



A.Nos. 8332 & 8333 of 2019
IN
O.P.No. 415 of 1997

C.V.KARTHIKEYAN, J.

This Application has been filed under Section 263(ii) of the Indian Succession Act 1925 seeking to revoke the order dated 18.10.2012 granting Letters of Administration in O.P.No. 415 of 1997.

2. This Application has been filed by the third and fourth respondents in O.P.No. 415 of 1997.

3. O.P.No. 415 of 1997 had been filed by Malligeswari, Uthiramary and Ranjini, seeking grant of Letters of Administration with Will annexed, relating to the registered Will dated 13.10.1977 said to have been executed by V.P.Tulukannad. The Will had been registered in the Office of the Sub Registrar, Periamet, as Document No. 65 of 1997. It primarily related to the bequeath of an immovable property at Old Door No.4, New Door No.6, Manoharan Street, Mc.Nochols Road, Chetpet, Madras-600 031.



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4. It was claimed that under the Will, the property had been bequeathed in favour of the petitioners and their another sister Nitya Kalyani, who had died prior to the filing of the petition and also to their brother P.T.Samaresan. It had been further stated under the Will that the testator had specifically disinherited his second son P.T.Swamynesan.

5. In the said petition, there were four respondents. The first respondent was Yamuna Bai, the widow of Swamynesan. The second, third and fourth respondents were Ravi Varma, Suresh Varma and Kasturi Bai Gandhi, the two sons and daughter of Swamynesan.

6. Notices were directed to the respondents and holding that service was effected and that the respondents had not responded to the notices, the petitioners were invited to graze the witness box. Accordingly, the second petitioner Uthiramary was examined as PW-1. The death certificate of her father Thulukanam was marked as Ex.P-1. The Will was marked as Ex.P-2. The affidavits of Selvanathan and Balachandran, who claimed to be familiar with the signature of Thulukanam was marked as Ex.P-3 and the consent affidavit of the children of P.T.Samaresan was



marked as Ex.P-4 and the consent affidavit of the legal heirs of Nitya Kalyani were marked as Ex.P-5. Ex.P-6 was also marked which was a consent affidavit of the daughter of Nitya Kalyani. Thereafter, M.K.Ravi was examined as PW2. He was the sixth son of P.M.Krishnaraj, the second attesting witness. He claimed that his father died on 04.02.1983 and that he was familiar with the signature of his father. His affidavit was marked as Ex.P-8.

7. The Will, as stated was dated 11.09.1977. The Original Petition had been presented before the Court on 24.06.1994. There were returns by the Registry and finally it was numbered in the year 1997 as O.P.No. 415 of 1997. To explain the delay in filing the petition since the Will was of the year 1977 and the petition was filed in the year 1994, it had been stated by the petitioners that after the death of their sister Nitya Kalyani, they had made a search of her belongings and in the midst of such belongings, they had found the Will and immediately thereafter, they had filed before Court seeking grant of Letters of Administration.

8. Considering the evidence produced and also considering that particular explanation and the further fact that the respondents had been served and had apparently taken a conscious



decision not to appear before the Court, a learned Single Judge of this Court by an order dated 18.10.2012 had granted Letters of Administration in favour of the petitioners therein.

9. The petitioners armed with the grant of Letters of Administration then filed O.S.No. 6753 of 2013 before the I Assistant City Civil Court, Chennai, seeking recovery of possession of the property which was bequeathed under the Will. The property as stated earlier was at Old Door No.4, New Door No.6, Manoharan Street, Mc.Nochols Road, Chetpet, Madras-600 031.

10. The defendant in that particular suit was the second respondent in the Original Petition, Suresh Varma, who was the one of the sons of P.T.Swamynesan, who was the second son of the testator of the Will P.T.Thulukkanam. The documents filed along with the said suit included a copy of the Will, a copy of the petition in O.P.No. 415 of 1997 and the order dated 18.10.2012 granting Letters of Administration.

11. On receipt of suit summons, the defendant entered appearance and filed his written statement.



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15. This application is such challenge to the grant of Letters of Administration, filed by him seeking to revoke the said grant.

