



C.R.P(PD)(MD).No.2031 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **B.PUGALENDHI**

C.R.P.(PD)(MD).No.2031 of 2022

Uthayakumar
S/o.Jeyaram

... Petitioner

Vs.

1.K.Vanaja

2.K.Jegadeesan

3.P.Raji

4.P.Naveenraja

... Respondents

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.3 of 2021 in Prob. O.P.No.2 of 2017, on the file of the Additional District & Sessions Court, Theni dated 24.08.2022.



C.R.P(PD)(MD).No.2031 of 2022

For Petitioner : Mr.H.Arumugam
For Respondents : Mr.R.Suriya Narayanan for R3 and R4
No appearance for R1 and R2

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.3 of 2021 in Prob.O.P.No.2 of 2017, on the file of the Additional District & Sessions Court, Theni, dated 24.08.2022.

2. The petitioner has filed Probate Original petition before the Additional District & Sessions Court, Theni, in Probate O.P.No.2 of 2017 to probate the Will dated 12.08.2017 executed by his father to him and he has also paid Court fee of Rs.16,54,710/- (Rupees Sixteen Lakhs Fifty Four Thousand Seven Hundred and Ten only) towards probate charges. Thereafter, the petitioner realized that he has paid the excess Court fee and he filed an application under Section 70 of the Tamil Nadu Court Fees and the Suit Valuation Act of 1955 read with Section 151 of C.P.C for refund of Court fee of Rs.16,29,710/- (Rupees Sixteen Lakhs Twenty Nine Thousand Seven Hundred and Ten only) paid by him mistakenly.



C.R.P(PD)(MD).No.2031 of 2022

The said application was dismissed by the learned Additional District & Sessions Judge, Theni, in I.A.No.3 of 2021 in Probate O.P.No.2 of 2017. Against the fair and decreetal order passed in I.A.No.3 of 2021 in Probate O.P.No.2 of 2017 dated 24.08.2022, the present Civil Revision Petition has been filed before this Court.

3. The learned counsel for the petitioner submitted that as per the Article 6 of Schedule 1 of Tamil Nadu Court Fees and Suit Valuation (Amendment) Act, 1955, the Court Fee for any Probate of the Will is subject to the maximum of Rs.25,000/- (Rupees Twenty Five Thousand only) and on wrong advice, the petitioner has paid a sum of Rs. 16,54,710/- (Rupees Sixteen Lakhs Fifty Four Thousand Seven Hundred and Ten only) towards probate charges and therefore, excess amount has to be returned to him. The learned counsel for the petitioner has also produced the endorsement made in the Probate O.P, which was filed in the year 2017.



C.R.P(PD)(MD).No.2031 of 2022

WEB COPY

4. The learned counsel for the respondents 1 and 2 submitted that it is not by mistake and once the amount has been paid, it cannot be refunded and therefore, no interference is warranted to the order dated 24.08.2022 passed in I.A.No.3 of 2021 in Prob. O.P.Nos.2 of 2017, on the file of the Additional District & Sessions Court, Theni.

5. The petitioner has filed the above Probate O.P to probate the Will dated 12.08.2017 executed by his father to him on 06.10.2017. The same was returned by the Court and he has also paid the Court Fee of Rs.25,000/- (Rupees Twenty Five Thousand only) as per the Article 6 of Schedule 1 of Tamil Nadu court Fee and Suit Valuation (amendment) Act 1955. The petitioner valued the Probate for an amount of Rs.5,51,57,000/- (Rupees Five Corers Fifty One Lakh and Fifty Seven Thousand only). The said application was returned by the Court again on 09.10.2017 with the following endorsement as under:-

"Value of claim Rs.5,51,57,000/- probate charges at 3%. For deposit of probate charges of Rs.16,54,710/- by 15.11.2017."



C.R.P(PD)(MD).No.2031 of 2022

WEB COPY

6. Thereafter, it was posted on 13.12.2017, with an endorsement of “*for depositing of Probate charges*”. On 13.12.2017, again it was adjourned to 10.01.2018 with an endorsement of “*for depositing of Probate charges*”

7. As per the Article 6 of Schedule 1 of Tamil Nadu Court Fees and Suit Valuation (Amendment) Act 1955, for probate of a Will is 3% on the administration with or without Will amount of value of the annexed. The estate in respect of which the grant of probate on letter of administration is subject to maximum of Rs.25,000/- (Rupees Twenty Five Thousand only).

