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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2022

PRONOUNCED ON : 30.03.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

A.Nos.4484 and 4485 of 2013 in

O.P.Nos.562 and 563 of 2009

ORDER

These applications have been filed to revoke the grant of letter of administration granted to the petitioner in O.P.Nos.562 and 563 of 2009 by order dated 21.04.2010.

2. One Veerakumar had filed petitions in O.P.No.562 of 2009 and O.P.No.563 of 2009 for the grant of letters of administration as one of the legal heirs of Late. Kannappa Gramani to whom the property had been bequeathed under the Wills by one Thayammal @ Thayarammal and her sister Muniammal and this Court also granted letters of administration to the petitioner Veerakumar by order dated 21.04.2010. Subsequently, the applicants have filed the present applications to revoke the grant of letters of administration granted to the said Veerakumar on the ground that the said Veerakumar has obtained the letters of administration by fraud.

3. The applicants are said to be the relatives, kith and kins of the



deceased testatrices as well as the father of the Kannappa Gramani. The applications for grant of letters of administration was filed after 27 years and they have not set out any reason for the entire delay. Even without impleading the applicants herein as a party in the said petition for letters of administration, the said Veerakumar has obtained the same by fraud. Further, there was a suit for partition and the same was also suppressed and that the properties covered under the letters of administration was a Poramboke land and the said Veerakumar has obtained the letters of administration by fraud, suppressing all the material facts since he is also a relative to the testatrices to the Wills dated 22.06.1978 and 10.07.1978 and therefore, the applications have got caveatable interest. Therefore, the present applications to revoke the letters of administration, have been filed. Both the testatrices viz. Thayarammal and her sister Muniammal, the wife of Kannappa Gramani were living together. The said Thayarammal had executed a Will dated 22.06.1978 bequeathing her undivided half share in favour of the Kannappa Gramani, who is the husband of her sister Muniammal. The said Muniammal had also executed a Will dated 10.07.1978 in favour of the said Kannappa Gramani in respect of her undivided half share.

4. The learned Counsel for the applicants would submit that the

applicants are the relatives of the testatrices and they are the children of one



Gnanamoorthy Gramani who is the blood brother of the said Kannappa Gramani. Thereby, the Kannappa Gramani is the uncle of the applicants, the testatrices Muniammal is aunt and Thayarammal is her sister. The testatrices and beneficiaries are related to the applicants and they should have been added as necessary parties in the main O.P. as per Form 59 (Clause 8) of the O.S. Rules 1956 for which, he placed reliance on the Judgments of the Hon'ble Apex Court reported in 2008 (10) SCC 489. Further he would submit that the property bequeathed by the testatrices is situated at Door No.8, Appavu Gramani, 2nd Street, robertsonpet, Mandaveli, Mylapore, Chennai. The suits are pending between the applicants and the respondents in C.S.No.250 and 493 of 2011 (Now renumbered as O.S.No.2194 & 2195 of 2020 on the file of the III Additional City Civil Court, Chennai), which are connected to the property situated at Old No.9 and 10, Appavu Gramani, 2nd Street, Robertsonpet, Mandaveli, Mylapore. Therefore, the property referred in the present Original Petitions and in the suits are different. Further, he would submit that the legal heirs of the Kannappa Gramani had executed a partition deed in Doc.No.1216 of 2004 registered with SRO Mylapore on 21.04.2004 pertaining to the property which is the subject matter of the present main O.Ps. (Door NO.8 Appavu Gramani Second street, Robertsonpet Mandaveli, Mylapore, Chennai). Thereafter the legalheirs of Kannappa Gramani had



