



**A.Nos. 5103 & 5104 of 2013
IN
O.P.No. 771 of 1995**

C.V.KARTHIKEYAN, J.

A.No. 5103 of 2013 had been filed seeking stay of the operation of the order dated 07.02.1996 in O.P.No. 771 of 1995 granting Letters of Administration to the respondent with respect to the Will dated 16.06.1970.

2. A.No. 5104 of 2013 had been filed seeking to revoke the order dated 07.02.1996 passed in O.P.No. 771 of 1995 granting Letters of Administration to the respondent in respect of the Will dated 16.06.1970.

3. Both these applications were originally filed by Hukmichand Jain against M.Premchand Ranka, the petitioner in O.P.No. 771 of 1995. Subsequently, A.No. 1266 of 2018 was filed and the second to eighth applicants were impleaded by order dated 13.03.2018. Further, the sole respondent died and his legal representatives were impleaded pursuant to order dated 09.07.2019 in memo dated 14.04.2019.



4. O.P.No. 771 of 1995 had been filed under Sections 232 and 276 of the Indian Succession Act, 1925 read with Order 25 Rule 2 of the Original Side Rules of the Madras High Court, seeking grant of Letters of Administration of the Will dated 16.06.1970 executed by Misribai, w/o. Misrilal, who was said to be the adoptive mother of the petitioner M.Premchand Ranka, and who died on 30.05.1971. It was stated that her husband Misrilal had predeceased her. It had been stated that as the adoptive son, the petitioner had become the absolute owner of the schedule mentioned property. It was therefore prayed that Letters of Administration should be granted.

5. In the Petition as originally filed, the petitioner had described himself as M.Premchand Ranka, son of M.K.Champalal and later had struck out the name Champalal in ink and had incorporated the name Misrilal. With respect to the delay in filing the Petition, the reasons had been added in ink in the original petition, stating that the Will dated 16.06.1970 was found only when a locker was opened at Rajasthan. The Petition had been returned by the Registry and one specific return was that all the legal heirs of the deceased Misribai must be disclosed in the Petition.



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It is also seen that the original Will had not been produced but only a carbon copy was produced. Though it was specifically stated that all the legal heirs of the deceased must be disclosed, it had not been so done even after the petition was represented. However it had been taken on board. By an order dated 07.02.1996, Letters of Administration was granted by a learned Single Judge of this Court. The entire order is extracted below:-

“This Petition is filed under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration in respect of the last Will and Testament of late Misribai wife of one Misrilal.

2. The petitioner who claims to be the adopted son of the said couple has moved for grant of Letters of Administration stating that late Misribai executed a Will on 16.06.1970 bequeathing her properties in his favour and after the death of the Testatrix on 30.05.1971 leaving himself and the daughter of the Testatrix Sugam Devi that he as the legatee under the Will is entitled to have the Letters of



Administration in his favour. The daughter of the Testatrix by name Sugam Devi has filed an affidavit stating that her mother late Misri Bai executed her last Will dated 16.06.1970 bequeathing her properties in favour of the petitioner and she has no objection for the grant of Letters of Administration in favour of the petitioner. She is also the attestor to the Will. As the said Sugam Devi is the daughter of the deceased Misri Bai and as she has no objection for the grant of Letters of Administration and she also has stated that Will was executed by her mother on 16.06.1970, the truth of the Will has to be accepted. Publication also was made in one issue of "News Today" dated 13.01.1996 and "Thina Thoothu" dated 05.01.1996. No one has come forward objecting the grant of Letters of Administration in favour of the petitioner or claiming any interest in the estate of the deceased Misri Bai. Therefore, the petitioner as legatee under the Will is entitled to have the Letters of Administration issued in his favour.

3. In the result, issue Letters of Administration to the petitioner on his executing a personal bond for Rs.10,000/- to



the satisfaction of Assistant Registrar (Original Side) High Court, Madras. Petition is allowed.”

7. It is seen that though admittedly, the testatrix had left behind a daughter Sugam Devi, she was not impleaded as a respondent. It was stated that she had filed an affidavit stating that her mother had executed a Will on 16.06.1970 and that she has no objection for grant of Letters of Administration. It was also noted that though publication was effected, nobody had come forward objecting the grant of Letters of Administration. Therefore, Letters of Administration had been granted.