16. In the Petition seeking to revoke the grant of Letters of Administration, he was joined by his sister Kasturi Bai Gandhi, who was the fourth respondent in the said Original Petition.

17. In the affidavit filed, he questioned the genuinity of the Will dated 13.10.1977 and in fact questioned the signature of his grandfather and more particularly stated that he had not been served with any notice from the Court in the Original Petition. He stated that he had received suit summons in the Original Suit mentioned above and thereafter, he had engaged the services of the Advocates, who had been named in the affidavit. He stated that he constantly kept enquiring them about filing the petition to revoke the grant and finally, he found that they had not taken any steps to revoke the grant and thereafter, he was under compulsion to change his counsels and had filed the present application.

18. Those details are not germane and need not be considered as grounds to seek revocation of Letters of



Administration. It only tells on the steps the petitioner appears to have taken to protect his interest.

19. Be that as it may, it had been further stated in the affidavit that the property which is the subject matter of the grant had actually been mortgaged with the Purasawalkam PHSSNL Nithi Limited and thereafter when the said Nithi had entered into liquidation, the property had been brought up for sale and P.T.Swamynesan, as the son of the mortgagor, V.P.Thulukkanam, had successfully bid in the auction and sale in his name had been confirmed by the High Court where the winding up proceedings of the said Nithi Limited was pending.

20. It was claimed that the petitioners in the Original Petition had no right or title over the said property. He further claimed that this purchase of the property was on 24.03.1981 by way of a registered sale deed registered as Document No. 340 of 1981 in the Office of the Sub Registrar, Periamet and the sale deed had actually been executed by the Official Liquidator, Madras High Court. He claimed to be in possession.



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21. The fact is that he had been impleaded as the sole defendant in the suit and recovery of possession was sought recognising his possession . He claimed that he had perfected title by mutating his name in the revenue records and had been paying necessary taxes to the Statutory authorities. He stated that this particular fact of the property being purchased by a registered sale deed, had been suppressed by the petitioners and further stated that this fact should have been stated in the Original Petition. He finally stated that in view of these facts and also in view of the fact that the notice had not been served in manner known to law, the Letters of Administration granted by the Court should be revoked.

22. In the Original Petition, there were four respondents. The first respondent was the mother, the second and third respondents were the sons and the fourth respondent was the daughter of P.T.Swamynesan. This Application seeking to revoke Letters of Administration had been filed by the second and the fourth respondent. The third respondent had not filed any application.

23. Heard arguments advanced by Mr.C.Umashankar for Mr.M.Selvam on behalf of the applicants, Mr.R.Thiagarajan, learned



counsel for the first, second and third respondents/petitioners in O.P.No. 415 of 1997 and Mr.J.R.K.Bhavanantham, learned counsel for the fourth respondent, who was the second respondent in O.P.No. 415 of 1997.

24. Mr.C.Umashankar learned counsel pointed out the provisions under Section 263(b) of the Indian Succession Act and stated that the very fact that the property had been dealt with and purchased by the father of the petitioners herein is a fact which should have been brought to the notice of this Court and failure to bring that fact to the notice of this Court amounted to concealing a material fact as provided under Section 263(b) of the Indian Succession Act. The learned counsel further stated that notices had not been served in manner known to law. He pointed out the notice forms and stated that the notices had been served on the first respondent in the Original Petition, Yamuna Bai, who had also received notices on behalf of her two sons. The learned counsel lamented that the first applicant herein was not even residing at that particular place where notice was served and therefore was insistent in his statement that notice was not served in proper manner.



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25. The learned counsel further invited the Court to compare the signatures of Yamuna Bai on the impugned notice forms and printed out that it was evident that she had not signed the notice forms. I would straight away point out that it is not for this Court to give any opinion on those signatures as the Court is certainly not an expert in comparing either handwritings or signatures and it would be prudent that a trained expert examines that particular aspect.

26. However, it is a fact that the first respondent in the Original Petition, Yamuna Bai had received notices on her behalf and on behalf of the second and third respondents. The endorsement of the bailif is also found in the notice form. The fourth respondent had received notice in her own capacity and she had also signed.

