

**Reserved on: 07.01.2021**

**Pronounced on : 02.02.2021**

**A.No.3556 of 2013**  
**in**  
**OP No.426 of 2012**

**R.PONGIAPPAN, J.**

This application has been filed under Section 263 of the Indian Succession Act, 1925 r/w Order XIV Rule 8 of Original Side Rules and r/w Order 25 Rule 62 of Original side Rules, praying to revoke the probate granted vide order dated 19.12.2012 in OP No.426 of 2012, on the file of this Court.

2. The applicant herein is the 4<sup>th</sup> respondent in OP No.426 of 2012. The said OP has been filed by the 1<sup>st</sup> respondent wherein the 2<sup>nd</sup> respondent to 4<sup>th</sup> respondents are arrayed as respondents 1 to 3. By order dated 19.12.2012, this Court granted an order of probate in favour of the 1st respondent. Aggrieved over the same, the applicant /4<sup>th</sup> respondent is before this Court, further seeking the relief to revoke.

3. The case of the applicant is that OP No.426 of 2012, had been filed seeking the relief of issuance of probate in respect of the alleged WILL dated 22.11.1995 said to have been executed by late Nataraja Pillai Sappany. In the said Original Petition, the applicant herein was served with the notice and thereafter, she filed vakalat on 06.11.2012 before this Court in D.No.29777 of 2012. Even prior to filing vakalat, the counsel who had appeared on behalf of the applicant was required to obtain an endorsement “noted” from the counsel for the 1<sup>st</sup> respondent/Original Petitioner. By following the said rule, the counsel for the applicant after obtaining the said endorsement, filed the vakalat in the Registry.

4. In the said circumstances, when the above case was listed for hearing on 19.12.2012, the name of the applicant's counsel had not been printed in the cause list published by this Court. Since the name of the counsel was not printed, he was unable to appear before the Court for raising objection on behalf of the applicant. Only in the said circumstances,

the probate was granted on 19.12.2012, in favour of the 1<sup>st</sup> respondent / Original Petitioner.

5. The further case of the applicant is that during the last week of August 2013, on verification it was found out that during the time of granting probate, nobody has represented on behalf of the applicant/4<sup>th</sup> respondent. According to the applicant, her father Nataraja Pillai Sappany @ Sappany Pillai has not executed the alleged WILL. On a mere perusal of the alleged WILL dated 22.11.1995, it appears that the same had been typed in Ten Rupees Stamp paper and the same would disclose that it is not true and valid. The alleged WILL is a fabricated one. There is a clear discrepancy in the alleged signature of Nataraja Pillai Sappany @ Sappany Pillai, in each page.

6. Further case of the applicant is that, she has filed a suit in OS No.13 of 2011 before the Principal District Court, Perambalur against the respondents herein seeking partition. In the said suit, the respondents have

entered appearance and also filed their written statements. In the written statements filed by the respondents, they have not referred the probate proceedings and about the alleged WILL, now under dispute. Respondents have all colluded together with a view to defeat the rights having by the applicant/4<sup>th</sup> respondent. The applicant/4<sup>th</sup> respondent is having several objection against the issuance of the probate. No such WILL had been executed by her father and as such the probate cannot be granted. The allegation regarding the value of the assets, is denied. The property regarding which probate is sought is worth several Crores, being located in a prime locality at Chennai. Therefore, the petitioner is constrained to seek revocation of the grant of probate by order dated 19.12.2012.

7. In response to the said averments, the 1<sup>st</sup> respondent herein / Original Petitioner has filed the counter affidavit wherein he had denied all the allegations levelled against him by the applicant.

8. The case of the 1<sup>st</sup> respondent herein / Original Petitioner is that, before granting the probate this Court firmly concluded that service was completed and thereafter only, an exparte order has been passed against this applicant. Before the Master, the case was taken up for two hearings and three witnesses have been examined.

9. At the time of filing the written statement in OS No.13 of 2011, the applicant knows the steps taken by the 1<sup>st</sup> respondent / Original Petitioner for probate proceedings. Upon the same WILL, Srilankan Court granted probate wherein, the applicant filed a consent affidavit stating that the WILL is true. The WILL certified by the Srilankan Court is enclosed and as such, the WILL probated is genuine, true and correct.