8. It must be kept in mind that Sections 68 of the Indian Evidence Act, 1872, stipulates the manner in which a Will must be proved. The said provision is as follows:-

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive,



and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

[Emphasis supplied]

9. One of the legal heirs of Sugam Devi had originally filed these applications seeking to revoke the grant, claiming that Sugam Devi had no knowledge about the filing of the Original Petition or about the Will. She was not impleaded as a respondent. Notice had never been directed to her. Though she had been stated to be the attesting witness, she had not been examined before the Court. It had been further stated that though the petitioner claimed that he was the adopted son, documents had not been produced to prove such adoption. In effect, it had been stated that the order was obtained by playing fraud and by deliberate suppression of



material facts.

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10. Section 263(b) of the Indian Succession Act is also follows:-

“Section 263: Revocation or annulment for just cause- *The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation. —Just cause shall be deemed to exist where—

(a)

263-(b) *the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;*

11. It is also seen that though the Will was dated 16.06.1970, the application seeking Letters of Administration was filed only in September

1995. The only reason given for the delay in filing the said application



was that a locker was opened in Rajasthan and the Will was found and therefore, there was a delay in filing the Petition.

12. In the affidavit filed in support of the present applications, it had been stated that Misribai, who is said to be the testatrix had left behind four properties at Chennai. The petitioners claimed that they are the absolute owners as the lawful legal heirs of Sugam Devi, who, according to them, died intestate on 27.08.2009. With respect to the delay in filing the Petition to revoke the Letters of Administration, the first petitioner had stated that he had permanently settled at Mumbai long back and that he came to know that the respondent herein was dealing with the properties and that in reply to the notice issued, the respondent had stated that he had been adopted by Misribai and that Letters of Administration had also been granted to him.

13. The petitioner specifically stated that he had caused inspection of the documents filed before Court and stated that the signatures of Misribai were forged in the Will. He also stated that Misribai knew only Hindi and did not know English or Tamil. He also stated that



the Will was typed in English and was signed in Hindi by Misribai. He stated that the witness had made an endorsement that they had explained the contents of the Will in Tamil but it was further contended that Misribai did not even know Tamil. He also stated that the signatures in the first and second page deferred. He very specifically stated that the signatures of Sugam Devi, were also not the signatures of Sugam Devi and had been forged by the respondent. He very specifically stated that Sugam Devi did not have knowledge about the filing of the Original Petition or about the Will. He also stated that the respondent had not produced any document to show that he had been adopted by Misribai and Misrilal. He very specifically stated that Sugam Devi should have been shown as a respondent to the Original Petition since she had a caveatable interest as daughter of Misribai. It was very specifically stated that the Will had not been proved as stipulated under Section 68 of the Indian Evidence Act 1872.

14. The reason for delay in filing the Original Petition was also questioned and disputed. It was finally stated that the Will produced was a forged document and that Sugam Devi had a caveatable interest and should have been impleaded as a respondent and more specifically it was



stated that her signatures in the consent affidavit was also forged and it was therefore stated that the Letters of Administration granted on 07.02.1996 should be revoked and the Will should be tested in manner known to law.

15. In the counter affidavit filed, the petitioner in the Original Petition reiterated that he was the adopted son of Misribai and Misrilal. He stated that his mother Misribai had executed a Will dated 16.06.1970. He stated that his adoptive father had died in the year 1948 and Misribai died in the year 1971. She executed the Will on 16.06.1970. He stated that he has been in possession and enjoyment of the properties bequeathed to him. He stated that his sister Sugam Devi had left the house after having married Harakchand Khiwasra.

16. He stated that he had filed O.P.No. 771 of 1995 for grant of Letters of Administration which had been allowed by order dated 07.02.1996. He stated that his sister Sugam Devi died on 27.08.2009 and had filed consent affidavit stating no objection for the grant of Letters of Administration. He also stated that earlier one Shantha Devi, the second wife of M.K.Champalal and her son Kishanlal Ranka, had filed A.Nos.



2987 & 2988 of 2000 seeking revocation of the Letters of Administration.