27. The main thrust of the arguments of Mr.C.Uma Shankar is that the petitioners, who had filed the Original Petition after considerable delay, should have disclosed the sale deed in favour of the first applicant herein.



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28. The learned counsel brought to the notice of this Court Section 3 of the Transfer of Property Act, 1882 wherein registration of a document can be deemed as sufficient notice to the general public at large. The learned counsel therefore stated that the petition seeking Letters of Administration suffers from suppression of the material fact relating to the Registration of the Sale Deed of the property.

29. Learned Counsel further pointed out that the bequeath was not an absolute bequeath but conditional and it was the wish of V.P.Thulukkanam that the mortgage should be redeemed by the petitioners and his another son and in the same breath, the testator had stated about the troubles received by him from the father of the applicants herein.

30. However, Mr.C.Umashankar stated that since the bequeath was not absolute and conditional and as a matter of fact, the condition had not been complied by the petitioners in the Original Petition, the Will cannot be put to advantage by them to claim title over the property and seek recovery of possession.



31. In this connection, the learned counsel placed reliance on the Judgment reported in ***AIR 2012 Madras 94 [Dr.R.V.Venkatesan Vs. D.Jenbagalakshmi and others]*** wherein a Division Bench was concerned with facts similar to the facts of this case and the learned counsel pointed out that the Letters of Administration should be revoked on the ground of suppression of material fact.

32. Mr. J.R.K.Bhavanantham, learned counsel pointed out the provision under Section 152 of the Indian Succession Act 1925 and claimed that the principle of ademption of legacies would apply though at the time of the bequeath, the property belonged to the testator, the property had been subsequently purchased by the father of the applicants and the fourth respondent, whom he represented.

33. Mr.R.Thiagarajan, learned counsel who appeared for the first to third respondents/petitioners in the Original Petition, was however very emphatic that the order granting Letters of Administration should not and need not be interfered with. The learned counsel pointed out that the Original Will had been produced. It was a registered Will. The delay in filing the petition



had been explained by stating that a search was made after the death of one of the sisters, Nitya Kalyani of her belongings and at that time, the Will was recovered and immediately thereafter, the petition had been filed. The learned counsel further pointed out the recitals in the Will and pointed out the opinion expressed by the testator about his son Swamynesan, wherein it had been specifically stated that the said son had given him troubles and therefore, he was disinherited from any bequeath.

34. With respect to the notices issued, Mr.R.Thiagarajan stated that necessary forms had been filled and presented before the Registry and the notices had been served only by the bailif of the Court and the bailif that recorded service had been completed and that the notice had been served. The learned counsel therefore stated that it would not be proper to impute allegations regarding the manner in which the notices were served. Even though it was not specifically mentioned, the general direction of the argument of Mr.R.Thiagarajan was that the Court should take recourse to Section 114(g) of the Indian Evidence Act, 1872, since the notices were served by an official, namely, the Court Bailiff, it should be presumed to have been served in normal and in proper manner.



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35. With respect to the grounds for which revocation could be sought, the learned counsel had relied on a string of decisions and I shall refer to them. They are:

(1.) ***AIR 1978 Madras 304 [G.Shanmugham Chetti and another Vs. Chinnammal]*** wherein a Division Bench had stated that the discretion vested in the probate Court either to revoke or annu the earlier grant has to be judiciously exercised. It was further held that not every procedural irregularity which do not shake the foundation of the grant can be a cause for revocation or annulment;

(2.) ***AIR 1955 SC 566 [Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others]***, wherein in a matter where owing to conviction for murder of the son of testator revocation was sought claiming that he should be disinherited, the Hon'ble Supreme Court stated that “**defective in substance**” provided under Class(a) in Section 263 illustration (ii), should mean that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings;



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(3.) **1992-1-L.W [R.Krishnamoorthy Vs.**

J.Chandrasekaran], wherein a learned Single Judge of this Court had held that existence of a caveatable interest is necessary for any person to come on record in an Original Petition seeking grant of either Probate or Letters of Administration. It was also stated that the grant of probate does not declare the right of any party to the property. It only decides the genuineness of the execution of the Will.