10. Before granting the probate, the original petition was listed before this Court as well as before the Master Court on various dates under Order 25 Rule 51 of Madras High Court Original Side Rules, which states that any person intending to oppose the issue of a grant of probate or letter

of administration, must either personally or by his advocate file a caveat in Registrar's office in Form No.69. But herein it is a case, on the side of the applicant, the said procedure has not been followed. Before granting the probate, the beneficiaries and the two attesting witnesses were examined before the learned Master and therefore, the questioning of forgery does not arise.

11. Heard Mr.S.Balasubramanian, learned counsel for the applicant / 4<sup>th</sup> respondent and Mrs.Sarojini Govindan, learned counsel for the 1<sup>st</sup> respondent / Original Petitioner and perused the documents.

12. The learned counsel appearing for the applicant / 4<sup>th</sup> respondent would submit that without showing the counsel's name in the cause list and continuing the proceedings, is violative of section 263 of the Indian Succession Act. Further, while at the time of filing the written statement before the District Court at Perambalur, nothing has been stated by the 1<sup>st</sup> respondent in respect to the availability of the WILL. It shows

that the alleged WILL is created for the purpose of obtaining the probate. Further, the procedure followed for granting the probate is defective in nature.

13. Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent / Original Petitioner would contend that the WILL now given probate by this Court was already produced before the Srilankan Court, wherein the very same applicant herein filed a consent affidavit in which she admitted that the WILL dated 22.11.1995 is genuine. Further under Order XXV Rule 52 of the Original Side Rules, it is mandatory on the part of the applicant to file counter within 08 days. But herein it is a case no counter was filed on behalf of the applicant/4<sup>th</sup> respondent and therefore, it cannot be said that while at the time of granting probate, this Court followed the defective procedure.

14. The learned counsel for the 1<sup>st</sup> respondent/Original Petitioner would further submit that the grounds stated in Section 263 of the Indian

Succession Act is not attracted with the case in our hand and therefore, the application filed by the applicant is liable to be dismissed.

15. Now, by considering the said submissions, with relevant records, to find out the merits of this application, it would be necessary to see Section 263 of the Indian Succession Act, 1925 which reads as follows:

**“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.

16. Applying the said provision with the case in our hand, 'just cause' which is narrated in the said provision is sufficient to revoke the

probate which was already granted. First of all, it is necessary to see whether the procedure followed by this Court for granting the probate is found correct or not. In this regard, as already pointed out by the learned counsel appearing for the applicant, on the date of granting probate the name of the learned counsel who filed vakalat on behalf of the applicant was not printed. Therefore, obviously the applicant/4<sup>th</sup> respondent, is not informed in respect to the hearing date and ultimately, she is not in a position to raise her objections. In this regard, though the learned counsel appearing for the respondent stoutly denied the contentions raised by the learned counsel for the applicant, he has not specifically denied the fact that on the date when the exparte order was passed, the name of the counsel who filed vakalat for the petitioner, was printed in the cause list.

17. At this juncture, it is necessary to see the judgment of this Court, in ***S.P.Kaveri Achi Vs. C.T.Ramasamy***, reported in **AIR 2008 Mad 235** in OSA No.190/2008, wherein this court has held as follows:

“15. The Court finds that in the instant case the order dated 29.02.2008 granting probate was passed on a day when strike was called by

