



A.No.5652 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Order reserved on	02.03.2023
Order pronounced on	19.04.2023

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

A.No.5652 of 2022

in

O.P.No.177 of 2020

Balasubramaniyan

... Applicant/2nd Respondent

vs.

Vedambalaachi (deceased)

K.Mariappan

... Respondent/Petitioner

PRAYER IN A.No.5652 of 2022: This Application is filed under Order XIV Rule 8 of O.S. Rules r/w Order XXV Rule 62 of O.S. Rules r/w Section 263 of the Indian Succession Act praying to revoke the letters of administration granted in O.P. No.177/2020 dated 07.09.2021.

Applicant : Mr.V.K.Vijayaragavan
Mr.P.T.Nalin Kumar

Respondent : Mr.V.Raghavachari, Senior Counsel,
for Mr.S.K.Kannadasan &
Mr.M.Simon Jeyakumar

ORDER



A.No.5652 of 2022

WEB COPY

This application was filed by the 2nd respondent in O.P.No.177 of 2020 (the main O.P.) to revoke the letters of administration granted on 07.09.2021 with the Will dated 26.09.1966 of the late S.K.Subbiah Pillai annexed thereto.

2. The applicant states that he is the brother of the respondent herein/petitioner in the main O.P. Both the applicant and the respondent are the grandsons of the testator's brother. Upon the death of the testator's only daughter, the applicant asserts that he has a caveatable interest in the estate of the testator and was impleaded as the second respondent. He further contends that a caveat in the main O.P. was filed by him on 12.10.2020 and the same was communicated to the respondent herein on 13.10.2020. A supporting affidavit raising objections was also filed on 15.10.2020 under S.R.No.15484 of 2020.

3. The applicant further states that no notice was served on him in the main O.P., in spite of him being impleaded as per order dated 02.11.2020 in A.No.2166 of 2020. Therefore, the grant suffers from legal infirmity and



A.No.5652 of 2022

there is “just cause” under Section 263 of the Indian Succession Act, 1925 (the Act) to revoke the grant.

4. These assertions were denied by the respondent on the ground that the applicant was fully aware of these proceedings and chose not to contest. The respondent further states that he did not receive a copy of the objection affidavit of the applicant and that the applicant did not comply with the requirements of Order 25 Rule 52 of the Madras High Court Original Side Rules, 1994 (the Original Side Rules). The respondent also asserts that the Will forming the subject of these testamentary proceedings was exhibited in evidence as Ex.A27 in a civil suit (O.S.No.12 of 1998) to which the applicant was a party and not objected to by him. Therefore, the respondent states that there is no merit in the application.

5. Oral arguments were advanced by Mr.V.K.Vijayaragavan, learned counsel for the applicant and V.Raghavachari, learned senior counsel for the respondent.



A.No.5652 of 2022

6. Learned counsel for the applicant submitted that, upon coming to know of the filing of the main O.P., the applicant lodged a caveat by serving a copy thereof on the respondent herein on 13.10.2020. He also submitted that an objection affidavit was filed by the applicant on 15.10.2020 under S.R.No.15484 of 2020. After pointing out that the applicant was impleaded as the second respondent in the main O.P., learned counsel submitted that notice in the main O.P. was not served on the applicant. He further submitted that it was erroneously recorded in the order dated 07.09.2021 that the applicant/second respondent in the main O.P. had no objection to the grant of letters of administration.

7. Learned counsel for the applicant invited my attention to the following three other litigations between the parties: (i) O.P.No.556/2020, which was filed by the applicant and later converted into T.O.S. No.23/2021, for grant of letters of administration with the Will dated 28.12.2018 of the late Vedambal (deceased 1st respondent in the main O.P.) annexed thereto, by which one of the properties of the testator herein was bequeathed to the applicant. (ii) W.P.No.21741/2021 filed by the respondent herein for a direction under Section 68(2) of the Registration Act, 1908. In



A.No.5652 of 2022

this writ petition, the Court directed the District Registrar to conduct an inquiry in Naka. No.486/A5/2022, and the Registrar left it open to the competent court to decide the matter relating to the validity and proof of the two Wills. (iii) O.S.No. 23 of 2019 filed by the respondent herein against the applicant and three others for partition of the properties described in the schedule thereto and to declare that the plaintiff is entitled to a $\frac{1}{2}$ share therein.