It was therefore contended by Mr.R.Thiagarajan, that the only issue which should be examined is whether the Will had been proved in manner known to law and in this connection pointed out that the Court had applied its mind to the evidence recorded to prove the Will and had granted Letters of Administration and therefore urged that the said grant should not be interfered with by this Court;

(4.) **2001 (2) CTC 713 (Mad) [R.Ramachandran Vs.**

G.Hariharan] wherein a Division Bench of this Court had stated that the challenge of the validity and genuineness of a Will after probate had been granted should be examined with much scrutiny. It was stated that the probate cannot be revoked or annuled on the ground of under valuation of estate or on the valuation of assets.



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(5.) ***AIR 1985 Bombay 113 [Ramchandra Shankar Khaire and Others Vs. Sarjerao Bajirao Jagtap].*** This Judgment had been relied on for the proposition that the question whether a testatrix could or could not bequeath the property in question, cannot be a matter which can be gone into in probate proceedings.

This Judgment was relied on the basis of the challenge to the grant that the testator Thulukkanam could not have bequeathed the property. It was stated by Mr.R.Thiagarajan that such a stand cannot be urged in probate proceedings or when Letters of Administration are sought.

(6.) ***AIR 1982 Calcutta 374 [Bibhuti Bhusan Mayur Vs. Bhabesh Bhusan Mayur and others],*** wherein it had been held that when an attesting witness had stated that the Will had been read over to the testator and then he put his thumb impression and in the absence of any suspicious circumstance, it should be held that the Will was a genuine document and was not obtained by practicing fraud or undue influence. These circumstances were pointed by Mr.R.Thiagarajan to state that these aspects had not



been pleaded in the present Petition and no suspicious circumstance in the execution of the Will had been pointed out. It was specifically stated out that the Will was a registered Will and the procedure of registration was done in proper manner and in manner known to law. It was therefore argued that the grant of Letters of Administration cannot be revoked since there are no suspicious circumstances surrounding the execution of the Will.

(7.) 2009 (5) LW 524 [J.Srinivasan and Ors. Vs. S.Venkataraman], wherein a Division Bench of this Court had stated with respect to the notice and reply and suits filed subsequent to the grant of probate and observed that such proceedings would clearly establish that the petitioners herein had full knowledge about the proceedings but had not come forward to set aside the grant. It was argued by the learned counsel that therefore the application filed under Section 263 had no legs to stand.

Even in that particular Judgment, after grant of probate, O.S.No. 634 of 2002 was filed before the City Civil Court, restraining the defendant from interfering with possession and subsequently O.S.No. 2922 of 2002 was filed seeking ejectment of



the first appellant/ husband from the property. In view of those two suits which were pending, it had been held that the parties cannot disclaim knowledge of the probate proceedings.

(8.) (2008) 4 SCC 300 [Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others], wherein it was held that the nature of title of the testator cannot be examined. It was stated that the Judgment of the probate Court, though a Judgment in rem would not be a determination of question of title. It was stated that the construction of a Will relating to right, title and interest of any person are beyond the jurisdiction of the probate Court.

36. The learned counsel pointed out that while sitting as a Judge of the probate Court, this Court is not vested with normal powers of a puisne Judge but must examine the Will and examine its execution, examine the attestation and examine whether those aspects were done in proper manner. The issue of title should not and cannot be examined by this Court.

37. Pointing out the ratio laid down in the aforementioned Judgments, Mr.R.Thiagarajan was emphatic that since there had been no procedural irregularity in the grant of Letters of Administration, this Court should not at this stage interfere with the grant and urged that this Court should dismiss the application.



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38. I have carefully considered the arguments advanced and perused the records.

39. The second and fourth respondents in O.P.No. 415 of 1997 on the file of this Court which petition had been filed seeking Letters of Administration relating to a Will executed by one V.P.Thulukkanam, have filed the present Application seeking revocation of the grant of Letters of Administration which grant was ordered by order dated 18.10.2012.

40. O.P.No. 415 of 1997 had been filed by the three daughters of Thulukkanam claiming that when they searched the belongings of their another sister Nitya Kalyani, who had died, they came into possession of a registered Will of their father and therefore, presented the same before the competent Court of jurisdiction seeking Letters of Administration. By the said Will, the father Thulukkanam had bequeathed, in their favour, the property at Old Door No.4, New Door No.6, Manoharan Street, Mc.Nichols Road, Chetpet, Madras-600 031.



