



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2023

PRONOUNCED ON : 27.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application No.5625 of 2022
in O.P.No.60 of 2022

Suresh Babu

...

Applicant

versus

1.Padmavathy

2.A.Azhwar

3.Parvathy

4.Saraswathi

5.Raji

6.Geetha

...

Respondents

PRAYER: Application filed under Order XIV Rule 8 of the Original Side Rules read with Section 263 of the Indian Succession Act, praying to revoke the order dated 19.09.2022 made in O.P.No.60 of 2022 granting Letters of Administration to the respondents.

For Applicant : Mr.V.G.Sureshkumar

For Respondents : Mr.R.Ganesamoorthy



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in O.P.No.60 of 2022



ORDER

This application has been filed to revoke the order dated 19.09.2022 made in O.P.No.60 of 2022 granting Letters of Administration to the respondents.

2. Heard the learned counsels for the applicant and respondents and perused the materials available on record.

3. The petition mentioned property belongs to one Kasthuri; the property along with its larger extent was purchased by one Arjunan Naicker from V.Jaganatha Mudaliar in the year 1965; Arjunan Naicker died on 08.03.1986 leaving behind his daughters and son as his legal heirs; the legal heirs entered into a partition deed in the year 2005; in the said partition, the schedule mentioned property was allotted to A.Ganapathy, who was the husband of the deceased Kasthuri; later the said Ganapathy settled the above said property in favour of his wife Kasthuri by way of a registered settlement deed dated 18.09.2008; since the schedule mentioned property was obtained by Kasthuri through her husband and she died intestate on



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25.11.2015 without leaving any children of her own, the respondents who are her class-II heirs are entitled to inherit the same and hence the respondents have filed the Original Petition and obtained Letters of Administration by virtue of the order dated 19.09.2022 in O.P.No.60 of 2022; now the applicant who claims himself as the adopted son of late Kasthuri and Ganapathy has filed this application to revoke the grant of Letters of Administration. The applicant has stated that the respondents managed to get the Letters of Administration without impleading him as a party and by suppressing the material facts.

4. Mr.V.G.Sureshkumar, learned counsel for the applicant submitted that the applicant is the adopted son of Ganapathy and Kasthuri; his natural parents are one Pachiappan and Neelavathi; Neelavathi is the sister of Kasthuri; it is submitted that the applicant was given in adoption by his natural parents to Ganapathy and Kasthuri when he was 14 years and from then onwards the applicant was living along with his adopted parents.



4.1. After the demise of the adopted parents, the applicant is in enjoyment and possession of the petition mentioned property as his lawful owner in his capacity as only the legal heir of the deceased; the applicant is said to have known about the grant of Letters of Administration in favour of the respondents only when the respondents had lodged a police complaint to call upon the applicant to handover the vacant possession of the property.

5. The respondents have filed counter and it was argued on their behalf by Mr.R.Ganesamoorthy that the applicant is in no way related to late Kasthuri and Ganapathy; the respondents 1 and 3 are the sisters of Ganapathy and the second respondent is the brother of Ganapathy; the respondents 4 to 6 are the children of predeceased sister of Ganapathy; since Kasthuri required the suit property by virtue of a settlement deed executed by her husband on her death and in the absence of any class-I legal heir, the respondents are entitled to inherit the same; the applicant who is in possession of the original documents of title had refused to handover the documents to the respondents and handover the possession; the applicant



has not produced any evidence to show that he was the adopted son of late Ganapathy and Kasthuri and hence this application should be dismissed.

6. There is no quarrel on the point that the property was settled in favour of the deceased Kasthuri by her husband by virtue of a registered settlement deed dated 18.09.2008. The respondents are the siblings and children of the predeceased late Ganapathy and they claim that they are entitled to the petition mentioned property as the class-II legal heirs of late Kasthuri. The respondents had filed O.P.No.60 of 2022 without impleading the applicant as a party. The owner of the property by name Kasthuri had died without any class-I legal heirs in view of the fact that her husband predeceased her and she had no issues of her own. However the applicant has produced the address proof of the family card of late Kasthuri and his Pan Card, Voter ID and Bank Passbook, containing the address of the petition mentioned property.