The said application was contested and by an order dated 02.08.2001, the Letters of Administration was revoked.

17. He stated that the said Shantha Devi and Kishanlal Ranka also filed a suit in O.S.No. 3210 of 1998 seeking mandatory injunction and permanent injunction with respect to the suit properties. He further stated that the Division Bench had allowed O.S.A.No. 367 of 2001 filed by him, holding that the said two individuals had no locus standi or right to maintain an application to revoke Letters of Administration. The suit in O.S.No. 3210 of 1998 was also dismissed as withdrawn. Both Shantha Devi Ranka and Kishanlal Ranka died on 29.10.2013 and 07.08.2013 respectively.

18. He stated that the present applications seeking revocation of Letters of Administration had been filed 18 years after the date of the order and stated that the applications are barred by the law of limitation.

19. He specifically stated that the Will dated 16.06.1970 is not a



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forged document. He reiterated that the Will had been duly executed by Misribai in manner known to law. It also contains the signatures of Misribai. He stated that she signed the Will only after knowing the contents of the Will. He also stated that the petitioners herein claimed through their mother Sugam Devi but very specifically pointed out that Sugam Devi had not protested against the grant of Letters of Administration and had actually, granted consent. He therefore stated that the present applications have been filed with mala fide intention. He stated that when Sugam Devi herself had not contested and had actually consented for grant of Letters of Administration, it would not lie in the mouth of her legal representatives, to seek revocation of grant of Letters of Administration of the Will. He specifically pointed out that Sugam Devi was also one of the attesting witness and that she had filed her consent affidavit and it was only after examining all the documents and after coming to a personal satisfaction, did the learned Single Judge of this Court grant the order of Letters of Administration. He stated that the Will had been proved in manner known to law and therefore, urged that these Applications should be dismissed.

20. Heard arguments advanced by Mr. N.Nagu Sah, learned



counsel for the applicants and Mr.S.Sadasharam, learned counsel for the respondents.

21. It is the contention of Mr.N.Nagu Sah, learned counsel for the applicants that the Petition in O.P.No. 771 of 1995 suffers from non disclosure of a legal representative, Sugam Devi, the daughter of the testatrix Misribai. The learned counsel stated that Sugam Devi was not even impleaded as a respondent. He stated that it had been contended in the Original Petition that she had given her consent affidavit. However, if she had been impleaded as a respondent and if notice had been directed to her then she could have raised objections about the genuineness of the consent affidavit. Since she was not made a party, learned counsel contended that the order granting Letters of Administration stands vitiated. The learned counsel pointed out that there had been no compliance of the procedure envisaged under Section 68 of the Indian Evidence Act which requires that atleast one attesting witness must be examined as a witness. The learned counsel pointed out the order granting Letters of Administration wherein it had been observed that since Sugam Devi had given her consent affidavit and she was herself the attesting witness, oral evidence was not required. However, it is the contention that non



disclosure of the daughter Sugam Devi of the testatrix in the petition and non impleading of Sugam Devi as a respondent clearly exposed the fraud committed on Court.

22. The learned counsel further stated that the respondents cannot take advantage of earlier orders of this Court in O.S.A.No. 367 of 2001 since the orders therein were passed under totally different circumstances and the respondents in that Original Side Appeal had laid their right and claim on the basis of a partition deed and on the basis of a settlement deed.

23. The learned counsel stated that the order granting Letters of Administration requires to be revisited. He also pointed out that in the Original Petition as first filed, the first respondent, had described himself as the son of his biological father Champalal and thereafter that name was struck out and the name Misrilal had been included. The learned counsel stated that no document had been produced relating to the alleged adoption. He stated that the Will was forged and opportunity must be given to contest the grant of Letters of Administration.