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41. They had impleaded as respondents, the widow and the two sons and daughter of one of their brothers, Swamynesan, who had been disinherited under the said Will. They had filed the consent affidavits of the other legal heirs particularly of their another brother Samaresan and the other sister Nitya Kalyani.

42. The Court in its normal course directed notices to the respondents. Notices were issued. The Court bailiff had recorded sufficiency of service. On being satisfied that the notices had been served in manner known to law or under procedure established by law, a learned Single Judge had invited the parties to graze the witness box and tender evidence.

43. Accordingly, the second petitioner Uthiramary was examined as PW-1. Another witness M.K.Ravi was examined as PW-2. During the course of her evidence, Uthiramary /P.W.1 produced the original death certificate of V.P.Thulukanam as Ex.P-1, the original Will as Ex.P-2 and thereafter, filed Ex.P-3 affidavit of M.Selvanathan and R.D.Balachandran, who claimed to be familiar with the signatures of the testator. The consent affidavits of the various legal representatives had been marked as Exs. P-4, P-5 and P-6. In his evidence, M.K.Ravi/P.W.2 stated that his father



P.M.Krishnaraj, was the second attesting witness and he identified the signature of his father in the Will.

44. Holding that the evidence produced was sufficient and further noting the absence of the respondents, the learned Single Judge of this Court by an order dated 18.10.2012 had granted Letters of Administration.

45. Thereafter on the basis of such grant, the petitioners filed O.S.No. 6753 of 2013 before the I Assistant City Civil Court, Chennai, seeking recovery of possession of the property bequeathed to them under the said Will.

46. The defendant therein was the son of their bother Swamynesan who had been disinherited by their father. He was in possession of the property. He received the suit summons and filed his written statement. He denied and disputed the genuinity of the Will. He further stated that the property which was the subject matter of the Will had actually been purchased by his father from the mortgagee Purasawalkam PHSSNL Nithi Limited through Court auction which auction was brought about by the Official Liquidator consequent to the Nithi being wound up by an order of



the Court. He also stated that his sale was affirmed and confirmed by the High Court. The sale was by a registered document.

47. The mute point to now consider is whether, since on the date of filing of O.P.No. 415 of 1997, there having been a sale executed over the said property, it was incumbent on the part of the petitioners in the Original Petition to have disclosed that particular fact in the Original Petition.

48. It is contended by Mr.R.Thiagarajan, learned counsel for the petitioners in O.P.No. 415 of 1997 that the Probate Court which examines a Will and is called upon to grant probate or Letters of Administration, cannot examine the tile of the testator and can only examine the genuineness or correctness or validity of the execution of the Will.

49. Section 63(c) of the Indian Succession Act, 1925 is as follows:-

“63 Execution of unprivileged Wills. —

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a



mariner at sea, shall execute his Will according to the following rules:—

(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. ”

50. To prove the Will, the guideline is provided under Section 68 of the Indian Evidence Act, 1872 which 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. ”

51. It provides that to prove the execution of a Will, atleast one of the attestors should be examined as a witness. In the instant case, neither of the attestors of the Will had been examined.

52. On the other hand, PW-2 had been examined. This obviously was done by taking recourse to Section 69 of the Indian Evidence Act 1872 which provides that if the attestors are not found then a witness, who can identify and who is familiar with the signature and writings of the attestor and the testator, can be examined as a witness.



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53. Section 69 provides that the attestation of one attesting witness must be proved to be in his handwriting and further it must also be proved that the signature of the person executing the document is in the handwriting of that person.

54. If the attester is not available, then the procedure under Order 16 Rule 10 of the CPC must be followed.

55. Notices must be issued and the entire procedure laid down therein must be followed by the Court before proceeding to Section 69 of the Indian Evidence Act, 1872.

56. In ***1945 SCC Online Cal 146 [Amal Sankar Sen Vs. The Dacca Co-operative Housing Society]*** , it had been held as follows:-

“7.In order that sec. 69 of the Indian Evidence Act may be applied, mere taking out of the summons or the service of summons upon an attesting witness or the mere taking out of warrant against him is not sufficient. It is only when the witness does not appear even after all the processes under Or.



