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A.No.3440 of 2021 in O.P.No.467 of 2010

Application No. 3440 of 2021

in

O.P.No.467 of 2010

N.SATHISH KUMAR.J.,

ORDER

This application has been filed praying to revoke the Letters of Administration granted by this court by order dated 03.09.2012 made in O.P.No.467 of 2010 in respect of the Will dated 01.09.1988 said to have been executed by late K.M.Radhakrishnan Chettiar.

2. The 1st applicant is the mother and the other applicants are sisters of the 1st respondent who was the beneficiary under the Will in question. Late K.M.Radhakrishnan is the brother-in-law of the 1st applicant and paternal uncle of the applicants 2 to 4 and the respondent.

3. It is the case of the applicants that the alleged Will of K.M.Radhakrishnan is an apparent fraudulent act devised at the instance of the respondent to knock away the property belonging to the alleged testator situated at Chennai. The alleged testator did not have any intention to execute Will in



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respect of the property situated at No.15, Nainiappa Maistry Street, Chennai

600003 in favour of the respondent. He had, in fact, during his life time had

love and affection towards all children of his brother K.M.Kesava Chettiar, the husband of the 1st applicant and the father of the other applicants and respondent.

The husband of the 1st applicant and the father of the other applicants and the respondent died at his very young aged. As the alleged testator and his wife Janakiammal did not have issues, the applicants 2 to 4 and the respondent were looked after by him.

4. It is the further case of the applicants that the alleged testator became weak and was suffering from serious setback in his health. He was suffering from geriatric issues. He was taking treatment for diabetic. He had also undergone kidney transplantation. He was bedridden for more than two years prior to his death. In 1988, the alleged testator was not hale and health and was lying without senses and during such time, the Will in question could have been obtained. At the beginning, the respondent pretended to show love and affection for the 1st applicant (mother) and the other applicants (sisters). The respondent being the only brother, applicants 2 to 4 were very fond of him. The 1st applicant had trust and confidence in the respondent and believed his words and never doubted him.



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Taking advantage of the confidence reposed in him by the applicants, he from the beginning had devised an idea to knock away the entire properties belonging to the family. The respondent had indulged in the act of obtaining signatures in various documents and papers from the applicants and they put their signatures believing the words of the respondent and the applications 2 to 4 put their signatures without even consulting their spouses and verifying the contents. The respondent always used to assure to provide just and equal share. The respondent had never shown his true colour and intention in the beginning with a view to gain confidence of the applicants and was waiting to execute his hidden agenda of knocking away the entirety of property one after another. He had created several documents without the knowledge of the applicants and also indulged in the act of filing suit in respect of the properties belonging to the family and also resorted to knock away the properties and had started indulging in getting transferred the properties in his name.

5. It is also the further case of the applicants that, recently in February 2020, when the applicants had come across about the act of the respondent in knocking away the properties of the family, petitions were filed against the respondent before the revenue authorities. At that time only, the applicants came



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to know about the letters of administration granted by this court in respect of the

alleged Will dated 01.09.1988. After search, the applicants came to know that

Will was fabricated by the respondent. The Will in question could not have been made by the alleged testator K.M.Radhakrishnan Chettiar as he was unable to move around and was bedridden at the relevant point of time. There is an interpolation made in regard the place of execution of Will and this circumstance coupled with the fact that the testator was not in sound state of mind at the time of making the alleged Will would create a strong suspicion that the Will was fabricated and there was no possibility for executing the Will at Chennai by the testator. The attesting witnesses were all employed by the respondent. The Will in question was not made known to the other family members during the life time of the alleged testator. Even at the time of letters of administration, the Will in question was not made known to the applicants. The family members were not even put on notice about the Will in question even in 2006 when the steps were being taken by the respondent herein for filing an original petition for the grant of letters of administration and it was kept secret by the respondent. The will is shrouded by suspicious circumstances and therefore, the letters of administration



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granted earlier by this court in favour of the respondent herein has to be revoked on this ground.

6. It is the further case of the applicant that in the Original Petition filed for the grant of letters of administration, the residential address of the 1st applicant's residential address was furnished as No.15, Nainiappa Maistry Street, Park Town, Chennai 600003 which is not correct and the 1st applicant never resided there at the said address. The respondent had deliberately furnished a false address of the 1st applicant only for the purpose of keeping the 1st applicant to remain ex parte in the proceedings. Further the place of execution differs in the Will in question and the attesting witnesses were found to have subscribed their signatures not only on the last page of the will but also found to have subscribed their signatures unnecessarily on two other places of the Will in question. The respondent had obtained signatures of the applicants herein.

