

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 25.02.2021

Pronounced on : 12.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Application No.6442 of 2019 in
Original Petition No.637 of 2016

1.A.Murugan,
S/o.K.V.AnnamalaiPillai,
No.2/1, 1st Main Road,
Kalaimagal Nagar,
Ekkatuthangal, Chennai - 600 032.

2.K.AudinarayananPillai,
S/o.K.VeerassamyPillai,
No.16/41, 1st Cross Street,
Shanti Nagar, Hosur - 635 109.

... Applicants /
Respondents

versus

K.Kokilamma,
W/o.K.Ambikapathi,
1-8-702/33/28, Padma Colony,
Nallakunta, Vidya Nagar 1st Street,
Musheerabad, Hyderabad,
Andhra Pradesh - 500 044.

... Respondent /
Petitioner

Prayer: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 263 of Indian Succession Act, to revoke the Letters of Administration granted through order dated 07.02.2018 made in O.P.No.637 of 2016 to the respondent.

For Applicants / Respondents : Mr.A.Palaniappan

For Respondents / Petitioner : Mr.N.Baskaran

ORDER

The applicants herein are the respondents in O.P.No.637 of 2016. This application has been filed under Order XIV Rule 8 of Original Side Rules read with Section 263 of Indian Succession Act, seeking the relief to revoke the Letters of Administration granted through order dated 07.02.2018 made in O.P.No.637 of 2016 to the respondent.

2. Heard Mr.A.Palaniappan, learned counsel appearing for the applicants / respondents and Mr.N.Baskaran, learned counsel appearing for the respondent / petitioner.

3. The learned counsel appearing for the applicants / respondents would contend that the property pertains to the Letters of Administration granted through order dated 07.02.2018, is the absolute property of one Sivaperumal. During his lifetime, the said Sivaperumal executed two unregistered Wills dated 15.09.1994 and 25.07.1996 respectively. Way back in the year of 2016, after suppressing the details of subsequent Will, the respondent / petitioner herein filed the above referred petition for granting Letters of Administration and obtained the favourable order. Further, before granting the Letters of Administration, the attestors of the Will, have not been examined before this Court.

4. Moreover, for the Will dated 25.07.1996, the petition for grant of Letters of Administration has been filed in the year 2015, after the lapse of 13 years. So, it is totally unbelievable that the Will now alleged to be executed by the said Sivaperumal, is a true one. Further, when at the time of granting Letters of Administration, the original Will has not been produced.

5. In this regard, in paragraph 9 of the Original Petition, the respondent / petitioner herself admitted that the Original Will has not been traced out. Further case of the applicants / respondents is that, without serving notice to them, by adopting the mode of substituted service, Letters of Administration was granted in favour of the respondent / petitioner. Therefore, the said circumstances shows that the Letters of Administration had obtained by using the fabricated Will and without serving notice to the applicants / respondents. Accordingly, the Letters of Administration granted in favour of the respondent / petitioner, is liable to be set aside.

6. In respect to the submissions made by the learned counsel appearing for the applicants, the learned counsel for the respondent would contend that in page 4 of the petition, the respondent has clearly narrated the story about the tracing of attestors and only due to the reason the attestors are not found, the respondent is not in a position to examine the said persons, as witnesses. Therefore, it cannot be said that the respondent has purposely not examined the attesting witnesses. Further, the notice was sent to the applicants for last known address and therefore, the same would not

constitute the fact that the notice was sent to the false address. According to him, this application has been filed with false allegations.

7. More than that, it is the specific contention that the Will in respect to the Letters of Administration, is a registered one. In otherwise, for the delay in filing the application, explanation is offered in the petition itself and therefore, the petition filed by the applicants / respondents, is liable to be dismissed.

8. I have considered the rival submissions made on either side and perused the records carefully.

9. In respect to the first submission made by the learned counsel for the applicants, the document produced by the respondent / petitioner at the time of filing the petition shows that the Will dated 25.07.1996, is a registered Will. Therefore, it cannot be said that the Letters of Administration was granted by believing the unregistered Will.

10. At this juncture, it would be relevant to see the judgment rendered in a case of **LALITHA MOHAN vs. PRATAP K.MOTURI** reported in **2020 (2) CTC 129**, the Hon'ble Division Bench of this Court has held as follows;

“6.5.....