the lawyers. The appellants lawyer, therefore, could not be present on that day. The appellant is an ailing and elderly lady, and was not staying at Chennai. In any event, it is not possible for her on a day, when lawyers were not appearing in courts, to arrange for a lawyer to represent her. In the decision of the Supreme Court in the case of Ramon Services (supra) it has been held that when a matter is decided ex parte in view of non-appearance of counsel on the date fixed in view of the strike by the advocates and when an application is made for setting aside that ex parte order, the Court should set aside the ex parte order inasmuch as sufficient cause is made in view of the non-appearance of the counsel on the day of strike. In the other Supreme Court judgment namely., G.P.Srivastava (supra) the Apex Court held that the expression sufficient cause should be liberally construed and the explanation in Order 9 Rule 13 application should be considered from the point of view whether on the date the ex parte decision was passed there was sufficient cause for non-appearance. Past conduct cannot be considered for refusing to set aside an ex parte order. Following the aforesaid principle this Court holds that in the instant case sufficient explanation for non-appearance was given. Though in the application for setting aside the ex parte order, Section 263 of the Act is mentioned, but from the tenor of the application and the grounds in this appeal, it is clear that the application is for setting aside the ex parte order under Order 9 Rule 13 of the Code of Civil Procedure. This is also clear from the order under appeal. Just non-mentioning of the said provision in the application will not debar the appellant from getting the benefit of the said provision since it has been held affirmatively by different Courts that Order 9 Rule 13 applies for setting aside an ex parte order in a probate proceeding considering the provisions of Sections 265 and 298 of the Act and Section 141 of the Code.

16. In view of the decisions of the Supreme Court, discussed above, sufficient cause was made out. For the reasons aforesaid, the order of the learned Judge dated 22.04.2008 is hereby set aside and consequently, the ex parte order granting probate dated 29.02.2008 is also set aside. The matter must be adjudicated afresh by the first Court.”

18. Applying the ratio laid down in the above referred judgment, herein also, admittedly on the date of hearing, the advocate, who filed vakalat on behalf of the applicant/4<sup>th</sup> respondent was not present due to the reason that his name was not printed in the cause list. Since this Court has decided that non appearance of advocate due to boycott is also a sufficient cause to set aside the exparte order, herein it is a case that not printing the name of the counsel in the cause list is nothing but non furnishing the information to the applicant in respect to the listing of the case before this Court. Thereby, it cannot be said that the applicant has inadvertently proceeded the OP after filing the vakalat. Therefore, I am of the view that the said reason alone is sufficient to hold that the application filed by the applicant / 4<sup>th</sup> respondent is liable to be allowed.

19. In respect to the second ground raised by the learned counsel appearing for the 1<sup>st</sup> respondent / original petitioner, it is an undisputed fact that before granting the probate by this Court, the same WILL now under dispute, was produced before the Srilankan Court and thereafter, probate has also been granted. In the impugned order though, it was stated that the respondents are not having any objection, the consent affidavit which alleged to have been filed by the applicant / 4<sup>th</sup> respondent, is not produced before this Court by the 1<sup>st</sup> respondent / Original Petitioner for substantiating his claim. Since four persons are cited as respondents in the order passed by the Srilankan Court, without seeing the consent affidavit filed by the applicant, it cannot be said that the applicant has also appeared before the Srilankan Court and filed the consent affidavit. Therefore, the said ground raised by the 1<sup>st</sup> respondent is not at all sufficient to hold that the applicant/4<sup>th</sup> respondent is estopped from contending that the WILL is a fabricated one.

20. More than that, before filing an application for grant of probate, the 1<sup>st</sup> respondent who is the petitioner in OP filed a written statement before the District Court, Perambalur in OS No.13 /11, which is filed by the applicant for the relief of partition against the present respondents. In the said written statement, nothing was averred by the 1<sup>st</sup> respondent in respect to the WILL alleged to be executed by his father. The said circumstances indicated by the applicant is much enough to accept her contention.

21. It was held by this Court in ***E.Sankaran Vs. Krishnaveni and another***, reported in **2011(5) CTC 157** that the revocation application can be filed by any person whose interest is affected by an order granting of probate. No doubt due to the grant of probate, the right of applicant/4<sup>th</sup> respondent, being the Class-I heir of the testator, is affected.

22. Ultimately, I am of the considered opinion that non printing the name of the advocates in the cause list amounts to neglecting the parties

and therefore, this case would clearly fall under Clauses-(b) and explanation to illustration no.ii of Section 263 of the Indian Succession Act, to constitute a 'just cause' for revocation of the probate order. Therefore, the application in A.No.3556 of 2013, is allowed. The probate order dated 19.12.2012 is revoked.

**02.02.2021**

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A.No.3556 of 2013  
in OP No.426 of 2012

**R.PONGIAPPAN, J.**

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**Pre-delivery order in**

**A.No.3556 of 2013**  
**in OP No.426 of 2012**

**02.02.2021**