7. It is also the further case of the applicants that the respondent was instrumental in obtaining the signatures from the applicants at the time of obtaining the consent affidavit which were to be filed then in the original petition for letters of administration. The respondent obtained the signatures of the applicants by misleading them that he would process the claim over the property



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of late K.M.Radhakrishnan Chettiar in the name of all the persons interested including the applicants. The letters of administration obtained by suppressing the material facts. The contents of the consent affidavits were not read out to the applicants and they were obtained by gaining confidence and making misrepresentation that the property would be divided among all the persons interested. Hence, this application for revocation of the letters of administration granted by this court by order dated 03.09.2012 made in O.P.No.467 of 2010 in favour of the respondent in respect of the alleged Will dated 01.09.1988 executed by K.M.Radhakrishnan Chettiar.

8. The respondent filed his counter affidavit inter alia denying the averments made in the application and contending that despite service of notice in the original petition filed for the grant of letters of administration, applicants 2 to 4 did not chose appear before the court either in person or through a counsel and to contest the matter for the reason best known to them that they had consented for the grant of letters of administration. One of the attesting witnesses to the Will was examined to prove the execution of the Will as required under law and this court on considering the evidence of the attesting witness who deposed in court was pleased to grant letters of administration in



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favour of the respondent. The respondent was 8 months old when his father had passed away in 1983. Since his paternal uncle and aunt-Janakiammal had no issues, they treated him as their son. Therefore, when he was hardly 6 years old, K.M.Radhakrishnan Chettiar had voluntarily out of his free will and consent executed the last will and testament on 01.09.1988 in the presence of witnesses in respect of the subject matter of property when he was in sound disposing state of mind. Under the will Janakiammal was appointed as Executor and original Will was handed over in her custody. Under the Will the testator had bestowed life interest in favour of his wife Janakiammal and after her life further life interest was created in favour of the respondent vesting of title absolutely in favour of his children in future. Thereafter, Janakiammal had also executed a Will on 29.05.2004 in the presence of attesting witnesses K.A.Dhanasekaran, the husband of 2nd applicant and another. Janakiammal died on 31.12.2005. The Will of Janakiammal dated 31.12.2005 came into effect on the date of her death.

9. It is the further case of the respondent that the applicants had duly sworn in an affidavit of consent dated 31.03.2006 individually admitting the Will dated 01.09.1988 of K.M.Radhakrishnan Chettiar expressing their no objection for the grant of letters of administration of the Will in question. The applicants were



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aware of the proceedings of letters of administration and the letters of administration granted on 03.09.2012. The Will was drafted by an Advocate and executed in the presence of witnesses. The application seeking to revoke the letters of administration has been filed with inordinate delay of more than eight years. This application is motivated when the respondent refused to yield to their illegal demands. There was no just cause for revocation. Hence, the respondent prays for dismissal of the application.

10. This court heard Mr.A.Palaniappan, learned counsel for the applicants and Mr.V.Raghavachari, learned senior counsel on behalf of Mr.E.Prabhu, learned counsel on record for the respondent;

11. The learned counsel for the applicants would contend that the letters of administration was obtained by suppressing the material facts. Though the applicants were served with notice in the said proceedings the respondent had gained confidence of the applicants and obtained their signatures in the consent affidavit by making false representation to them. During the said proceedings, the contents of the consent affidavit of the applicant were never read out to them. Therefore, according to the learned counsel the Will, which is an unregistered one, is shrouded with serious suspicious circumstances.



12. The learned counsel for the applicants would further submit that though in the will at one place it was typed as if the Will was executed at Kannigaippair village, it was interpolated at another place as if the Will was executed at Chennai. According to the learned counsel, since the alleged testator was not keeping good health and he was bedridden and completely immobilized and was unable to move around, it is highly unbelievable that he had come down to Chennai to execute the Will in question. The attesting witnesses to the Will in question were employed by the respondent and their testimony would only go to indicate that the alleged testator was not in sound state of mind and good health at the time of making the alleged Will. The alleged testator was in fact suffering from serious setback and that would by itself would go to indicate that the Will has been created after the death of the testator.

13. The learned counsel would further submit that the applicants have not been examined in the proceedings of letters of administration and their consent affidavits only were filed. There was no reason assigned as to why the other legal heirs, viz., the applicants were disinherited. This circumstance is also one of the suspicious circumstances shrouded in the Will in question. The learned counsel would also submit that thumb impression of the testator K.M.Radhakrishnan



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Chettiar was not obtained on each page of the Will and it was obtained only at the last page. This would also indicate that the Will in question has been created.