16, r. 10 which the Court considered to be fit and proper had been exhausted that the foundation will be laid for the application of sec. 69 of the Indian Evidence Act. The party, namely the Plaintiff, must move the Court for processes under Or. 16, r. 10, C.P. C, when a witness summoned by him has failed to obey the summons but when the Plaintiff does move the Court but the Court refuses the process asked for, we do not see why sec. 69 of the Evidence Act cannot be invoked. The other view would place the Plaintiff in an impossible position when the witness is an attesting witness to the document on which he has brought the suit, and the Court refuses coercive processes contemplated in Or. 16, r. 10, C.P.C.. ”

57. Even when witnesses are examined under Section 69 of the Indian Evidence Act, the witness must prove two separate facts (1) relating to the signatures / handwriting of the attestor and (2) relating to the fact that the signature of the executor is in the handwriting of the said executor.

58. In the instant case, M.K.Ravi, who was examined as PW-



2 had spoken about the signature of his father P.M.Krishnaraj, who was one of the attestors. To speak about the writings of Thulukkanam, the petitioners had filed the affidavit of M.Selvanathan and R.D.Balachandran, who claimed to be familiar with the handwriting of the testator namely Thulukkanam. They were not examined in Court.

59. The question which begs an answer is whether it was absolutely necessary for them to have been examined before the Court. The fact remains that their affidavits were filed which obviously means that they were available. When they are available, it would only be appropriate that they tendered evidence in open Court. The affidavit of a live person may not have the same sanctity as evidence tendered by such person. Let me leave that issue open. However, a slight opening is created necessitating revisiting the grant of Letters of Administration.

60. The further focus of the arguments questioning grant related to the issuance of notices in the Original Petition.

61. An application had been filed before this Court disputing



the signature of Yamuna Bai as found in the notice. It must be kept in mind that a bailif of this Court had served notices on the addresses given therein. When the notices were served, the first applicant or the fourth respondent/his brother were not residing in that particular property. Their mother was residing there. The mother was the first respondent in the Original Petition, Yamuna Bai. Notice was served on Yamuna Bai. She received notice in her own name and also the notices in the names of her two sons. The question whether the petitioners were aware or not aware that the two sons / their own nephews, were not residing in that particular house, is a fact which has to be ascertained. This can be ascertained only when the PW-1 is questioned. This aspect opens a small window for interference with the grant of Letters of Administration.

62. As stated, an application came to be filed disputing the signature of Yamuna Bai. In this connection, her contemporaneous signatures in her Will of the year 1995 was sought to be produced. A process was issued to the Sub Registrar's Office to produce the original Will, executed by her.



63. I am informed that the original Will had been produced.

64. It is the contention of Mr.R.Thiagarajan that the signature of Yamuna Bai will have to be tested by an expert.

65. The learned counsel placed a caveat on this Court from examining and comparing the signatures though such provision is available under Section 73 of the Indian Evidence Act, 1872. The learned counsel stated that the Court cannot claim to be an expert in comparing signatures. I would accept that particular point. But if such comparison is to be undertaken by a trained person, then such exercise necessarily would indicate that evidence will have to be recorded and such evidence can be recorded only when the grant is interfered with and opportunity is granted to examine in more detail, the signatures of Yamuna Bai in the notice forms. This reasoning gives a further window of opening to interfere with the grant already ordered.

66. The main thrust of arguments of Mr.C.Uma Shankar, learned counsel is with respect to Section 263 of the Indian Succession Act, 1925 more particularly 263(b) of the Indian Succession Act, which 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. Explanation. —Just cause shall be deemed to exist where—*

(a)

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

(c)

(d)

(e) ”

67. It is in this connection reliance had been placed on ***AIR 2012 Madras 94 [Dr.R.V.Venkatesan Vs. D.Jenbagalakshmi and Ors.]***.

