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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

THURSDAY, THE 17TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.2400 of 2015
in
O.P.No.948 of 2010

In the matter of Indian
Succession Act(Act XXXIX of 1925)
and
In the matter of Will and Codicil of
Thiru T.K.Sivagurunathan (Deceased)

S. SANTHANAM
AP-18, 11th Street,
Sector "A",
Anna Nagar West Extension,
Chennai-600 101

..Petitioner

-Vs-

1. S. KUMARASAMY
S/o.Thiru T.K.Sivagurunathan,
residing at Plot No.1919,
H Block, 2nd Street,
Anna Nagar,
Chennai - 600 040

2. S. VETRIVELAN
S/o.Thiru T.K.Sivagurunathan,
residing at Plot No.1919,
H Block, 2nd Street,
Anna Nagar,
Chennai - 600 040



3. TMT. RUBAVATHY
Wife of D. Neelamegam,
residing at 40/50,
Silandhikuttai,
Kolathur High Road,
Chennai – 600 099

..Respondents

A.No.2400 of 2015:

TMT. RUBAVATHY
40/50, Silandhikuttai,
Kolathur High Road,
Chennai – 600 099

..Applicant/3rd Respondent

-Vs-

1. S. SANTHANAM
AP-18, 11th Street,
Sector 'A',
Anna Nagar West Extension,
Chennai-600 101

..Respondent / Petitioner

2. S. KUMARASAMY
Plot No.1919,
H - Block, 2nd Street,
Anna Nagar,
Chennai - 600 040

3. S. VETRIVELAN
Plot No.1919,
H - Block, 2nd Street,
Anna Nagar,
Chennai - 600 040

..Respondents/Respondent 1 and 2



Application praying that this Hon'ble Court be pleased to revoke the Letters of Administration and the Issue of probate of the Will in favour of the petitioner.

This Application coming on this day before this court for hearing the court made the following order:

This application has been filed by the applicant/third respondent to revoke the Letters of Administration and the issuance of Probate of Will in favour of the applicant.

2. Learned counsel for the applicant submitted that though the applicant was impleaded as third respondent in the said O.P.No.948 of 2010, after serving notice, he engaged a counsel and the counsel also filed vakalat. The same was returned. Subsequently, the counsel has not given any instructions to the applicant, therefore, he was set ex-parte. He came to know about the ex-parte order in the year 2005. Hence, he has filed an application to revoke the Probate order dated 01.08.2012.

3. Learned counsel for the first respondent/petitioner in O.P.No.948 of 2010 has submitted that the applicant herein was shown as third



respondent in the Original Petition and notice was duly served and the applicant also engaged a counsel. Though the vakalat filed by the counsel returned, the applicant has not followed and taken effective steps to continue the proceedings and he has neither given proper explanation for not appearing and nor given any instructions to the counsel. Further, he submitted that the applicant is not a beneficiary to the Will and he has no caveatable interest and therefore, prayed that grant of Probate as ordered by this Court need not be revoked.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. Admittedly, the first respondent/petitioner filed the Original Petition for grant of Probate/Letters of Administration and in which the applicant also shown as third respondent. Third respondent was duly served in the said Original Petition and she also engaged a counsel. Subsequently, neither she appeared in person or through counsel, nor she filed any counter. Therefore, the applicant/third respondent was set ex-parte in the abovesaid Original Petition. Then, Original Petition was proceeded further and after recording evidence, Probate was granted by this Court on



the legal heirs to the testator to the Will and she has to be given opportunity to cross-examine the attestors to testify the genuineness of the Will. Since the Probate was granted, that has to be revoked.

6. On a perusal of the Will and also the order of the Probate, it is found that the applicant is not a beneficiary to the Will. Since she is one of the legal heir of the testator she was impleaded as one of the respondent namely the third respondent in the Original Petition. She remained ex-parte and the scope of the Original petition is only to get the Probate that the Will has got to be proved in the manner known to law. Accordingly, the first respondent/petitioner established before the Court in the Original Petition, and the Court granted Probate. Though the applicant is one of the legal heirs of the testator, she is not not beneficiary to the Will. Though opportunity was given to her, she did not utilize the opportunity and the applicant has not given any sufficient cause for non-participating in the proceedings as to why she has not participated in the Original Petition proceedings. During the enquiry, though she has stated that the counsel has not informed, but records show that notice was served to her and she has also appeared through counsel. Though the counsel not intimated anything to her, it is the duty of the party to follow the case and if within reasonable time, if any instructions or any information not received from the counsel,



they should approach the Court and ascertain the present situation/position of the case or latest development of the case.

7. Admittedly, Original Petition has been filed in the year 2010 and the applicant appeared even in the year 2010. The Probate was granted by this Court in the year 2012. For about two years, the applicant has not cared about the pending of Original Petition. Therefore, she has not shown any interest to proceed the O.P. After five years of filing the Original Petition, she cannot file this application to revoke the Probate. Further, she is not a beneficiary to the Will. The scope of the Probate is very limited. It shows only the Will is genuine. If the applicant has got any other interest, she will work out her remedy in the manner known to law.

8. Reasons stated in the application is not convinced and satisfactory, therefore the applicant is not entitled to get the relief sought for in the application. Hence the application is dismissed.

Sd/.P.V.J.
17.03.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

su/24.3.2022

COURT OFFICER(O.S.)