8. Learned counsel for the applicant relied upon the Supreme Court decisions in *Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon & Ors.*, (2007) 11 SCC 357, and *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira & Anr.*, (2019) 20 SCC 85, to contend that the jurisdiction of a probate court is limited to deciding whether a Will is genuine or not. He also relied on *CT Ramasamy v. SP Kaveri Achi*, 2002-4-L.W.681, where it was held that a caveat under Section 148-A of the Code of Civil Procedure, 1908 (CPC), may also be treated as a caveat filed in testamentary proceedings under the Original Side Rules.



A.No.5652 of 2022

9. The last contention of learned counsel was that the immovable asset, which is claimed by the respondent herein pursuant to the impugned grant, was acquired by the testator on 18.06.1971 under Document No.920 of 1971 and was not owned by the testator at the time of execution of the Will. By inviting my attention to the Will, learned counsel contended that the Will extends the bequest to future receivables but not to immovable properties acquired in future. Therefore, he contended that the immovable asset claimed by the respondent under the Will of the testator's daughter was not bequeathed under the Will forming the subject of the grant impugned herein.

10. *Per contra*, learned senior counsel for the respondent submitted that the present application is not sustainable because court notice was served upon the applicant on 22.10.2020 *vide* ROC No.3120/2020 in the impleading application, but the applicant chose to not appear before the Court in the main O.P. He referred to the cause list of 07.09.2021 to prove that the applicant's name was specified therein, on the date of the impugned order being pronounced. Although the caveat petition was received by the respondent, as acknowledged in the counter of the respondent herein in



A.No.5652 of 2022

A.2915 of 2022 (condone delay application), learned senior counsel submitted that the said caveat petition and objection affidavit were not duly filed in the Court registry in compliance with Order XXV, Rule 52 of the Original Side Rules.

11. Further, learned senior counsel contended that letters of administration with the Will executed by the late S.K.Subbiah Pillai annexed thereto were granted after examining the exhibits, including the original Will, and after the daughters of the attesting witnesses were examined before the learned Master. He further pointed out that O.S.No.12 of 1998 was filed before the District Court, Nagapattinam, wherein the present Will was exhibited as Ex.A27, but the applicant did not raise any objection. The judgment in O.S.No.12 of 1998 was relied upon in this connection.

12. In response to the contention that the bequest did not include the immovable property acquired after the execution of the Will, learned senior counsel cited *Ittianam & Ors. v. Cherichi* (**Ittianam**), (2010) 8 SCC 612, to contend that a bequest is deemed to include assets acquired between



the date of execution of the Will and the date of death of the testator unless there is clear indication to the contrary in the Will. He also pointed out that Section 90 of the Act contains a deeming fiction for the specific purpose of raising a presumption against intestacy.

13. Upon consideration of the submissions of learned counsel for the respective parties and the records, the principal question that arises for consideration is whether the applicant has made out a case to revoke the grant of letters of administration as per Section 263 of the Act. Section 263 reads as under:

“263. 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) the proceedings to obtain the grant were defective in substance; or

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

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or



WEB COPY



A.No.5652 of 2022

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

The circumstances specified in clauses (a) to (d) of Section 263 have been interpreted as illustrative and not exhaustive by a Division Bench of this Court in *G.Shanmugam Chetti and another v. Chinnammal (Shanmugam Chetti)*, 1977 SCC OnLine Mad 145. Being illustrative, if a case falls within the scope of the said clauses, it will be deemed that there is “just cause” to revoke the grant. Besides, these illustrations underscore that a grant cannot be revoked merely because the applicant could not appear at the hearing and, therefore, was not heard. The applicant should, instead, discharge the relatively heavier burden of establishing that there was a substantive defect in the proceedings or there was false suggestion by way of suppression of material facts or untrue allegation of a fact essential, in law, for purposes of the grant or any other circumstance broadly analogous thereto.



14. The scope of Section 263 becomes evident from the following

paragraph of **Shanmugam Chetti**, which, in relevant part, is set out below:

“...The discretion vested in the probate Court either to revoke or annul the earlier grant has to be judiciously exercised. It is not every non-conformity with procedural irregularities which were not made as an issue at the time of the grant nor such infirmities which do not shake the foundation of the grant that would ever be the cause for revocation or annulment of an earlier grant. The expression 'just cause' explained in S.263 of the Indian Succession Act is obviously illustrative and not exhaustive. There may be cases where a just cause for revocation or annulment is available, even though they may not strictly come within the framework of the illustrations given in explanation to S.263 of the Act. A mere error in form and procedure but not in substance cannot vitiate an earlier grant. If in a given case fraud is alleged or a material concealment is suggested such fraud must not only be pleaded, but also be proved at least prima facie to enable the court to react and issue a direction by way of a citation to the primary grantees to lodge the original letters of administration in court. Vague suggestions about concealment which do not go into the root of the matter and which is not material in the cases, cannot also be considered as a just cause for revocation. In effect,



therefore, there must be abundant material which is acceptable to a reasonable person to come to the conclusion that the court has been misled in making the original grant and that there was a deliberate design and a motive for the making of untrue allegations of facts which are essential in point of law....”