24. Mr.S.Sadasharam, learned counsel for the respondents however strongly disputed the contentions raised. The learned counsel pointed out that Sugam Devi, the daughter of Misribai had given her consent affidavit. The consent affidavit had been produced in Court. She was also one of the attesting witnesses. In view of this fact, the Court had correctly come to a conclusion that oral evidence was not required. The learned counsel further pointed out that even on the earlier occasion, there was an application filed seeking to revoke the Letters of Administration and finally by a Judgment of the Division Bench in O.S.A.No. 367 of 2001, dated 13.03.2022, the grant of Letters of Administration had been affirmed and upheld. The learned counsel specifically pointed out that when Sugam Devi was alive, for a long period of 13 years, she had not questioned the grant of Letters of Administration. After her death, her legal representatives had filed the present application nearly after 17 years from the date of grant of Letters of Administration. The learned counsel therefore stated that the application is barred by the law of limitation and in this connection drew reference to Article 137 of the Limitation Act 1963. The learned counsel stated that in view of the clear bar by the law of limitation, the applications have to be dismissed.



25. I have carefully considered the arguments advanced and also perused the materials available on record.

26. The following facts are not disputed:-

(i) The first respondent herein M.Premchand Ranka, since deceased, had filed O.P.No. 771 of 1995 seeking Letters of Administration relating to the Will dated 16.06.1970 said to have been executed by his adoptive mother Misribai;

(ii) He had not impleaded Sugam Devi, the daughter of Misribai as respondent in the petition;

(iii) He had however filed the consent affidavit of Sugam Devi, and

(iv) Considering the documents, a learned Single Judge of this Court by order dated 07.02.1996 had granted Letters of Administration;

27. The said order is again extracted in entirety for better and



complete appreciation:

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“This Petition is filed under Sections 232 and 276 of the Indian Succession Act for grant of Letters of Administration in respect of the last Will and Testament of late Misribai wife of one Misrilal.

2. *The petitioner who claims to be the adopted son of the said couple has moved for grant of Letters of Administration stating that late Misribai executed a Will on 16.06.1970 bequeathing her properties in his favour and after the death of the Testatrix on 30.05.1971 leaving himself and the daughter of the Testatrix Sugam Devi that he as the legatee under the Will is entitled to have the Letters of Administration in his favour. The daughter of the Testatrix by name Sugam Devi has filed an affidavit stating that her mother late Misri Bai executed her last Will dated 16.06.1970 bequeathing her properties in favour of the petitioner and she has no objection for the grant of Letters of Administration in favour of the petitioner. She is also the attestor to the Will. As the said Sugam Devi is the daughter of*



the deceased Misri Bai and as she has no objection for the grant of Letters of Administration and she also has stated that Will was executed by her mother on 16.06.1970, the truth of the Will has to be accepted. Publication also was made in one issue of “News Today” dated 13.01.1996 and “Thina Thoothu” dated 05.01.1996. No one has come forward objecting the grant of Letters of Administration in favour of the petitioner or claiming any interest in the estate of the deceased Misri Bai. Therefore, the petitioner as legatee under the Will is entitled to have the Letters of Administration issued in his favour.

3. In the result, issue Letters of Administration to the petitioner on his executing a personal bond for Rs.10,000/- to the satisfaction of Assistant Registrar (Original Side) High Court, Madras. Petition is allowed.”

28. It is seen that the attesting witness had not been examined as a witness. It had been contended that the daughter Sugam Devi had filed an affidavit that her mother Misribai had executed the Will dated 16.06.1970. In the affidavit, she had stated that she has no objection for



grant of Letters of Administration. She was also said to be an attester of the Will. It was therefore contended in the order that the truth of the Will has to be accepted. It was also pointed out that publication had been effected and that no one had come forward objecting for grant of Letters of Administration. It was therefore held that the petitioner therein was entitled for grant of Letters of Administration.

29. Section 68 of the Indian Evidence Act, 1872 is as follows:-

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been



executed is specifically denied.”

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30. A reading of the provision shows that if a document is required by law to be attested and a Will is such a document which has to be attested as provided under Section 63(c) of the Indian Succession Act 1925, then atleast one attesting witness must be **“called”** for the purpose of proving the execution of the Will.

31. Section 63(c) of the Indian Succession Act is as follows:-

“(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. ”

32. It is thus seen that any Will must have atleast two attesting



of proof of the Will to tender evidence, to prove execution and attestation.

This is a mandatory condition by law.