68. The facts in that case are similar to the facts of the present case. There, the property had already been settled and the settlement was by a registered deed. The Division Bench held that it cannot be pleaded that such settlement could not be known to the petitioners, and held that concealment of that fact would fall squarely under Section 263(b) of the Indian Evidence Act, namely



“concealing from the Court something material to the case”.

69. Section 3 of the Transfer of Property Act, 1882 is as follows:-

“3. Interpretation clause.—*In this Act, unless there is something repugnant in the subject or context,— “a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.*

Explanation I.—*Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any*



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memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.
Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires



notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud. ”

70. It is thus evident that the purchase by the father of the applicants of the property in the year 1981 by a registered document is a fact which should be deemed to be to the knowledge of the petitioners of O.P.No. 415 of 1997 and suppression of that fact is material.

71. In the instant case, the father of the applicants herein Swamynesan had purchased the property by a registered sale deed in the year 1981. That fact is not disputed by Mr.R.Thiagarajan. It cannot also be denied. A transaction is registered only to inform the general public that an encumbrance has been created over a particular property. It is a form of a public notice.

72. Even in ***AIR 2012 Madras 94 [Dr.R.V.Venkatesan Vs.***



D.Jenbagalakshmi and Ors.], wherein also after considerable delay, as a matter of fact delay of about 6 to 7 years, a petition had been filed seeking probate, the Division Bench had placed a word of caution that quite apart from the reasons for the delay, allied documents like encumbrance certificate should be filed to determine whether the property is still available.

73. Had the Registry in this case, taken that particular caution while numbering O.P.No. 415 of 1997 then it would have been evident that the property with respect for which Letters of Administration is sought had already changed hands and was in the hands of the respondent. Their father had become the title holder of the property. The probate Court cannot examine title but certainly can take judicial notice of a registered document, touching upon the very property for which Letters of Administration is sought.

74. It is therefore clear that when this fact is read in conjunction with the explanation for the delay, the fact of registration of the property should have been brought to the knowledge of the Court and had not been brought to the knowledge of the Court. It can also be presumed that the petition had been



filed at a time when the first applicant herein was not residing in the property and notices were innocuously served on his mother taking advantage of the fact that he was not residing in the said property.

75. Section 152 of the Indian Succession Act, 1925 is as follows:-

“152. Ademption explained.—If any thing which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the Will. ”

76. In the instant case, as on the date of filing of the Original Petition, the property which had been bequeathed under the Will had been withdrawn from the operation of the Will. The property had been sold and purchased by Swamynesan, the son of Thulukkanam. The principle of ademption directly applies.

77. All these facts when read in conjunction would imply that



it would only be appropriate that the Will is proved in manner known to law and the applicants herein are provided with an opportunity to contest the petition seeking Letters of Administration in favour of the first to third respondents herein.

78. The sum and substance of the discussion is that quite apart from the notices, which had been served and examination of the signatures therein will have to go through a trial process regarding their genuineness and which would require comparison of the signature of Yamuna Bai with her admitted signatures of contemporaneous period, the issue of suppression of material fact at the time of filing the Original Petition, namely the fact that the property had already been sold and such sale had actually been confirmed by the Madras High Court in a Company Petition for winding up of the Purasawalkam PHSSNL Nithi Limited, stare at the face of the applicants in O.P.No. 415 of 1997.

79. It is quite ironical that the children of Thulukanam on whom he laid trust to redeem the mortgage failed to do so but the one son whom he stated was troublesome had purchased the property in auction and thereby restored the family pride.

80. For all these reasons, I hold that the order granting



Letters of Administration dated 18.10.2012 in O.P.No. 415 of 1997 should be interfered with and the grant of Letters of Administration should be revoked.

81. Accordingly, A.No. 8332 of 2019 is allowed however without costs.

82. In view of the reasons stated, A.No. 8333 of 2019 which had been filed for stay has become otiose and is therefore closed.

83. The Letters of Administration granted on 18.10.2012 should be recalled by the Registry and the petitioners in O.P.No. 415 of 1997 are directed to hand over the original citation granting Letters of Administration dated 18.10.2012 within one week from the date of receipt of a copy of this order being made ready by the Registry.

30.09.2022

Index:Yes/No
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C.V.KARTHIKEYAN, J.



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