8. The petitioner has filed the Probate O.P only on 06.10.2017, after the amendment. Therefore, the petitioner is liable to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as Court fee as per the amended Act and the petitioner has also paid the amount, at the time of filing the above petition. However, there are certain proceedings of the Court, that the Court under the impression that 3% of the value of the



C.R.P(PD)(MD).No.2031 of 2022

claim has to be paid and directed the petitioner to deposit the probate charges of Rs.16,54,710/- (Rupees Sixteen Lakhs Fifty Four Thousand Seven Hundred and Ten only) by the order, dated 15.11.2017 and after two hearings, it appears that the petitioner has paid the amount.

9. The learned counsel for the petitioner produced the order in ***Chidambaram Chettiar, In re*** reported in ***1934 (8) Law Weekly 295*** wherein, the Hon'ble Division Bench held as follows:

“In our opinion, the Court can order a refund (1) where the Court- Fees Act applies; (2) where there is an excess payment by a mistake or (3) where, on account of the mistake of a Court a party has been compelled to pay Court-fees, either wholly or in part.”

10. In ***Factors (P.) Ltd. v. Amalgamated Com.T.(P.) Ltd.***, reported in ***1983 (6) Law Weekly 109***, it is held as under:

“The law on the subject is thus fairly clear. In order to claim a refund of fee paid by mistake or inadvertence,



C.R.P(PD)(MD).No.2031 of 2022

under Section 70 of the Court Fees Act, 1955, the party must, in the first place, establish that no Court fee was payable at all by him or that excess Court fee had been paid. In the second place, he must go further and establish that the payment was due to his mistake in thinking that the amount paid as Court fee was really payable under the provisions of the Court fees Act. Where however, the payment had been made out of a mistake on his part in the choice of a remedy no refund can be claimed, as the payment evidently has not been made due to any mis-taken belief that the same was really due under the Court fees Act. It is also open to him to establish that the payment was due to his inadvertence, in other words that he had wrongly paid the Court fee by oversight or negligence.

11. The learned counsel for the petitioner has relied upon the judgment in ***In the Goods of: Kalyan Kumar Bose (Deceased)*** reported in ***2013 SCC Online Cal 22789 : (2013) 5 CHN 648***, wherein it is held that unless there is grant of probate, there is no vested right in the State to receive the fees.



C.R.P(PD)(MD).No.2031 of 2022

WEB COPY

12. Admittedly, the petitioner has paid the excess Court Fee. The maximum Court fee for a Probate is Rs.25,000/- (Rupees Twenty Five Thousand only) as per amended Act. The petitioner has also paid only Rs.25,000/- (Rupees Twenty Five Thousand only) along with probate O.P. The petitioner valued his claim as Rs.5,51,57,000/- (Rupees Five Corers Fifty One Lakhs and Fifty Seven Thousand only). The trial Court made an endorsement by referring the value of the probate and directed the petitioner to deposit the probate charges at the rate of 3% by the order dated 09.10.2017. Thereafter, the Probate O.P was adjourned twice for deposit of probate charges at Rs.16,54,710/- (Rupees Sixteen Lakhs Fifty Four Thousand Seven Hundred and Ten only) and then, the petitioner has paid the probate charge of Rs.16,54,710/- (Rupees Sixteen Lakhs Fifty Four Thousand Seven Hundred and Ten only) on 05.01.2018. The earlier counsel for the petitioner has also not properly advised him to challenge this order and now, on change of Counsel, the petitioner has filed this present petition.



C.R.P(PD)(MD).No.2031 of 2022

WEB COPY

13.Considering the facts and the circumstances of this case and the position of law, this Court is inclined to allow this Civil Revision Petition by setting aside the fair and decreetal order passed in I.A.No.3 of 2021 in Prob.O.P.No.2 of 2017, on the file of the Additional District & Sessions Court, Theni, dated 24.08.2022. The trial Court shall take necessary action to address to the Treasury to refund the Court fee to the revision petitioner within a period of four weeks from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is allowed. No Costs.

17.11.2022

Index : Yes/No
Internet : Yes
Speaking/Non-speaking order
tta

To
Additional District & Sessions Court,
Theni



WEB COPY



C.R.P(PD)(MD).No.2031 of 2022

B.PUGALENDHI,J

tta

Order made in
C.R.P.(PD)(MD).No.2031 of 2022

Dated:
17.11.2022