33. In *CRP (PD).No. 2834 of 2010 dated 07.01.2011, S.Saravanan & 2 Others Vs. R.Selvakumar*, it had been held as follows:-

“5. Admittedly, the documents which are sought to be filed are affidavits sworn to by the persons, who are not parties to the suit and under Order 7, Rule 14 (iii), a document which is sought to be produced in Court by the plaintiff and which has not been produced along with the plaint or not mentioned in the list annexed to the plaint cannot be received in evidence, without the leave of the Court. Therefore, the Court has got power to permit the plaintiffs to file additional documents at a later stage, even though the same was not mentioned in the plaint or not filed along with the plaint. This position has been reiterated in the judgment reported in (2006) 4 M.L.J. 1061(supra). Though a document can be permitted to be received at a later stage, we will have to see whether the affidavits of living persons can be received in evidence during trial. Under Order 19, Rules 1



and 2 of C.P.C. the Court may at any time for sufficient reason order that particular facts may be proved by affidavits on such condition as the Court thinks reasonable. As per sub rule (30 of Order 19 of C.P.C., the Court may at the instance of either party, order the attendance for cross-examination of the deponent, when evidence was given by affidavit. Therefore, by a combined reading of Order 19, Rules 1 and 2, it is made clear that an affidavit can be allowed to be received in evidence only on condition that the deponent must be made available for cross-examination and no party has got right to file the affidavit of a living person as of right, unless the Court permits the same subject to the condition stated under Order 19, Rules 1 and 2 of C.P.C. This has been made clear in the judgment reported in A.I.R. (1949) Madras 689 wherein it has been held as follows:-

" Affidavit evidence is not permitted except where there is an agreement between the parties that evidence may be taken by affidavit or where under Order 19, Rule 1 of C.P.C. there is an order of Court that particular facts may be proved by an affidavit or that affidavit of any witness may



be read at the hearing. Hence, the only basis on which the affidavit of a living person not called into the witness box can be acted upon as admissible evidence as that should be capable of being regarded is a statement in writing complying with the conditions prescribed in Section 32 of the Indian Evidence Act. "

6. Further, the Hon'ble Supreme Court in the judgment reported in 1988 S.C. 1381 (Sudha Devi Vs. M.P.Narayanan) has held that the affidavits are not included in the definition of 'evidence' in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reason, the Court passes an order under Order 19, Rule 1 or 2 of C.P.C. As per Order 19, Rules 1 and 2, the Court can permit the affidavit to be filed on condition that the defendant being available for cross- examination and it is not open to the revision petitioners to file an affidavit and request the Court to receive the same in evidence as of right. The other decisions relied upon by the learned counsel appearing for the revision petitioners will not apply to the facts of the present case on hand.



7. Therefore, I am of the opinion that the Court below, considering all these aspects has rightly dismissed the application and hence, I do not find any reason to interfere with the order of the Lower Court and hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed sd To The Learned XV Assistant Judge, City Civil Court Chennai.”

34. In the instant case, Sugam Devi was said to be the attesting witness. She was alive on the date of the order granting Letters of Administration. She had filed an affidavit. She must have been called to tender evidence to speak about the affidavit and about her consent for grant of Letters of Administration and more importantly about the attestation of the Will and its execution.

35. In **2001 2 CTC 466 [K.Jeyaraman Vs. K.Rajagopalan and another]**, it had been held in paragraph Nos. 17 to 19 as follows:-

*“17. The Court further observed thus:
The omission to issue citations to persons, who
should have been appraised of the probate*



proceedings may well be, in a normal case a ground by itself, for revocation of the grant. But this is not a discretion irrespective of other considerations arising from the proved facts of a case. The law has vested a judicial discretion in the Court to revoke a grant where the Court may have prima facie reasons to believe that it was necessary to have the Will proved afresh in the presence of interested parties.” (Italics Supplied)

18. *Having regard to the clear pronouncement of the Supreme Court, we are unable to agree with counsel for the appellants that in all cases where revocation is sought, the Court must allow the parties to adduce evidence regarding the genuineness of the Will. Where it is established that a part who should have been given notice had not been given such a notice thereby depriving him of the opportunity to file a caveat, it is not the law that the court must, as a rule, nevertheless permit the respondent in the revocation proceedings to prove the genuineness of the Will in the same proceedings.*



19. As observed by the Supreme Court, in a normal case the Rule is to revoke the grant of probate, once it is established that the notice required to be given to a party had to been given. As to whether the court dealing with the revocation application should permit the propounder of the Will to establish the genuineness of the Will in the same proceedings is a matter of judicial discretion having regard to all the circumstances in the case.”