filed the present Original Petitions and in the said petitions, the legal heirs of Kannappa Gramani have willfully and deliberately not disclosed about the partition deed in petitions in O.P.Nos.562 and 563 of 2009. The said non disclosure of the partition deed in the Original Petitions by the legal heirs of the Kannappa Gramani falls under Section 263(b) of the Indian Succession Act 1925. Therefore, fraud has been played by the legal heirs of the Kannappa Gramani. In support of his contentions, the learned counsel placed reliance of the judgement of this Court reported in **2012(2) CTC 278**. He would further submit that the testatrices died in the year 1980 and 1984 respectively whereas the Original Petitions were filed in the year 2007. Therefore, there is a enormous delay of 27 & 23 years respectively and the reasons stated for the delay in filing the petitions are not proper and not acceptable. Further, the letters of administration are filed after a lapse of 3 years from the death of the deceased. The reason for the delay shall be explained in the petitions which is contemplated under Order 25 Rule 9 of the O.S. Rules 1956. The said reason should be bonafide whereas, in the instant case, the reasons for the enormous delay of 27 and 23 years are not properly explained in the Original Petitions. Therefore, the letters of administration granted by this Court should be revoked for which, he placed reliance on the Judgment of this Court reported in 2012(2) CTC 278



Even the genealogical tables annexed with the original petitions itself show that the applicants are the legal heirs of the brother of the said Kannappa Gramani. Therefore, without impleading them, the letters of administration should not have been granted after 27 years of the death of the testatrices and after 12 years of the deceased and therefore without any explanation for the inordinate delay, the letters of administration should not have been granted. Further, the applicants are the close relatives and kith and kins of the deceased Kannappa Gramani and they have got caveatable interest. Therefore, the letters of administration granted by this Court dated 21.04.2016 have to be revoked.

5. The learned counsel for the respondents/petitioners would submit that the applicants are no way connected with the property and also the Wills. One Muniammal and Thayarammal who were sisters, were the owners of the petitions schedule property with 50% share each. The Muniammal was the second wife of the said Kannappa Gramani, grand father of the respondents and the father of the said Veera Kumar. The Thayarammal after the death of her husband, lived with her sister Muniammal and her husband Kannappa Gramani. The said Thayarammal executed a Will on 22.06.1978 and Muniammal executed a Will on



Muniammal died on 18.06.1980 and 14.07.1984 respectively. The Kannappa Gramani died on 14.11 1997. After the death of Kannappa Gramani, the petitioner in the main Original Petitions viz. K.Veerakumar came to know the existence of the Will in favour of his father Kannappa Gramani and therefore he filed the petitions for grant of letters of administration in favour of the legal heirs of the Kannappa Gramani and the same was granted by this Court by order dated 21.04.2010.

5 (a) The learned counsel for the respondents/petitioners would further submit that the applicants herein have filed the present applications to revoke the letters of administration granted by this Court dated 21.04.2010 after a lapse of 3 years i.e. in the year 2013 as a counter blast against the suit in C.S.No.250 of 2011 filed by the respondents/petitioners for declaration of title against and the Court also granted interim injunction in the said suit. After passing of the interim injunction, the applicants herein as a counter blast, filed C.S.No.493 of 2011 seeking relief of declaration. The applicants have also filed O.A. No.926 of 2011 for interim injunction and the same was dismissed, against which they preferred an appeal and the appeal was also dismissed. The first applicant Govindammal @ Kaliammal in the revocation application A.No.4485 of 2013 died on 24.04.2016. The original respondent Veerakumar also died on 12.04.2014. Subsequently, the legal heirs were impleaded.



5 (b) The learned Counsel for the respondents/petitioners would further submit that the applicants herein are not the legal heirs either for the testatrices or to the Kannappa Gramani. Further they claim that the property is a Poromboke land and does not belong to testatrices. The letters of administrations is a fundamental nature of the probate proceedings what ever would be the interest of the testatrices, the same has to be accepted. Any person questioning the existence of title in respect of estate and capacity of the testatrices to dispose of the property, would be a stranger to the proceedings. Further, the question of title arising under the Act cannot be maintained by probate Court as its jurisdiction is limited only to consider the genuines of the Will. Further he would submit that any person claiming any interest adverse to the interest of the testatrices / testatrix or their estate cannot maintain any application before the probate Court as the remedy would be elsewhere. The applicants herein avered against the interest of the testatrices and hence they cannot claim right or interest under the testatrices as their legal heirs. Therefore, the applications are not maintainable and the same have to be dismissed summarily. Further, the applicants have not made out any just cause as defined under Section 263 of Indian Succession Act. The applicants out of grievance only have filed these applications for revocation with ulterior motive and has a counter blast in C.S.No.250 of



