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C.M.A.No.4316 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

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1. Angayee
2. Ammachi
3. Varadahrajan
(P2 and P3 added as parties
as per order in I.A.No.1 of 20169
dated 01.04.2019-Petition amended
as per Order in I.A.No.2 of 2019,
dated 03.04.2019)

...Appellants

Vs.

Nil

... Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 299 of the Indian Succession Act, 1925, against the fair and decretal order dated 05.07.2019 made in Probate O.P.No.5 of 2018 on the file of the Principal District Judge, Namakkal District.

For Appellant : Mr.C.Veera Raghavan

J U D G M E N T

Aggrieved by the order passed by the Principal District Judge, Namakkal dated 05.07.2019, rejecting the petition filed by the appellants for grant of probate, the appellants/petitioners are before this Court.



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2. The brief facts stated in the petition are as follows:-

The properties situated at Chandrasekarapuram Village, which are the petition mentioned properties, were the ancestral properties of one Alagammal, the paternal grand mother of the petitioner, Muthu Padaiyachi, the paternal grand father of the petitioner and Ammaiyappan, the father of the petitioner since 1972 by virtue of a joint Patta. Patta has been granted in the name of the aforesaid persons. They have been enjoying the properties jointly. It is the case of the petitioner that a joint Will was executed by the said Alagammal, Muthu Padaiyachi and Ammaiyappan on 27.04.1984 bequeathing the properties on the first petitioner.

3. The recitals of the Will would indicate that the rights have been given to the daughter of Alagammal and Muthu Padaiyachi, one Arayee and her husband Arumuga Padaiyachi to enjoy the property for a period of 5 years commencing from 15.05.1980. That apart, there is also a recital, which would indicate that the children of Arayee could continue to remain in the property enjoying its usufructs till they got married. It



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appears that the said Alagammal died on 12.06.1985. Muthu Padaiyachi died on 07.09.1988 and Ammaiappan died on 29.01.1996. On their demise, it is the case of the first petitioner that the properties devolved upon her. It is also the petitioners' case that the Will had been signed by her paternal aunt, Chinnapillai @ Ammachi and by Bakkiyam and Varadharaj, the legal heirs of other aunt, Angayee, Therefore, the said Angayee had filed a petition in O.P.No.5 of 2018 for grant of probate in respect of the Will dated 27.04.1984 executed by Alagammal, Muthu Padaiyachi and Ammaiappan. This petition was dismissed by an order dated 18.06.018 on the ground that the petitioner had not proved the Will in the manner known to law by examining the attestors of the Will. This order has been taken up on challenge by the petitioner before this Court in C.M.A.No.2473 of 2018. By order dated 13.11.2018, this Court had allowed the said C.M.A on the following lines.

"6. On a perusal of the records, it is seen that the lower Court has dismissed the petition on the ground that the appellant has not chosen to examine two attestors of the Will. Therefore, this Court is inclined to allow this appeal by remitting back the petition in Probate O.P.No.5 of 2018 on the file of the learned



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Principal District Judge, Namakkal. However, the appellant is directed to implead the two attestors of the Will and examine them as witnesses in Probate O.P.No.5 of 2018 within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the learned Principal District Judge, Namakkal is directed to pass an appropriate order and dispose the same in accordance with law."

Thereafter, the petition appears to have been amended since two other petitioners, Ammachi and Varadahrajan have been added as petitioners along with the earlier petitioner, Angayee. This appears to be in line with the orders passed by this Court in C.M.A.No.2473 of 2018. Once again, the learned Principal District Judge dismissed the petition on the ground that the persons having a caveatable interest have not been impleaded as parties to the proceedings. Challenging the same, the appellants are before this Court.

4. Heard the learned counsel for the appellants and perused the materials available on record.



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5. The joint Will has been executed as early as in the year 1984 by the said Alagammal, Muthu Padaiyachi and Ammaiyappan in favour of the first petitioner, Angayee. However, the proceedings have been initiated in the 2018. Alagammal died on 12.06.1985. Muthu Padaiyachi died on 07.09.1988 and Ammaiyappan died on 29.01.1996, however the petitioner has initiated the probate proceedings only on 02.01.2018. The petition does not give any reasons for the delay in taking out the probate proceedings. The delay assumes significance, since the Will permits others to enjoy the property by cultivating the land and taking the income thereof. It is also seen that the property in question belonged only to Alagammal and the necessity for all the 3 testators to execute the Will was also not explained. Apart from Ammayappan, the said Alagammal and Muthu Padaiyachi had four daughters, Angayee, Ammachi. Chinnapillai @ Ammachi and Arayee.

6. The petition is bereft of details as to why the other legal heirs have not been impleaded as well as the fact as to whether the children of Arayee had been married, since one of the clauses in the Will is that they are permitted to enjoy the property till they get married. In



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such circumstances, the omission to set out the reasons for the delay of over 22 years in filing the petition and the non impleadment of the other legal heirs also creates a doubt in the mind of the Court as to whether the Will in question has been executed as stated by the first appellant.

7. Considering the fact that the petition has been filed with such an inordinate delay, that too, without impleading all the persons having a caveatable interest in the property, I see no reason to interfere with the order of the learned Principal District Judge, Namakkal passed in O.P.No.5 of 2018. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

16.06.2022

Index :Yes/No

Speaking Order: Yes/No

srn

To

1. The Principal District Judge, Namakkal District.

2. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA.J,

srn

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