



C.R.P.No.3402 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3402 of 2022
and C.M.P.No.18097 of 2022

Pooukuzhali

... Petitioner

Vs.

1. Vairamanai
2. Subramanian
3. Abinaya
4. Anuja
5. Adhavan
6. Madhy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order passed by the Principal District Judge at Pondicherry dated 08.09.2022 passed in I.A.No.135 of 2022 in O.P.No.44 of 2020.

For Petitioner : Mr.V.Vasanthakumar

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below, dismissing the petition filed by the revision petitioner, seeking to reject the probate Original Petition filed by the first respondent.



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2. The first respondent herein filed original petition in O.P.No.44 of 2020, seeking grant of Probate of the Will, dated 25.06.2009, allegedly executed by his father Selvarassou @ Pudukai Selvam. The petitioner herein, who was arrayed as 5th respondent in the Original Petition, filed the instant application in I.A.No.136 of 2022, seeking rejection of the Original Petition under Order VII Rule 11(d) r/w 151 of CPC on the ground that the Probate Original Petition, filed by the first respondent, who was the sole beneficiary under the Will was not maintainable. It was the case of the petitioner that the probate Original Petition under Section 276 of the Indian Succession Act, 1925, can be filed only by the executor named in the Will in view of Provision of Section 222 of the Indian Succession Act. The Court below rejected the said contention of the revision petitioner by relying on the judgment rendered by the Division Bench of Karnataka High Court that the sole beneficiary can apply for probate of Will, since no executor had been appointed under the Will. Aggrieved by the said order, the petitioner has come up by way of this revision.

3. The learned counsel for the petitioner by taking this Court to provisions of Section 222 and 276 of the Indian Succession Act, submits that only in cases where executor had been named in the Will, he is entitled to seek grant of Probate,



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in other cases where no executor had been named in the Will, the legatee under the Will can only seek letters of administration. Therefore, it is the contention of the learned counsel for the petitioner that original petition seeking Probate is not maintainable and liable to be rejected.

4. I do not agree with the contention made by the learned counsel for the petitioner. The executor of the Will seeks grant of Probate not for his own benefit, but he acts for the benefit of the legatees of the Will.

5. The Hon'ble Apex Court of India in a decision reported in **2016 (13) SCC 253** in *Vatsala Srinivasan vs. Shyamala Raghunathan*, when a question arose, whether the Probate Original Petition filed by a executor Will abate on the death of executor or it can be continued by legatees under the Will, held that the proceedings for grant of Probate and letters of administration are of same nature and both the proceedings relate to assessment of genuineness and authenticity of Will. After referring to various earlier judgments, it was held that the legatees in a Will can continue Probate proceedings and letters of administration can be granted, however, treating the prayer as the one for letters of administration. The relevant observations of the Apex Court is as follows:



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(vi) *In view of law laid down in the aforesaid judgments, the Division Bench observed that both the proceedings with regard to the Probate and the letters of administration are of the same nature and therefore, the proceedings cannot abate. The essence of both the proceedings is the same and they relate to ascertainment of genuineness and authenticity of the Will (Emphasis Supplied). By considering the aforesaid judgments, the Division Bench has rightly confirmed the view expressed by the learned Single Judge.*

(vii) *We also agree with the view expressed by the Division Bench of this Court which was followed in the judgment delivered in 1963 SCC online Mad 46 in Govind M. Asrani Vs. Jairam Asrani and other, as the logic behind dismissing the appeal, in our opinion, is just and proper. In any case, so as to establish the Will, the Probate proceedings are required. The function of the executors is to execute the Will. The main purpose can be very well achieved by obtaining a letter of administration, so that the property can be administered by the administrator as per Section 232 of the Succession Act. In the instant case, the said practice has been rightly followed.*

(viii) *We are also in agreement with the view expressed in the impugned judgment, which has also relied upon the law laid in **Jadeja Pravinsinhji Anandsinhji vs. Jadeja Mangalsinhji Shivsindhji and Ors, AIR 1963 Gujarat 32** in which it has been held:*



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6.....*An executor, in the capacity of an executor, has no personal interest in the estate of the deceased.*

.....*The object of the executor in these proceedings is to get an adjudication not of any dispute in which he is personally interested, but the objects is to propound the Will of the deceased for the benefit of those who take a interest of the Will.*

IX. It is, therefore, clear that the executor in applying for probate is not fighting a personal action but fighting for the interests of all the beneficiaries under the Will. Therefore, the action of an executor in applying for a probate is not in substance a personal action and as observed earlier by me the maxim, actio, personalis moritur cum persona could not apply to such a case. If the executor fails in his duty, any of those whom, he represents are entitled to intervene and carry on the proceedings with a formal modification that the prayer must then be for letters of administration with the Will annexed.

6. In view of the authoritative pronouncement made by the Hon'ble Apex Court, the object for grant of Probate as well as letters of administration are one and the same. Both for the benefit of the legatee under the Will. Therefore, even though the first respondent herein prayed for grant of probate, having regard



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to the fact, he is the sole legatee under the Will, the Court can very well grant letters of administration instead of probate, in case, he succeeds in proving the validity and genuineness of the Will. Therefore, the order passed by the Court below, dismissing the petition to reject the Probate Original Petition, calls for no interference by this Court.

7. The learned counsel for the petitioner relied on the Division Bench of the Bombay High Court judgment reported in **2011 (2) Mh.L.J., (VATSALA SRINIVASAN VS. NARISIMHA RAGHUNATHAN since deceased, SHYAMALA RAGHUNATHAN)**. The observations of the Division Bench in paragraph 15 of the said judgment is relevant to decide the issue involved in this matter and the relevant portion of the above said judgment reads as follows:

“15. The judgment of the Supreme Court is therefore authority for the principle that the right to seek probate of a Will executed by a deceased testator is personal to the executor appointed under the will. Upon the death of the executor the heirs of the executor cannot be substituted in his place. However, this would not debar the legatee and upon the death of the legatee his heirs from seeking substitution.”

A reading of the above said judgment would make it clear that when a petition for probate is filed by the executor of the Will and in case of his death, the



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legatees can very well substitute themselves as petitioner and proceed with the matter. In the case on hand, there is no executor appointed under the Will.

Legatees of the Will has filed this petition with a prayer for grant of probate. Though technically, the petitioner who is a sole legatee under the Will can only seek Letter of Administration, the technicalities of law will not come in the way of justice. It would be appropriate to mention the observation of the Hon'ble Apex Court in *S.Nagaraj and others vs. State of Karnataka and another* reported in *1993 Supp (4) SCC 595*.

“Justice is a virtue which transcends all barriers. Neither the technicalities of law nor the rules of procedure will come in it's way.

.....

.....

Even law bends before justice”

Therefore I have no hesitation in holding that the present petition filed by legatee can be treated as the one for grant of Letters of Administration instead of probate and proceed with in accordance with law.

8. The learned counsel for the petitioner prayed this Court, in the impugned order the Court had observed that there is no dispute with regard to the genuineness



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of the Will. A reading of the counter affidavit filed by the petitioner herein would suggest that there is a serious dispute with regard to the genuineness of the Will.

Therefore, the Court below has to go into genuineness of the Will and dispose of the O.P., in the manner known to the law.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.10.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
jai

To
The Principal District Judge,
Pondicherry.



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S.SOUNTHAR, J.

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