



C.M.A No.2555 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2555 of 2022

1.D.Sivaraman

2.D.Balamurali

... Appellants

Vs.

1.Vasanth

2.Krishnamurthy

3.The Branch Manager
Canara Bank, No.121/31,
Thiruvoodal Street,
Thiruvannamalai.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 384 of Indian Succession Act r/w Section 104 C.P.C., seeking to set aside the judgment and decree order dated 04.04.2022 in S.O.P.No.1 of 2018 (Sub Court O.P.No.100 of 2010) on the file of the Additional District Judge, Thiruvannamalai.



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For Appellants : Mr.S.Arivazhagan

For Respondents : Mr.D.Govinda Reddy for R2
Mr.K.M.Anand for R3

JUDGMENT

This appeal is laid against the order passed in SOP.No.1 of 2018, by which the learned Additional District Court, Thiruvannamalai had dismissed the appellants' petition seeking succession certificate. A certain Sundaramurthy died as a bachelor. He had few immovable properties and also certain bank deposits. As regards his immovable properties, he executed a Will, dated 23.01.2010. However, as regards his bank deposits, he had not made any arrangement. On 17.08.2010, Sundaramurthy died.

2.Respondents 1 and 2 herein are sister and brother of the late Sundaramurthy, respectively. The appellants herein are the children of the first respondent.

3.The claim of the appellants is that as much as Sundaramurthy had already conveyed his intend to bequeath his immovable properties to his



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nephews, namely the appellants herein. Therefore, they argue that they should be allowed to collect the amounts that Sundaramurthy had deposited with the third respondent bank. The trial Court has dismissed the O.P, not on the merit of the case, but on the grounds of jurisdiction. The Court reasoned that it was sitting on testamentary jurisdiction, and therefore, it could not grant a succession certificate.

4.This Court finds it difficult to subscribe to the line of reasoning of the learned District Judge. The learned Judge appears to have assumed that merely because a Will was produced by the appellants, he had automatically assumed the jurisdiction of a probate Court. However, since it is a Hindu Will executed outside the jurisdictional town, it does not even need to be probated.

5.This, however, does not advance the case on the appellants on merit. The Court cannot presume that merely because Sundaramurthy had conveyed his immovable properties to the appellants, it *ipso facto* implies that he would have intended to part with his bank deposits to them. That is a matter more on title. It must be underscored that when issuing succession certificates, Courts are only concerned with the *prima facie*



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title of the petitioners to collect their debts and securities, and it does not address the issue of title. That has to be decided by a Competent Civil Court.

6. Here, it may have to be noted that the appellants would only be the Class II heirs of the deceased, but if one goes through Class II heirs in the schedule to the Hindu Succession Act, it is governed by Rule of elimination by proximity. In terms of that, the brother and sister of the deceased Hindu male will exclude the children born to brothers or sisters.

7. To conclude, even though this Court does not subscribe to or approves the reasoning of the trial Court for dismissing the S.O.P, it still arrives at the same conclusion for the reasons hereinabove stated.

22.11.2023

Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

The Motor Accidents Claims Tribunal
(Principal District Judge), Cuddalore.



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N.SESHASAYEE, J.
Anu

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