14. The learned counsel for the applicants would lastly submit that the respondent had deliberately furnished a false address of his mother, the 1st applicant herein in the original petition for the grant of letters of administration and had managed to get an order for publication of the proceedings against his mother, the 1st applicant and thereafter, he had obtained an order setting her exparte in the proceedings. This would also create a serious doubt about the Will in question. Thus according to the learned counsel, the entire proceedings whereby letters of administration was granted in favour of the respondent is a result of suppression of material facts and the statement that the alleged testator who had undergone kidney transplantation and was bedridden and was also suffering from geriatric issues at the relevant point of time had come to Chennai all the way from Kannigaippair village to execute the Will in question is highly improbable and doubtful. Thus, the applicants have made out a just cause for revocation of Will.

15. The learned counsel for the applicants would rely upon the judgement of the this court reported in the cases of **K.Karthik v. Jayanthi Iyengar, (2015-**



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1-L.W. 723) for the proposition that delay in approaching the court for letters of administration when not explained it should be construed as one of unavoidable circumstances to cast shadow upon the Will to eclipse the same.

16. The learned counsel for the applicants would further rely upon the judgment of this court in the case of **R.Thangarajan v. R.Balasubramanian (1994-2-L.W.- 326)** for the proposition that mere delay in seeking revocation is not a reason to deny the applicant's interest in the property of the testator.

17. Per contra, the learned senior counsel for the respondent would contend that the application for revocation of the letters of administration granted in favour of the respondent with an unexplained delay of more than eight years is not maintainable in law. According to the learned counsel, it is not the case of the applicants that letters of administration was obtained without their knowledge. The applicants were served with notice in the original petition and the applicants 2 to 4 had filed their consent affidavit before this court which were also accepted and received by this court in evidence. The 1st applicant despite notice and paper publication did not chose to appear either in person or through a counsel and therefore, she had been set exparte by the court. Therefore, the applicants cannot now contend that they had no knowledge about the proceedings initiated by the



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respondent for the grant of letters of administration. The averments made in the affidavit filed in support of the present application that the applicants came to know about the grant of letters of administration only in 2020 is highly improbable and the same cannot be countenanced for the simple reason that the applicants themselves filed their consent affidavit expressing their no objection for the grant of letters of administration in favour of the respondent. The applicants admitted the signing of the affidavits. When that be so, several years after signing of the consent affidavits, the applicants cannot now complain that contents of the affidavits were not read out to them. Therefore, according to the learned counsel, the contention of the applicants that they were not aware of the grant of the letters of administration in favour of the respondent was introduced only to blackmail the respondent and get enriched themselves by getting a share in the property which was bequeathed by the testator in favour of the respondent.

18. The learned senior counsel for the respondent would further contend that the respondent was all along treated as their son by his uncle late K.M.Radhakrishnan Chettiar and aunt Janakiammal. When the respondent was hardly 6 years old, the Will was executed by the testator K.M.Radhakrishnan Chettiar giving life interest to his wife –Janakiammal. The said Janakiammal



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thereafter, executed a Will on 29.05.2004 in favour of the respondent in respect of her individual property wherein, she had referred to the Will executed by her husband K.M.Radhakrishnan Chettiar in favour of the respondent. The learned senior counsel would also bring to the notice of the court that one of the attesting witnesses in the Will executed by Janakiammal was none other than the husband of the 2nd applicant herein which is not disputed by the applicants.

19. The learned senior counsel for the respondent would lastly contend that there was also an exchange deeds executed between the husband of the 2nd applicant and the respondent in respect of the property subject matter of the Will confirming the title of the respondent. Therefore, according to the learned counsel, when the applicants have consciously filed consent affidavit now, they cannot complain that there was suppression of material facts. When the Will was drafted by an Advocate as per the instructions of the testator and, was executed in the presence of attesting witnesses and the court had accepted the Will, unless a just cause is shown for revocation, the grant of letters of administration cannot be disturbed. According to the learned senior counsel, there was no just cause made out by the applicant to revoke the letter of administration and therefore, he prays for dismissal of the application.



