by the applicant Gopinath. According to the respondent, the grounds required for revocation of letters of administration under Order XIV Rule 8 of Original Side Rules read with section 263 of Indian Succession Act, 1925 has not been satisfied by the applicant.



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7. Heard Mr.S.Annakodi, learned counsel for the applicant and Mr.Mukundan, learned counsel for the respondent.

8. Learned counsel for the applicant would reiterate the contents of the affidavit filed in support of the application A.No.620 of 2021 and would submit that only due to the reasons stated in the application, the applicant was unable to file an application seeking to revoke the letters of administration granted in favour of the respondent by order dated 15.12.2020 in O.P.No.559 of 2018. He would also submit that only by using her undue influence with her grandmother Poora Devi and with the assistance of her mother Malini Sivakumaran, the respondent has obtained a Will dated 23.04.2008 from her grandmother which is the subject matter of this proceedings. According to the learned counsel, the reasons namely the non-availability of the applicant's advocate in Chennai and Covid Pandemic is a just cause for the purpose of revoking the letters of administration granted in favour of S.Nithya Devi, the respondent. He drew the attention of this Court to the order dated 15.12.2020 passed in O.P.No.559 of 2018 in which the letters of administration was granted in favour of S.Nithya Devi and would submit that the said order has been obtained behind the back of the applicant without affording



him sufficient opportunity to put forward his defence. Hence, he would submit that the letters of administration granted in favour of the respondent has to be revoked.

9. Per contra learned counsel for the respondent would submit that by following the due process of law contemplated, letters of administration was granted in favour of the respondent. He would reiterate the contents of the counter affidavit filed by the respondent. He would also submit that sufficient opportunity was granted to the applicant/respondent to contest the proceedings, but despite those opportunities granted, the applicant/respondent failed to make use of those opportunities by entering appearance in O.P.No.559 of 2018 earlier and by filing a caveat showing his caveatable interest. According to him, letters of administration granted in favour of the respondent on 15.12.2020 by this Court in O.P.No.559 of 2018 was passed in accordance with law as evidence placed on record by the respondent before this Court enables her to get the grant of letters of administration in her favour.

10. In support of the contentions of the respondent, learned counsel for the respondent relied upon the following authorities:



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(a) A Single Bench decision of the Madras High Court in the case of ***Vijayakumar vs. P.G.Ellappa Chettiar*** reported in **78 Law Weekly 422**;

Relying upon the said decision, the learned counsel for the respondent would submit that where a person who after having been served with notice in the letters of administration petition has not filed any caveat with the supporting affidavit, he cannot take advantage of his own default.

(b) A Division Bench Judgment of the Madras High Court in the case of ***J.Srinivasan (died) and another vs. S.Venkataraman @ Balaji*** reported in **2009-5-LW. 524**;

Relying upon the said decision, learned counsel for the respondent would submit that having been served with notice in O.P.No.559 of 2018 as early as in the year 2019 itself and having had the knowledge of the Will dated 23.04.2008 in the year 2017 itself, the applicant cannot file any application seeking for revocation of the letters of administration in the year 2021.

(c) A Division Bench Judgment of Madras High Court in the case of ***N.Sthirasundari and another vs. V.Kalyani and another*** reported in **2013 (1) CTC 646**;

Relying upon the said decision, learned counsel for the respondent would submit that mere filing of caveat would not render proceedings contentious and the



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caveator himself has to satisfy the court with regard to his interest in estate of the deceased. Learned counsel for the respondent would also submit that even in the application filed for revocation of letters of administration, the applicant has not stated that he has a caveatable interest in the property of the deceased and the details of such caveatable interest has also not been disclosed.

(d) A Division Bench Judgment of Madras High Court in the case of **S.V.Ramakrishnan vs. P.R.Sethuraman and others reported in 2011 (3) MWN (Civil) 772;**

Relying upon the said decision, learned counsel for the respondent would submit that the applicant having received the notice in O.P.No.559 of 2018 in the year 2019 itself and having not filed any caveat together with supporting affidavit setting out the grounds for revocation, the applicant cannot now file an application seeking for revocation of letters of administration, that too, after a lapse of more than two years from the date of receipt of notice in O.P.No.559 of 2018.

DISCUSSION:

11. Section 263 of Indian Succession Act, 1925 reads as follows:



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“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.”

12. As seen from section 263 of the Indian Succession Act, unless just cause is shown by the applicant, grant of probate or letters of administration by this Court in favour of the respondent/petitioner cannot be revoked. Section 263



of the Indian Succession Act has also given some circumstances which will amount to “just cause” for the purpose of revocation of probate or letters of administration. The said circumstances is not an exhaustive list, but is an inclusive one. The circumstances pleaded by the applicant in this application seeking for revocation of letters of administration does not fall under any of the five circumstances mentioned in the explanation to section 263 of the Act referred to supra.

13. The case of the applicant/respondent is that he was unable to contact his Advocate, due to his absence in Chennai and thereafter, he was unable to give proper instructions to his Advocate due to the Covid – 19 Pandemic. Admittedly, the notice in O.P.No.559 of 2018 was received by the applicant / respondent in the month of December, 2019 itself, when Covid-19 was not declared in India. Despite the receipt of the notice in O.P.No.559 of 2018 in the month of December 2019, the applicant/respondent has chosen not to immediately engage an Advocate and file a caveat objecting the grant of letters of administration in favour of the respondent/petitioner who is his sister's daughter. It is also to be notice that the subject Will is a registered document.



