



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice S.SATHI KUMAR

O.S.A.No.226 of 2021

D.Sudhakar

.. Appellant/Petitioner

Vs

1.Prabhu @ Prabakaran
S/o. Late N.Kanniappan

2.Premalatha
W/o. Rajendiran

3.Usha Nandhini
W/o. Saravanan

4.N.Gunasekaran
S/o. Late Nagappan

5.D.Varadhammal
W/o. Late G.Dhanapal

D.Kuppan (deceased)

6.Kumudhavalli
W/o. Raji

7.Smt.Mariammal
W/o. Late G.Rajendran

8.R.Selvam

Manickam (deceased)

G.Parasuraman (deceased)

9.Smt.Rajeswari

10.K.Pooja (minor)



11.K.Roja (minor)

12.K.Karthik (minor)

Respondents 10 to 12 are Minors
rep by their Mother & natural guardian
Rajeswari 9th Respondent

13.Smt.Varalakshmi

14.P.Prakash

..Respondents

(Cause title accepted vide Court Order dated 24.06.2021)

Appeal preferred under Order XXXVI Rule 1 of Original Side Rules r/w. Order Clause 15 of Letters Patent Act, to allow the appeal by setting aside the order and decree of dismissal dated 27.07.2020 passed in O.P.No.390 of 2015.

Prayer in OP.390 of 2015: Original Petition filed under Section 232 and 276 Indian succession Act and under order XXV and Rule 5 of original side rules for grant of letters of Administration with will annexed to the Petitioner as the deceased husband's sister's 2nd grand son/ sole beneficiary under the Will executed by the deceased Kannammal having effect limited to the state of Tamil Nadu.

For Appellant : Mr.V.Pavitra
for S.Rajasekar

For Respondents : Vacated - R1 to 4
Mr.P.Mathivanan -R5, 6, 9 to 14
Mr.T.P.Sekar -R7 and R8

JUDGMENT

(Judgment of the Court was delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order passed by learned Single Judge dated 27.07.2020 recorded on O.P.No.390 of 2015, the operative part of which reads as under:

"In the light of the order of this Court dated 26.03.2019, no further order is required as the Original Petition stands dismissed since the deficit Court fee has not been paid on or before 27.04.2019. The Original Petition is dismissed. No costs."

2. In substance, O.P. is not examined on merits since it was treated to have been dismissed for non-payment / late payment of



Court fees. It is thus dismissed for default.

3. The learned Advocate for the respondents is also present in the Court. Having heard learned advocates for both the sides, we find that ends of justice would meet if the grievance of the appellant is heard on merits by the learned Single Judge.

4. From records, it also transpires that the total Court fees of Rs.4,22,967/- was already paid on behalf of the present appellant, may be part thereof belatedly. The financial condition of the appellant, as pleaded is considered by us. Further, the dismissal for default was on 27 July 2020, when there was complete lock down due to pandemic. We find that ends of justice would meet, if the grievance of the appellant is considered and adjudicated on merits.

5. For the above reasons, we pass the following order:

5.1 This appeal is allowed.

5.2 The impugned order dated 27.07.2020 recorded on O.P.No.390 of 2015 is set aside.

5.3 O.P.No.390 of 2015 is restored to file. The same be listed before appropriate Bench, as per Roster, to be considered on merits. This is without prejudice to the rights and contentions of the contesting parties, on merits.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh

To

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

+1cc to Mr.T.P.Sekar, Advocate, S.R.No.62261
+3cc to Mr.S.Rajasekar, Advocate, S.R.No.62323

O.S.A.No.226 of 2021

MG(CO)
SB(06/12/2021)