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20. The learned senior counsel in support of his contention that application for revocation of letters of administration ought to have been made within three years from the date of grant of letters of administration and the present application filed with an inordinate delay is liable only to be dismissed relied upon a judgement of a Division Bench of **Bombay High Court** in the case of **Ramesh Nivrutti Bhagwat v. Dr.Surendra Manohar Parakhe [2007 SCC OnLine Bom 1506]**. He also relied upon the judgement of the Supreme Court in the case of **Lynette Fernandes v. Gertie Mathias [(2018) 1 SCC 271]** and the Hon'ble Supreme Court in the case of **Ramesh Nivrutti Bhagwat [(2020) 7 SCC 284]** for the proposition that revocation can be ordered only when just cause was established. Judgement of the Hon'ble Supreme Court in the case of **Ramesh Nivrutti Bhagwat [(2020) 7 SCC 284]** was relied on for the proposition that residuary provision of Article 137 of the Limitation Act, 1963 shall apply for revocation of letters of administration and such limitation period will commence on the date of the alleged knowledge or notice of grant of letters of administration.

21. In the light of the submissions made on either side, now, the point that arises for consideration in this application is



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Whether the applicants have made out a just cause for revocation

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of the letters of administration granted in respect of the Will dated e
01.09.1988 executed by late K.M.Radhakrishnan Chettiar in favour of
the respondent herein?

Point:

22. The relationship of the parties is not in dispute. It is relevant to note that it is not the case of the applicants that they were not aware of the proceedings which was initiated by the respondent for the grant of Letters of Administration in respect of the Will dated 01.09.1988 executed by late K.M.Radhakrishnan in favour of the respondent. In fact, the 1st applicant, the mother and the other applicants, the sisters of the respondent had given their consent affidavit before the court though the 1st applicant was set ex parte during the proceedings. The execution and signing of the affidavits by the respective applicants were not disputed by the applicants. Only stand taken by the applicants is that the respondent being the only son of the 1st applicant and the brother of the other applicants had managed to gain their confidence and obtained their signatures without being made known to them the contents of the affidavits. It is not the case of the applicants that they were illiterate and they



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were not able to understand the nature of the affidavit and the contents thereof.

When the applicants had signed in the affidavit consciously and participated in the proceedings and filed such affidavits before the court of law, then cannot later contend that those affidavits had been obtained by misrepresenting them. Even assuming that they applicants were misrepresented, there must be necessary pleading in support of such contention as to the misrepresentation. Mere allegation in general terms that there was misrepresentation would not constitute as such misrepresentation of facts. It is the specific case of the respondent that when his father died, he was hardly 8 months old and he was all along looked after by his uncle K.M. Radhakrishnan Chettiar and aunt Janakiammal. When he was six years old, K.M. Radhakrishnan Chettiar made a Will. The said Will has been proved in the court of law by examining one of the attesting witnesses as P.W.2. P.W.2 had spoken about the execution of Will. Merely because the testator was suffering from certain physical ailments at the relevant point of time and was confined to his bed, that itself cannot be a determinative factor to hold that the Will was not executed by testator in a sound state of mind. What is required to be weighed is only the mental faculty of the testator at the time of making the Will.



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23. The term “**sound mind**” has been defined in Section 12 of the Indian Contract Act, 1872 which reads as under:-

12. What is a sound mind for the purposes of contracting.-

A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Therefore, merely because a person was suffering from geriatric issue apart from diabetic and other complications would by themselves not be sufficient to hold that such person was not in sound mind and was not capable of understanding and of forming a rational judgement. The test of soundness of mind is that he was capable of understanding the nature of things and forming a rational judgement as to its effect upon his interest. There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy this test. As such, it is relevant to note that when one of the attesting



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witnesses had already testified in the court about the sound state of mind of the testator while executing the Will, mere allegation in general, that too, when the applicants themselves having accepted the Will filed their consent affidavit expressing their no objection for the grant of letters of administration in favour of the respondent, after the lapse of more seven years, it is very hard to believe the contention of the applicants that the testator was not of sound mind at the time of making the will in question.

24. The revocation of letters of administration can be made only in the case where the just cause is shown by the party concerned. Section 263 of the Indian Succession Act, 1865 which read as under: -

“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) 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



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(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

(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.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) 'A' obtained letters of administration to the estate of 'B', as his widow, but it has since transpired that she was never married to him.



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(v) 'A' has taken administration to the estate of 'B' as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.”

25. A careful perusal of the above provisions in s.263 of the Indian Succession Act would make apparent that if only the case of the applicants falls within the ambit of any of the above provisions, the letters of administration granted can be revoked.