15. While examining the meaning and scope of the expression “just cause” in *R.Mohanambal & Ors. v. M.Palani & Ors.*, MANU/TN/1857/2020, I concluded as follows:

*“As held in **Shanmugham Chetti**, Clauses (a) to (e) of the explanation to Section 263 are illustrative and not exhaustive. Nevertheless, the overarching consideration is that the Applicants should establish that there is a “just cause” to revoke the probate. Therefore, it has to be determined whether the Applicants have established “just cause”. The use of the expression “just cause” may be contrasted with the use of the expression “sufficient cause” in provisions such as Order IX Rule 13, CPC, which deals with the setting aside of an ex parte decree. The same expression “sufficient cause” is also found in Section 5 of the Limitation Act, 1963. The use of the expression “sufficient cause” clearly indicates that the reasons or explanation offered by the applicant should be adequate to*



WEB COPY

explain, as the case may be, the failure to attend the court proceedings or failure to perform the obligation of filing the appeal, etc. in time. To put it differently, the focus is on the applicant and the adequacy of the explanation for the earlier default. On the other hand, the use of the expression “just cause” shifts the emphasis from adequacy to justness of the reasons or cause cited in support of the application for revocation of probate. Consequently, on examining each illustration in the explanation to Section 263, it is evident that the focus is firmly on deficiencies of a substantive nature in the grant. Although I am conscious that “sufficient cause” may qualify as “just cause” in certain cases, the two expressions are clearly not synonymous. Indeed, I am of the view that “just cause” is a higher standard or threshold than “sufficient cause” inasmuch as it becomes necessary for the Court to conclude that the interest of justice or fairness justifies revocation and it is not enough for the applicant in an application to revoke a grant in testamentary or intestate proceedings to cite adequate reasons for his/her failure to contest such proceedings earlier....”

Therefore, the reasons cited by the applicant to revoke the grant should be examined by bearing in mind the law relating to revocation of the grant.



A.No.5652 of 2022

16. In this case, the main O.P. was filed on 28.01.2019 for the grant of letters of administration with the Will dated 26.09.1966 of S.K. Subbiah Pillai annexed thereto. The said Will was registered in the office of the Sub-Registrar, Thiruthuraipoondi, Thiruvarur District, in Book III, Volume 48, as Document No.31 of 1966. In the main O.P., the respondent herein stated that the testator died on 05.04.1983. Since the main O.P. was filed more than 35 years after the death of the testator, the respondent herein provided an explanation for the delay in paragraph 9 of the petition. The respondent also stated that the revenue records relating to some of the properties bequeathed under the Will were mutated on the basis of the Will. The principal ground on which this application is founded is that notice in the O.P. was not served on the applicant and that a caveat petition was filed by the applicant. Whether the said ground constitutes “just cause” to revoke the grant falls for consideration.

17. The record discloses that an application to implead the applicant, as the second respondent in the main O.P., was filed after the demise of the original sole respondent therein, the late V.Vedambal Aachi (the daughter of the testator) on 30.11.2019. For such purpose, notice was



A.No.5652 of 2022

ordered by the Master on 29.09.2020. As per the record, court notice was served on the applicant on 22.10.2020 in PSA No.828/OC. Subsequently, by order dated 02.11.2020 in A.No.2166 of 2020, the applicant, who is the brother of the petitioner and the grandson of the testator's brother, was impleaded as the 2nd respondent. From the above, it is evident that the applicant was undoubtedly aware of the court proceedings.

18. Regarding the caveat petition and the objection affidavit, it is necessary to examine the Original Side Rules. Under Order XXV, Rule 51, any person intending to oppose the issue of letters of administration should file a caveat in the Registrar's office in Form No.69. It also prescribes that after receiving such caveat, the Registrar shall give notice to the petitioner. As held in *C.T.Ramasamy*, a caveat filed under Section 148-A of the CPC may also be treated as a caveat filed under this rule. Additionally, as per Order XXV, Rule 52, an affidavit in support of the caveat shall be filed within 8 days setting out the rights and interests of the caveator and the grounds of objections to the petition.