36. It was also held that the failure to implead all the necessary parties particularly those who have caveatable interest is itself a ground of revocation of Letters of Administration.

37. In *1995 2 L.W 65 [G.Nagappan Vs. Kalaiselvam]*, paragraph Nos. 6 & 7, it had been held as follows:-

“6. In the original petition filed by the respondent for grant of probate, he has stated in paragraph 4 thereof that Palani Chettiar, husband of Saraswathi pre-deceased her and she had not issued and “as such, but for the will no



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other person is entitled to her share in the schedule mentioned properties” (underlying by us). This Statement contained in paragraph 4 of the Original Petition is obviously false. Even according to the respondent, his father Balakrishnan lived at the time of the original Petition and he died only three months back. Balakrishnan is undoubtedly an heir to Saraswathi and that too, a nearer heir. His sisters Poongavanam, Kumari and Vijaya will also be nearer heirs than the respondent. The respondent ought to have disclosed their names in the petition and informed the Court that they are the nearer relatives and obtained the orders of the court for issue of notice to them in ascertaining whether they contest the will or not. He did not do so. It may be that the respondent is disputing the status of Pavunambal and her children Saroja, Nagappa (appellant herein) and Chinnaponnu, but he is not disputing the status of Balakrishnan and his sisters. Hence he ought to have impleaded them as parties to the present proceeding particularly in view of the provision in the Original Side Rules. Under O. 25, Rule 4 of the Original Side Rules, an application for probate shall be made by a petition with the will



annexed, accompanied, if the will is not in English by an Official translation thereof in English and such application shall be in Form No. 55 or as near thereto as the circumstances of the case may permit. The language is mandatory and the application ought to be in Form 55. Form 55 found in Appendix II in Cl. 7 thereof, which was introduced by R.O.C. No. 3618-A/89 F1, reads as follows:

“The petitioner has impleaded all the next of kin or other persons interested as party/respondents. There is no next of kin or other person interested to be impleaded.”

No doubt the form was amended only in 1991 but the Court was always insisting upon such impleading of nearer heirs. The petitioner was guilty of not even disclosing the particulars of such persons. The petitioner ought to have impleaded his father Balakrishnan and his sisters as parties. The appellant and his two sisters were undoubtedly interested, parties to the Original Petition and notice should have been issued to them. Even if it can be said that they cannot claim to be legal heirs unless they prove their status they were interested parties



and they ought to have been made respondents in the original petition.

7. In as much as the respondent herein had made a false suggestion in the Original Petition by stating in paragraph 4 that but for the will no other person was entitled to the property of Saraswathi and concealed from the Court, facts material to the case, viz., the existence of his father Balakrishnan and his three sisters as well as the claims of the appellant and his two sisters, the proceedings to obtain grant were defective in substance as the necessary parties were not impleaded thereto.”

38. It is thus seen that there has been complete failure of providing material information in the petition seeking grant of Letters of Administration. Suppression of a material fact itself is considered to be a fraud on the Court.

39. In this connection the relevant paragraph in **1994 1 SCC 1 :: AIR 1994 SC 853 [S.P.Chengalvaraya Naidu Vs. Jagannath (Dead) by LRs & Ors]** are as follows:-

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief



Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

5. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons



from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ...”

[Emphasis Supplied]

40. For better reference, Section 263(b) of the Indian Succession Act, 1925 is as follows:-

“263 Revocation or annulment for just cause. —
The grant of probate or letters of administration may be revoked or annulled for just cause.

*(b) the grant was obtained fraudulently by making a false suggestion, or by **concealing** from the Court something material to the case; ”.*



[Dr.R.A.Venkatesan Vs. D.Jenbagalakshmi and others] it had been held

as follows:-

“15. All persons who have "an interest in the estate of the deceased" and are entitled to enter caveat and oppose the grant of probate under Section 263 of the Act are also entitled to apply for revocation of the probate. It is well established that any interest, however slight is sufficient to entitle a party to oppose Letters of Administration/Probate.

