



A.No.6063 of 2022 in O.P.No.550 of 2017

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in

O.P.No.550 of 2017

N.SATHISH KUMAR, J.

This application has been filed to condone the delay of 1471 days in filing a petition to restore the Original Petition in O.P.No.550 of 2017 which was dismissed for non prosecution.

2. The Original Petition in O.P.No.550 of 2017 has been filed for probate of the Will said to be have been executed by one Saraswathi in favour of the petitioner. The respondent in the Original Petition is said to be the executor named in the Will. The present petitioner is shown the beneficiary in the above petition. This application has been filed to restore the Original Petition which has been dismissed for non prosecution. The so called executor named in the Will has not come before this Court.



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3. The Will has been executed by the one Saraswathi, who is a retired teacher at the relevant point of time. Even as per the recitals in the Will, the testatrix has already parted with the title and she has executed a sale deed in favour one Nandhini in the year 2012 itself. Further it appears that the said Saraswathi has also a filed a suit in C.S.No.106 of 2014. However, she has not prosecuted the suit and the suit has been dismissed for default.

4. Though in a probate proceedings, the Court cannot go into the title of the property, as the very recitals found in the Will reveals that the testatrix has already sold the property in favour of one Nandini. When a person has no title over the property at the relevant point of time, property cannot be bequeathed by way of a Will as per Section 59 of the Indian Evidence Act. Further, there are no details whatsoever in the petition with regard to other kith and kin of the testatrix and they have not been made as a party. Admittedly, the testatrix was a retired teacher and there is no whisper whatsoever about the nominee of the testatrix to her retirement benefits, who received the retirement benefits and without making such an inquiry, totally suppressing the legal representatives or made other kith and kin of the



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testatrix as a party, this Court is of the view that the very long delay cannot be condoned. Therefore, when the very recitals in the Will propounded in this matter indicate that the said Saraswathi had no title at the relevant point of time and considering the fact that the present title holder has not been made as a party, I do not find any merits in this petition to condone such a huge delay.

5. Accordingly, this application is dismissed.

22.11.2023

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