“The Will was admittedly registered. The Testator lived for seven years after execution of the Will. He could change his mind; he did not. The very fact that he did not take any step for cancellation of the Will is itself a factor which the Court may take into consideration for the purpose of upholding the same. The question as to whether the Register was brought to the house of the Propounder or he had gone to the Registrars office is not a matter which requires serious consideration.”

Therefore, mere participation or the presence of the Propounder or the beneficiary by itself cannot be a prime factor to disbelieve the Will sans the other circumstances governing.”

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11. Now, applying the ratio laid down in the above referred judgment with the case in hand, it seems that since the Will pertains to the

petition, is a registered one, it is understandable that the said Will may be a true one. However, the same has to be proved only in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872.

12. In otherwise, there is no substantial difference between a registered and unregistered Will insofar as the above compliance of the provisions is concerned. However, registration gives additional strength to the Propounder or beneficiary. Section 114(e) of the Indian Evidence Act, 1872, read with Section 60 of the Registration Act do create a presumption. Such a presumption is attributable to the official act of registration. Therefore, it is made clear that either the Will is registered or unregistered, the same has to be proved by examining the witnesses, who attested the Will.

13. Now, coming to the Will dated 25.07.1996, the same has been attested by R.M.Chidambaram and E.A.Vishnupathy. The respondent herein while at the time of proceeding the petition had filed for grant of

Letters of Administration did not take any effective steps in order to summon the said E.A.Vishnupathy to adduce the evidence. Though E.A.Vishnupathy, is an aged man, provision is available in the Civil Procedure Code, for examining him through an Advocate Commissioner. But here, it is a case, no such effort was taken by the respondent / petitioner, for examining him by adopting such mode.

14. Accordingly, it can be construed that the Will has not been proved in accordance with law. Moreover, it is an admitted fact that the original Will has not been produced when at the time of granting Letters of Administration. In this occasion, it is necessary to see Section 294 of Indian Succession Act, 1925, which reads as follows;

“294. Filing of original Wills of which probate or administration with Will annexed granted.— (1)Every District Judge, or District Delegate, shall file and preserve all original Wills, of which probate or letters of administration with the Will annexed may be granted by him, among the records of his Court, until some public registry for Wills is established.

(2)The State Government shall make regulations for the preservation and inspection of the Wills so filed.”

15. So, according to the said provision, when at the time of administration with Will, the original has been produced before the Court and the same shows preservation of original Wills. But here, it is a case, the same has not been done.

16. Another aspect, which is necessary to see in this matter is that, before granting Letters of Administration, no notice is served upon the applicants / respondents. In this regard, the learned counsel for the respondent / petitioner would submit that the notice has issued to the last mentioned address. Since the same was returned with an endorsement as “left” after getting permission from this Court, paper publication has been effected and thereafter only, Letters of Administration was granted, but the same was denied by the applicants.

17. At this juncture, it is necessary and useful to see the judgment of this Court in ***S.D.PONNUSWAMY MUDALIAR vs.***

S.K.SOMASUNDARAM reported in (1992) 1 MLJ 210, wherein it was held as follows;

“Court cannot ignore non-service of notice even if person not served had knowledge about probate proceedings.”

18. So, applying the provisions reiterated in the judgment, herein also, it is necessary for the respondent / petitioner to prove the fact that at the time of sending notice, the applicants / respondents were residing in the petition mentioned address.

19. Section 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The dispatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he in fact received the notice. It is open to the despatcher to adopt either of the options. If he opts the former,

he can afford to take appropriate steps for the effective service of notice upon the addressee.

20. Here, it is a case, the respondent / petitioner did not take appropriate steps for the service and it cannot be conceded that the notice sent to the applicants / respondents with the correct address. Therefore, the above circumstances create a just cause for revoking grant of the Letters of Administration granted by an order dated 07.02.2018 to the respondent.

21. For the foregoing reasons, Letters of Administration granted in O.P.No.637 of 2016 dated 07.02.2018, is hereby revoked and accordingly, this application stands allowed.

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12.03.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in
Application No.6442 of 2019 in
Original Petition No.637 of 2016

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