26. It is not the case of the applicants that the proceedings of letters of administration were defective in substance. Therefore, clause (a) of Section 263 will not come to the aid of the applicants. AS far as clause (b) and (c) are concerned, it is the contention of the applicants that grant was obtained fraudulently by making false suggestion or by or by concealing from the Court



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something material to the case or the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

27. On perusal of the records, this court do not find any suppression of material fact and the respondent had cited all the necessary parties as respondent and the Will propounded as the last Will of the deceased by the respondent was found to be proved in the manner known to law. On the facts of the given case, the applicants' case would also not fall under clauses (b) and (c) also to order for revocation of the letters of administration granted in favour of the respondent.

28. It is to be noted that Will was executed when the respondent was hardly six years old and the testator had given life interest to his wife- Janakiammal. The said Janakiammal during her life time had executed a Will in favour of the respondent in respect of her personal properties. In the said Will also, there is a reference made about the Will in question. This fact was not at all disputed by the applicants.

29. Be that as it may, the fact that the husband of the 2nd applicant was one of the attesting witnesses of the Will executed by Janakiammal was also not disputed. When the documents were also filed to show that exchange deeds were also executed in respect of the properties covered under the Will of Janakiammal



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wherein the 2nd applicant's husband was also a party. This fact was also not disputed. All these admitted facts would only go to indicate that the present application has been filed belatedly only for claiming shares in the property. The applicants were aware of the proceedings initiated for the grant of letters of administration and the also the grant of letters of administration in favour of the respondent. They also filed their consent affidavits before this court. Therefore, now, it is highly difficult to countenance their contention that they came to know about the letters of administration granted in favour of the respondent only in 2020. This court is therefore of the view that the applicants were already aware of the proceedings initiated by the respondent in 2006 itself and the above said proceedings was culminated in 2012 in granting of letters of administration. Such being the position, the applicants ought to have filed an application for revocation of the letters of administration granted in favour of the respondent within three years from the date of issuance as per Article 137 of the Limitation Act, however, the present application has been filed after the lapse of more than eight years.

30. In the case of **Ramesh Nivrutti Bhagwar [2007 SCC OnLine Bom 1506]**, a Division Bench of Bombay High Court has held that application for



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revocation has to be made within a period of three years from the date of grant of letters of administration.

31. In the case of **Ramesh Nivrutti Bhagwat [(2020) 17 SCC 284]**, the Hon'ble Supreme Court has held that the residual provision of Article 137 of the Limitation Act 1963, which provides a period of three years from the date when the right to apply accrues, shall apply for revocation of letters of administration and such limitation period will commence on the date of the alleged knowledge or notice of grant of letters of administration. Therefore, when the applicants in the instant case were made as parties to the proceedings, the knowledge of grant could be attributable to the applicants from the date of passing of orders granting letters of administration. The letters of administration was granted in 2012. Such being the position application for revocation ought to have been made within three years from the date of order granting letters of administration whereas the present application was filed on 13.08.2021 after a lapse of almost nine years. Thus, the application for revocation of letters of administration is *exfacie* barred by limitation.

32. In an identical situation, this court in the case of **J. Rapeeta Earnest Mary v. A.Jesudass (Manu/TN/6854/2020)**, this court has held that that



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application filed to revoke the order granting letters of administration with an inordinate delay cannot be entertained.

33. In the case of **R.Thangarajan v. R.Balasubramanian (1994-2-L.W.-326)** has held that the grant made without citing the parties who ought to have cited is a just cause. In the instant case, all the parties interested were made as parties and they had, in fact, filed their affidavit, consenting for the grant of letters of administration. Therefore, this judgement relied on by the learned counsel for the applicants are not applicable to the facts of the present case.

34. In the cases of **K.Karthik v. Jayanthi Iyengar, (2015-1-L.W. 723)** this court has revoked the letters of administration on the ground that subsequent to the execution of Will, two gift settlement deeds were executed in respect of the very same properties by the testator. Further, there was an inordinate delay in filing the petition for letters of administration. However, this judgement will also not be applicable to the facts of the present case.

35. Considering all the above, this court is of the view that when the order granting letters of administration, which is sought to be revoked was tested on given facts of the case and the materials that were brought on record, the same cannot be faulted with. Further, this court is of the view that the applicants have



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not made out any just cause to revoke the letters of administration granted in favour of the respondent in O.P.No.467 of 2010 wherein the applicants were parties and they had also filed their consent affidavits. Therefore, the application deserves only to be dismissed.

In the result, the Application is dismissed. No costs.

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Index : yes / no
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Speaking / Non Speaking Order



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