



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

THURSDAY, THE 10TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.885 of 2022
in
O.P.No.638 of 2008

In the matter of Indian
Succession Act XXXIX of
1925 and

In the matter of the Last Will
and Testament of
Mrs.Meena Bai-Deceased

T.S. PRAKASH CHAND GANG
S/O.LATE THARA CHAND OSWAL JAIN,
RESIDING AT NO.13,
DHARMARAJA KOIL LANE,
SAIDAPET,
CHENNAI - 600 015.

..PETITIONER

-VS-

P.GYANCHAND
NO.13, DHARMARAJA KOIL LANE,
SAIDAPET, CHENNAI - 600 015.

..RESPONDENT

A.No.885 of 2022:

1. MRS.LEELA KUMARI
W/o Late Hansraj,
New No.14, Old No.12,
Dharmaraja Koil Lane,



Saidapet, Chennai - 600 015.

2. H.NIRMAL CHAND,
S/o.Late I. Hansraj,
New No.14, Old No.12,
Dharmaraja Koil Lane,
Saidapet, Chennai - 600 015.

..Applicants

-Vs-

1. T.S. PRAKASH CHAND GANG,
No.13, Dharmaraja Koil Lane,
Saidapet, Chennai - 600 015.

..1st Respondent/Petitioner

2. P.GYANCHAND
No.13, Dharmaraja Koil Lane,
Saidapet, Chennai -600 015.

..2nd Respondent / Respondent

This application praying that this Hon'ble Court be pleased to revoke the order of probate granted on 10/02/2009 in O.P.No.638 of 2008 on the file of this Hon'ble Court for the alleged execution of the WILL dated 16/05/1990.

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

This application has been filed to revoke the order of probate granted by this Court by order dated 10.02.2009 in O.P.No.638 of 2008 in the Will dated 16.05.1990.

2. The first respondent had filed the probate O.P. in O.P.No.638 of 2008 and obtained probate by order dated 10.02.2009. Now after a period of



the probate obtained by the first respondent. The main contention raised by the applicants is that the Testatrix of the Will is one Meena Bai and she died on 17.12.1998 and her husband K.C.Mank Chand pre-deceased her issueless on 08.04.1989. The first applicant is the wife and the 2nd applicant is the son of Late. Hansraj who is the brother's son of the said K.C.Mank Chand. Since the K.C.Mank Chand and Meena Bai had no issues, K.C.Mank Chand's brother's son namely Hansraj who is the husband of the first applicant and father of the second applicant, took care of them and he was enjoying the property and that the Meena Bai never adopted the second respondent and he is not the adopted son of Meena Bai. The Meena Bai and K.C.Mank Chand out of love and affection and since the husband of the first applicant fully took care of them, during their life time, had handed over the original property and title along with possession in favour of Hansraj. After the death of the Hansraj, the applicants were in possession of the property and being the legal heirs of the Hansraj, the applicants alone have right, title interest or whatsoever over the property. The respondents in connivance created documents after documents as if the second respondent is the adopted son of Meena Bai and and Meena Bai had executed a Will and appointed the first respondent as executor to the Will.

The second respondent is son of the first respondent. After the death of the husband of the Meena Bai, they created documents as if, the second



respondent is the adopted son. The first respondent filed O.P. before this Court for probate without impleading the kith and kins and other second class legal heirs and back behind them, obtained the probate fraudulently. Even the second respondent claiming himself to be the son of K.C.Manak Chand and Meena Bai, had filed a suit in O.S.No.2883 of 2019 on the file of the 1st Additional City Civil Court, Chennai, relating to the property for which probate has been granted by claiming rights based on the fraudulently obtained probate order. The second respondent fraudulently created records after records which were hidden for several years and now based on the said records, has filed the above said suit. The Testatrix Meena Bai did not have any child and during the life time of K.C.Manak Chand and Meena Bai till the death of K.C.Manakchand on 04.04.1989, they did not adopt any child for more than 3 decades during their life time. The second respondent, the son of first respondent has created an adoption deed dated 26.04.1990 and the said adoption deed is alleged to have been executed as Doc.No.400/1990 registered on the file of the Sub Registrar Office, T.Nagar, Chennai and behind the back of the applicants, the second respondent colluding with the 1st respondent filed an application for probate of Will and obtained the probate order. Further taking advantage of the order of probate, the respondents were in the habit of harassing the applicants and their family and a civil suit has also been filed in



C.S.No.781 of 2005 for the relief of partition. During the pendency of the said suit for partition, the respondents had filed the O.P. for probate and obtained probate in the year 2009 and after several years, there are civil disputes pending before Civil Courts. Therefore, the probate which has been obtained by the respondents without impleading the kith and kins of Meena Bai is not valid and it is liable to be revoked.

3. Admittedly the property belongs to one Meena Bai and she had no issues and she executed a Will dated 16.05.1990 and the Will is also got probated by this Court in O.P.NO.638 of 2008. A perusal of records and the probate order passed by this Court show that the first respondent had approached this Court for probate of the Will stating that he was the executor and the second respondent is the beneficiary under the Will and he is the adopted son of Meena Bai. The legal heir certificate has also been produced before the probate Court and the copy of the legal heirship certificate in Page 71 of the typed set shows that it has been obtained in the year 2000. Therefore, the second respondent is adopted son of the Meena Bai and the applicants have not established their caveatable interest in the said application and they have not established any valid ground to revoke the probate already granted by this Court by order dated 03.03.2009. Even otherwise, whether the second respondent is the adopted son of Meena Bai or not is not the subject matter of the probate of Will and whether Meena



Bai handed over the property to the father of the second respondent and whether the second applicant is entitled for the title are all not the matters to be decided in the O.P. The probate proceedings cannot be converted into a suit for title as the probate is only for limited purpose that whether the Will is genuine and whether the will is proved in the manner known to law by examining attestors or otherwise. The applicants have not established that they have got caveatable interest or they are the second class legal heirs of Meena Bai.

Therefore, the application is dismissed.

Sd/.P.V.J.
10.03.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022

SU./01.04.2022

COURT OFFICER(O.S.)

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