16.

17. As per Section 263, Explanation (b), Letters of Administration may be revoked where "the grant was obtained fraudulently by making false suggestion or by concealing from the Court something material to the case". Section 263, Explanation (c) states that "just cause exist where the grant is obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or



inadvertently".

18. Considering the scope of "locus standi" of the person seeking revocation and the test for determination of locus standi, referring to various decisions, in 1995-2 LW 852 [S.Panchanathan v. Elappan (died) and 5 others], it was held as under:-

22. The question as to who is entitled to file an application under Section 263 of Indian Succession Act, has been the subject matter of several decisions of various High Courts. In Sadananda Pyme v. Harinam Sha, AIR 1950 Cal. 179, a Division Bench of the Calcutta High Court held that a person holding an interest in the property in the event of intestacy is one, who Will have locus standi to file an application under Section 263 of the Indian Succession Act. In Promode Kumar Roy v. Sephalika Dutta, AIR 1957 Cal 631, a Division Bench of that Court held that person who has acquired an interest in the testator's estate, though after his death, by reason of the mortgage transfer



by the testator's son and who is undoubtedly also a creditor of the testator's said son, whom the alleged Will purports to disinherit has plainly locus standi to apply for revocation of the grant, particularly when his allegation is that the grant was obtained in fraud of the creditors. In the **Goods of Ganapati Sarkar, AIR 1959 Cal. 227**, a single Judge of that Court held that a slightest interest in the estate Will entitled one to be a party to probate proceedings. In another Bench decision the Calcutta High Court in **Annapurna Kumar v. Subodh Chandra Kumar, AIR 1970 Cal. 433**, has held that any interest, however, slight, and even a bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary paper. In **Rao & Sons v. Chandamon del, AIR 1971 Orissa 95**, a single Judge of that Court went to the extent of holding that creditors of the heirs at law of the testator were entitled to ask for revocation of probate and enter caveat during probate proceedings in response to a general citation. In **Sima Rani Mohanti v. Puspa Rani Pal, AIR 1978 Cal. 140**, a



*Division Bench of that Court reiterated the proposition laid down in **Annapurna Kumar's case, AIR 1970 Cal. 433 (supra).***

21. Referring to the above judgments, in (2007) 6 MLJ 290 [S.Bhaskaran and another v. R.Loganathan] (in which one of us was a member RBIJ), the Appellant claimed to have purchased the property through Ranganayaki who is the Class I heir of Purushothaman. Observing that any interest howsoever slight, is sufficient to entitle to oppose the grant, the Division Bench of this Court held as follows:-

"Purchasers of property from a Class I heir, have caveatable interest in the probate proceedings initiated in respect of the Will executed by the husband of the said Class I heir, especially when the said Class I heir is alleged to have only life interest over the property."

22. In the case on hand when the property was already said to have been disposed of by way of settlement deed in favour of Dhanapal and subsequently sold, the Respondents definitely have interest in the property to oppose the Letters of



Administration. More so, when the Letters of Administration was sought for nearly 30 years after the death of Perundevi Ammal.”

[Emphasis Supplied]

42. In 2017 (1) SCC 257 [Ramesh Varma (dead) Vs. Lajesh Saxena and another] it had been held as follows:-

“13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written



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statement.

14. In *Savithri v. Karthyayani Amma* [Savithri v. Karthyayani Amma, (2007) 11 SCC 621] this Court has held as under : (SCC p. 629, para 17)

“17. ... A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the



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propounder to explain them to the satisfaction of the court before it can be accepted as genuine.””

43. It had been held that suppression of a document itself is considered as fraud. Suppression of a material fact therefore stares on the face of the respondent herein.

44. The main contention of the learned counsel for the respondent is on the issue of limitation.

45. The learned counsel placed reliance on Article 137 of the Limitation Act, which is as follows:-

“137. Description of application: Any other application for which no period of limitation is provided elsewhere in the Division.