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14. It is an undisputed fact that there is a dispute with regard to the alleged non-payment of the share to the respondent/petitioner's grandmother Poora Devi in the partnership firm business by the applicant / respondent, after the demise of K.Raju, Poora Devi's husband who was a partner along with his son who is the applicant herein in the partnership firm. The suit was filed by the applicant's mother Poora Devi against the applicant in C.S.No.440 of 2000 which was renumbered as O.S.No.14056 of 2010 seeking for dissolution of the partnership firm and for rendition of accounts and for payment of her share of income in the said partnership firm after the demise of her husband who was also a partner during his lifetime.

15. The said suit came to be decreed in part in favour of Poora Devi, the respondent's grandmother, which was admittedly challenged by the applicant before this Court in A.S.No.167 of 2012. During the pendency of the said appeal, it is an admitted fact that as seen from the evidence available on record that the respondent's grandmother namely Poora Devi died and the respondent herein has filed an application in the year 2017 to bring her on record as the third respondent in the said appeal proceeding and it is also an admitted fact that in the said



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application, the existence of a registered Will dated 23.04.2008 in favour of the respondent was also disclosed. The applicant despite having knowledge of the existence of the Will in the year 2017 itself, has chosen to file an application seeking to revoke the letters of administration granted in favour of the respondent only in the year 2021.

16. In this application, the applicant / respondent has not given any justifiable reason with supporting evidence for the purpose of establishing that the Will dated 23.04.2008 registered as Document No.20 of 2008 where the respondent/petitioner is a beneficiary, is a fabricated one and has been obtained by undue influence. Mere bald allegations levelled against the respondent / petitioner is not enough and those allegations must be supported by evidence which the applicant/respondent has miserably failed to provide.

17. While granting letters of administration, this Court has given due consideration to the evidence available on record. As seen from the evidence which led to the grant of letters of administration in favour of the respondent, this Court had given due consideration to the following documents which was marked as exhibits:



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Sl.No	Exhibit	Nature of document
1	P1	Original Registered Will
2	P2	Computer generated copy of death certificate of R.Poora Devi
3	P3	Computer generated copy of death certificate of K.Raju
4	P4	Photocopy of legal heirship certificate of R.Poora Devi
5	P5	Consent affidavit given by Malini Sivakumaran
6	P6	Affidavit of assests
7	P7	Copies of paper publication effected in one issue of Tamil daily “Maalai Sudar” and one issue of English daily “Virtual Times”
8	P8	Affidavit of PW2, Lalitha

18. Infact, the only daughter of the testatrix Poora Devi, Malini Sivakumaran has also given no objection for grant of letters of administration in favour of the respondent/petitioner who is her daughter. A consistent stand has also been taken by the respondent/petitioner that applicant though being the son of the testatrix Poora Devi has failed to maintain his mother during her lifetime and has also not paid the share of the testatrix in the partnership business after the death of her husband. Only after proper investigation and only in accordance with law, this court had earlier granted letters of administration in favour of the respondent in O.P.No.559 of 2018.

19. Even though in this application, the applicant has stated that a caveat was filed on 01.12.2020 and a copy of the affidavit was also served on the respondent as well as her counsel, no evidence to that effect has been produced.



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The order dated 15.12.2020 passed in O.P.No.559 of 2021 under which the letters of administration was granted also does not reveal that such a caveat was filed by the applicant. Therefore, it is very clear that no caveat was lodged by the applicant objecting the grant of letters of administration in favour of the respondent.

20. The decisions relied upon by the learned counsel for the respondent referred to supra also supports the case of the respondent as no just cause has been shown by the applicant for revoking the letters of administration granted to the respondent.

21. A Division Bench of this Court in the case of ***J.Srinivasan (died) and another vs. S.Venkataraman @ Balaji*** reported in ***2009-5-LW. 524*** has held that despite service of summons if no objection is raised for grant of letters of administration, a party cannot seek for revocation of letters of administration.

22. In another Division Bench Judgment of the Madras High Court in the case of ***N.Sthirasundari and another vs. V.Kalyani and another*** reported in ***2013 (1) CTC 646***, the Division Bench has held that mere filing of caveat would not render proceeding contentious and on account of no representation, the order



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of court discharging caveat and issuing probate is justified .

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23. In one another Division Bench Judgment of this Court in the case of **S.V.Ramakrishnan vs. P.R.Sethuraman and others reported in 2011 (3) MWN (Civil) 772**, it has also been held that under Order XXV Rule 62 of Madras High Court Original Side Rules, if a person is seeking for revocation of letters of administration after being served with notice in the letters of administration proceedings fails to adhere to Order XXV Rule 62 of Madras High Court Original Side Rules, the revocation of letters of administration cannot be granted.

24. As seen from the aforementioned decisions also where the reasons which are also similar to the one given by the applicant, the Division Bench of this Court has consistently held that it is not a just cause for revoking the letters of administration. Therefore, there is absolutely no just cause shown by the applicant to revoke the letters of administration granted by this Court in favour of the respondent on 15.12.2020 in O.P.No.559 of 2018.



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25. In the result, there is no merit in this application. Accordingly, this application is dismissed.

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ABDUL QUDDHOSE, J.



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