question either the probate or the letters of administration granted by this court. Therefore, both the applications are liable to be dismissed confirming the letters of administration granted by this Court in both the original petitions.

6. Heard both sides and perused the records.

7. Admittedly one Veerakumar had filed the Original Petitions in O.P.No.562 of 2009 and O.P.No.563 of 2009 for grant of letters of administration in the matter of last Wills and Testament of S. Thayammal @ Thayarammal and K.Muniammal respectively in respect of the property situated at Door No.8 Appavoo Gramani, II Street, Robertsonpettai, Chennai - 600 028. It is not in dispute that the said Thayammal @ Thayarammal and K.Muniammal were sisters. According to the respondents herein, both the Thayammal @ Thayarammal and K.Muniammal were sisters and they owned the property jointly and they each had got 50% share in the said property and after the death of her husband, Thayarammal lived with her sister Muniammal and they both had executed Wills dated 22.06.1978 and 10.07.1978 respectively in favour of Kannappa Gramini, the father of the respondent/petitioner and he died intestate on 14.11.1997 leaving behind the petitioner in the original petition



and therefore, he filed petitions and got letters of administration. Now the applicants herein have filed these two applications to revoke the letters of administration stating that they are the said Kannappa Gramini's brother's sons and they are close relatives and they should have been arrayed as parties in the original petitions and without impleading them, the Original Petitions are not maintainable. Further the main original petitions for letters of administration have been filed after 27 and 23 years after the death of the testatrices respectively and they have not given any reason for the said inordinate delay. Further there was suppression of partition and other suits and the nature of the property which is also not connected with the suits. But the Court already granted letters of administration on the ground that the Wills executed by Thayammal @ Thayarammal and K.Muniammal were proved and the same were genuine.

8. It is settled proposition of law if any person who has got caveatable interest and files application to revoke the letters of administration or probate on the ground that the persons who are having interest have not been impleaded and back behind them, got probate or letters of administration or the letters of administration or probate obtained fraudulently whereas in this case the applicants have not made out such

ground and the applicants have no caveatable interest and they are neither



legal heirs of Thayammal @ Thayarammal and Muniammal the testatrices

to the Wills dated 22.06.1978 and 10.07.1978 nor legal heirs of the

beneficiary to the Will i.e. Kannappa Gramini. Admittedly, the father of the

present respondents / the petitioner in O.P. to the letters of administration

were the legal heirs of the said Kannappa Gramini and there is no dispute

regarding the relationship of the parties. Therefore, when the said Kannappa

Gramani has got Class-I legal heirs, and dies intestate, the legal heirs of the

Kannappa Gramani are entitled to get the letters of administration.

Whether the property in the Wills is a subject matter of the suit property and

the suits pending between the parties are with regard to Poramboke land or

they got the better title all can be decided only separately in the manner

known to law. The Original Petitions for letters of administration or probate

cannot be converted into a suit for title. Unless the applicants have got

cavetable interest, the Court need not revoke the letters of administration

granted by this Court. Further, the decisions referred to by the learned

counsel for the applicants are not applicable to the present case on hand as

the facts and circumstances of these cases are different. Therefore this

Court finds that the applicants have not proved that they have caveatable

interest and therefore letters of administration granted by this Court on

21.04.2010 cannot be revoked. Hence, the applications are liable to be



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9. Accordingly, these applications are dismissed.

Sd/.P.V.J.
30.03.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU/20.04.2022

COURT OFFICER(O.S.)

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