Period of Limitation: Three Years Time from which period begins to run: When the right to apply accrues.” ”

46. The learned counsel placed reliance on the Judgment of the

Hon’ble Supreme Court *AIR 2019 SC 3318 [Ramesh Nivrutti Bhagwat*



Vs. Dr.Surendra Manohar Parakhe], wherein the Hon'ble Supreme

Court had held as follows:-

“15. Recently, in Sameer Kapoor and Another v. State through Sub Divisional Magistrate South, New Delhi and Others, 2019 Online SCC 630 (SC), the context was slightly different; the probate was issued by a foreign court. The executor sought letters of administration in an Indian court (like in the present case), under Section 228. The court dealt with the objection of limitation, and noticed, firstly, that Kunvarjeet Singh Khadapur (supra) had ruled about applicability of Article 137 for grant of probate in the first instance. Drawing a distinction from the grant of probate (or letters of administration) and the recognition of that, under Section 228, the court (in Sameer Kapoor (supra)) held as follows:

“it can be said that in a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the court to perform a duty. Probate or letters of administration issued by a competent court is



conclusive proof of the legal character throughout the world. That the proceedings filed for grant of probate or letters of administration is not an action in law but it is an action in rem. As held by this Court in the case of Kunvarjeet Singh Khandpur (supra), an application for grant of probate or letters of administration is for the court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.”

*16. The decision in **Lynette Fernandes v. Gertie Mathias, (2018) 1 SCC 271**, dealt with the precise issue of the period of limitation applicable for an application for cancellation of a probate or letters of administration. This court held as follows:*

“One must keep in mind that the grant of probate by a Competent Court operates as a judgment in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but



against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation Under Article 137 of the Limitation Act in proceedings for revocation of probate. In this matter, as mentioned supra, the Appellant was a minor at the time of grant of probate. She attained majority on 09.09.1965. She got married on 27.10.1965. In our considered opinion, three years limitation as prescribed Under Article 137 runs from the date of the Appellant attaining the age of majority i.e. three years from 09.09.1965. The Appellant did not choose to initiate any proceedings till the year 25.01.1996 i.e., a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the Appellant to show as to why she did not approach the Court of law within the period of limitation. At the cost of repetition, we observe that the Appellant failed to produce any evidence to prove that the Will was a result of fraud or undue influence. The same Will has remained un challenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of



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31 years in approaching the Court for cancellation or revocation of grant of probate.”

17. In the present case, the letters of administration were granted in ancillary proceedings on 25.11.1994. The High Court took note of the fact that the notice of motion (in the disposed of proceeding) was filed on 29.03.1997; it was withdrawn on 01.04.1998. The petition for revocation of the letters of administration were filed on 29.7.1999. Proceedings were clearly time barred, given that the original grant of the ancillary letters took place on 25.11.1994; they constituted notice to all concerned. Clearly, the petition for revocation of letters of administration was time barred. It is accordingly held that there is no infirmity in the concurrent findings impugned; the appeal fails and is dismissed with no order as to costs.”

47. It is the case of the respondent that Sugam Devi had not raised any objection during her lifetime and therefore her legal representatives, namely, the applicants herein cannot put up any ground seeking revocation of Letters of Administration. However as correctly



no material available on record in O.P.No. 771 of 1995 that Sugam Devi had knowledge about the filing of the petition. She had not been shown as a respondent. She had not been invited to tender evidence. Her name has not even been disclosed in the Petition. It is therefore clear that the objections raised on this ground cannot be sustained.

48. With respect to limitation, it must be held that fraud overrides every act. There cannot be a plea of limitation when an order had been obtained by deliberate suppression of a material fact. The issue of limitation cannot be put to advantage, since the entire order obtained in O.P.No. 771 of 1995 is the result of blatant suppression of a material fact.

49. It is thus seen that when there is material suppression and failure to comply with the statutory provisions, particularly Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872, the petitioner in O.P.No. 771 of 1995 will have to be called upon to prove the Will in solemn form in manner required by law.

50. In view of the above reasons, these Applications stand allowed I have no hesitation in revoking the order dated 07.02.1996 granting Letters of Administration in O.P.No. 771 of 1995.



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Vsg

25.11.2022

Index :Yes/No
Internet:Yes/No

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C.V.KARTHIKEYAN, J.

vsg

Pre-delivery Order made in

**A.Nos. 5103 & 5104 of 2013
IN
O.P.No. 771 of 1995**

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