



A.No.5972 of 2022
in O.P.No.466 of 2020

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R.N.MANJULA, J.

This application is filed to revoke the Grant of Letter of Administration granted vide order dated 17.08.2021 passed by this Court in the above Original Petition by stating that it is vitiated by reason of fraud.

2. The averments in the affidavit is as follows:

The applicant is the first respondent in O.P.No.466 of 2020; the first respondent is the brother-in-law of this applicant and the respondents 2 to 4 are her sisters-in-law; the husband of the applicant P.Harikumar passed away on 26.12.2015 leaving the applicant as the only legal heir; the parents of P.Harikumar predeceased him; the Letters of Administration has been obtained by the first respondent by playing fraud; the first respondent colluding with the respondents 2 to 4 have fabricated the Will dated 03.12.2014 behind the back of the applicant and managed to get the Letters of Administration; to the best of the knowledge of the applicant her husband did not execute any Will or testament during his lifetime; the applicant did not have any knowledge about the filing of the Original Petition in O.P.No.466 of 2020; the applicant has not engaged



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the advocate by name S.Premkumar through whom the consent affidavit is seen to have been filed; in the consent affidavit the signature of the applicant is forged; the applicant came to know about the fraud committed by the first respondent in obtaining the Letters of Administration only when some of the land brokers approached her to give 'no objection' for purchasing the properties standing in the name of her husband; when the applicant was residing at Chennai her Salem address is given; the comparison of the applicant's signature in the consent affidavit and her passport itself would show that it is a forged one; there is a manipulation in the dates seen in the consent affidavit; since the Letters of Administration has been obtained by playing fraud behind the back of the applicant, it has to be set aside.

3. A counter has been filed by the respondents by stating that the applicant / first respondent had knowledge about the Will and she had also executed the consent affidavit voluntarily; however now she had retracted from her stand and filed this application; the brother of the first respondent and the applicant were living separately after their marriage and they have no issues; the first respondent's brother passed away on 26.12.2015 and the Will dated 03.12.2014 in respect of which Letters of



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Administration has been granted is the last Will and the testament of the applicant's brother; the first respondent is supporting the applicant financially and so far the first respondent was constrained to give Rs.1,50,00,000/- and other monetary assistance to the applicant; the applicant has given the consent affidavit only through her counsel S.Premkumar; now she cannot plead that she was not aware of the Letters of Administration; the applicant has suppressed the money transfer made by the first respondent and the financial support extended by him; the applicant used to stay at her permanent address by leaving the matrimonial home; the applicant would sign as 'Kirthika' in several documents; hence there is no reason to revoke the Letters of Administration as there is no suppression of facts.

4. The learned counsel for the applicant submitted that the first respondent who is the brother-in-law of the applicant had managed to get the Letters of Administration without the knowledge of the applicant; though the Will is dated 03.12.2014, the contents of the Will would show about the death of the mother as 21.06.2015 which is a future date; the same advocate who had filed the Original Petition had affixed his signature by stating that the consent affidavit is filed; one Advocate



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cannot act for both the parties and further the signature of the first applicant in the consent affidavit can be seen to be a forged one and that can be compared with the signature of the applicant made in her passport; the first applicant usually resides at Chennai but in the Original Petition an address of a commercial place at Salem is mentioned as the address of the applicant; the first respondent had completely suppressed the existence of this applicant as the legal heir of his brother P.Harikumar; the recitals in the Will itself is self explanatory to show the fraud committed by the first respondent.

5. The learned counsel for the first respondent submitted that only because the applicant had given the consent affidavit to the counsel by name S.Premkumar, it happened to be filed in the Court and now the applicant completely retracts her stand; the applicant concedes the financial assistance done by the first respondent, but filed this application with false averments; the difference in the date of execution of the Will is probably a typographical error and that cannot be exaggerated as fraud; the applicant is the wife of the first respondent's brother P.Harikumar but they did not happily live together; since the applicant had chosen to live at Salem most of the times, the first respondent had given her Salem address.



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6. The Will dated 03.12.2014 is an unregistered one. In the contents of the Will it is seen that there are recitals that the mother died on 21.06.2015. When the Will itself was executed on 03.12.2014, the contents of the Will speaks about a future event and that creates a thorough suspicion. Further the same counsel had filed the consent affidavit of the first respondent also by making endorsement. Though there is a possibility for an Advocate being a counsel for both the parties, if there is any understanding between themselves, when a party had chosen to contest the matter, there cannot be any engagement of the same counsel by both the parties.

7. Some of the documents like settlement deed dated 09.05.2018 produced by the applicant would show that the first respondent might have acted with some evil desire to suppress the very existence of the applicant herself. Because in the said settlement deed which was executed in favour of the first respondent, it is stated that the husband of the applicant is unmarried. Since there are some strong grounds shown by the applicant that the Letters of Administration has been obtained by suppression of facts, I feel in the interest of justice, the Letters of



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Administration already granted should be revoked and the parties should be allowed to contest the matter by converting the Original Petition into Testamentary Original Suit by leaving all other contentions of the applicant open to be dealt during the trial.

8. In view of the above stated reasons the application is allowed and the Original Petition in O.P.No.466 of 2020 is ordered to be converted into Testamentary Original Suit. The applicant is required to file his written statement within a period of two weeks from the date of converting the Original Petition to Testamentary Original Suit with a condition that the parties should cooperate to conclude the Testamentary Original Suit proceedings within a period of three months.

03.07.2023

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