A.No.5652 of 2022

19. In the case at hand, there is no caveat petition on record in the registry of this Court. However, there is an affidavit dated 13.07.2020 of the applicant affirming the applicant's caveatable interest in the subject matter and opposing the grant. If the date specified in the affidavit is assumed to be correct, the applicant was aware of the main O.P. at least by July 2020, which is much prior to the date of service of notice in the impleading petition. From the date stamp on the docket of the affidavit, this affidavit appears to have been received by the registry on 15.10.2020. There is a copy of a caveat petition dated 12.10.2020, which was received by the respondent herein on 13.10.2020, in the file. The respondent also acknowledged the receipt of a copy of the caveat petition on 12.10.2020 in the counter filed in A.2915 of 2022 (application to condone delay in filing the revocation petition). Thus, it appears that the applicant served a copy of the caveat petition on the respondent herein but did not file and number the same. As regards the affidavit, it appears to have been lodged in the registry in October 2010 although it is dated 13.07.2020, which curiously pre-dates the caveat petition. When all these facts are considered, it leads to the inference that the applicant had knowledge of these proceedings latest by July 2020 but did not comply with the requirements of Order XXV of the



A.No.5652 of 2022

Original Side Rules with regard to the lodging of the caveat petition and affidavit. It also appears that the applicant did not take any steps to oppose the grant even after receiving notice in the impleading application on 22.10.2020.

20. Moreover, the respondent submitted a copy of the plaint and judgment in O.S.No.12 of 1998 on the file of the Principal Sub-Judge, Nagapattinam, wherein both the applicant and the respondent are plaintiffs. The plaint refers to the Will of the late S.K. Subbiah Pillai. The judgment discloses that the Will of the late S.K.Subbiah Pillai was exhibited as Ex.A27. This evidences that the applicant was not only aware of but exhibited the said Will in evidence in a suit filed by several plaintiffs, including the applicant and the respondent. Therefore, the applicant is prohibited from assailing the Will now by the rule of estoppel.

21. In the main O.P., after the applicant was impleaded on 02.11.2020, the amended petition was received and verified on 10.12.2020. After succession duty was paid, general publication was ordered on 16.12.2020. Paper publication was effected in one issue of the English daily,



A.No.5652 of 2022

Trinity Mirror, on 03.01.2021 and one issue of the Tamil daily, Makkal Kural, on 10.01.2021. Learned Master recorded that paper publication was effected on 19.02.2021. Pursuant to order dated 24.02.2021 of the Court, evidence was recorded on 27.08.2021. The respondent was examined as PW1 and six documents, including the original registered Will dated 26.09.1966, were exhibited as Exs.P1 to P6. Mrs.R. Usha, daughter of the late K. Venkataraman (one of the identifying witnesses) was examined as PW2 and Ms. S.Janaki, daughter of the late Panjabikesan Iyer (one of the attesting witnesses) was examined as PW3. Thereafter, by order dated 07.09.2021, the main O.P. was allowed. The cause list for the said date is on record; this case was listed as item 43; and the name of the applicant herein is printed therein.

22. I also called for and examined the original Will. It is a holographic Will bearing the signature of the testator on each page, which was attested by four witnesses. Two witnesses, including one of the attesting witnesses, have signed as identifying witnesses when the Will was presented for registration before the Sub-Registrar, Thiruthuraipoondi. The Will bears the rubber stamp of the Subordinate Judge's Court,



A.No.5652 of 2022

Nagapattinam, indicating that it was exhibited in evidence in O.S.No.12 of 1998 through PW1 as Ex.A 27. It also contains an endorsement that the original was returned on 18.07.2000, upon being substituted by a certified copy, pursuant to order dated 17.07.2000 in I.A.No.179 of 2000.

23. When the above aspects are considered cumulatively, in my view, the non-receipt of notice in the main O.P. does not shake the foundation of the grant (see ***Shanmugam Chetti***) and the applicant is unable to establish any substantive defect in the grant. All that remains is to consider the ancillary argument that the bequest did not include the immovable property acquired after the Will was executed. On this issue, learned counsel for the applicant relied on the fact that future receivables were expressly dealt with whereas immovable properties acquired later were not dealt with in the Will. This contention was countered by learned counsel for the respondent by relying on ***Ittianam*** and the presumption against intestacy under Section 90 of the Act. While on this issue, it should be noticed that even assuming that the contention of learned counsel for the applicant is correct, the grant cannot be revoked on this ground. Therefore, I



A.No.5652 of 2022

refrain from recording any findings on this issue and leave it open for determination in an appropriate proceeding.

24. For reasons aforesaid, the application to revoke the grant of letters of administration is dismissed. There shall be no order as to costs.

19.04.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No



WEB COPY



A.No.5652 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

rrg

Pre-Delivery Order
in
A.Nos.5652 of 2022
in
O.P.No.177 of 2020

19.04.2023