7. The claim of the applicant is that as the adopted son of late Kasthuri and Ganapathy, he was living along with them until their lifetime



and still continues to live there. The address proofs as shown by the applicant is a *prima facie* material to support his contention that he was living in the petition mentioned property even during the life time of Kasthuri. Kasthuri died on 06.08.2019 and the Original Petition has been filed in the year 2022 by the respondents without showing any of the interested persons as respondents.

8. It is admitted by the respondents that the applicant is in possession of the original title deeds of the petition mentioned property. The Government Identity Cards along with the possession of the original title deeds of the property would show that the applicant has got certain interest in possession of the petition mentioned property, though he has the burden to prove his relationship with the deceased Kasthuri.

9. The respondents ought not to have used the Letters of Administration granted to them as a weapon to dispossess the applicant from the petition mentioned property without resorting to file an appropriate suit. If the applicant is able to prove that he is the adopted son of the



deceased Kasthuri and Ganapathy, his rights can have the priority over the rights claimed by the respondents.

10. The learned counsel for the applicant has cited the judgment of the Division Bench of this Court held in ***Dr.R.A.Venkatesan vs. D.Jenbagalakshmi*** reported in ***2012 (2) CTC 278*** in support of his submissions that all persons who are interested in the estate of the deceased are entitled to enter by way of filing a caveat and oppose the grant of Probate or to apply for revocation. In the said judgment, it is held as under:-

“13. A grant of administration does not decide any question of title. It merely decides the right to administer. When deciding the grant of Letters of Administration, the Court would not go into the question of title. When a person seeks Letters of Administration, under Section 218 of Indian Succession Act, it is sufficient if the applicant for Letters of Administration alleges that there is a property to be distributed and that he is entitled to the whole or part of it. Although it is not necessary for the Court to decide what assets are likely to come to the hands of the applicant for Letters of Administration. Court is duty bound to consider whether there



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is any estate at all to be administered. Court need to specify whether any property was left by the deceased.

14. As pointed out earlier, case of Respondents is that Perundevi Ammal settled her immovable property at No.3, Prasanna Vinayagar Koil Street, Mylapore, Chennai-4 in favour of Dhanapal under Settlement Deed dated 23.08.1973 and after the Settlement Deed, Dhanapal was in continuous possession and enjoyment of the same as absolute owner till his death on 08.11.1989. Further case of Respondents is that after the death of Dhanapal, Respondents 1 to 3 were in possession and enjoyment of the said property and that they sold the property to Respondents 4 & 5 under Sale Deed dated 28.06.1993 and Respondents 4 & 5 are in possession and enjoyment of the property. No application of Letters of Administration can be entertained to an estate which was already disposed of even during the life time of the deceased. When property was already disposed of even during the life time of deceased, Respondents have a right to show before the Court that the schedule property is not available to be administered.

15. All persons who have "an interest in the estate of the deceased" and are entitled to enter caveat and oppose the grant of Probate under Section 263 of the Act are also entitled to apply for revocation of the Probate. It is well established



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that any interest, however slight, is sufficient to entitle a party to oppose Letters of Administration/Probate.”

11. As the applicant has stated more than the bare minimum facts with regard to his interest in the petition mentioned property, the respondents ought to have impleaded the applicant as a party to the proceedings seeking grant of Letters of Administration in O.P.No.60 of 2022. Since Letters of Administration has been granted in the absence of the applicant, I feel it is liable to be set aside.

12. In the result, the application in A.No.5625 of 2022 is allowed and the grant of letters of administration in O.P.No.60 of 2022 dated 19.09.2022 is hereby revoked. And the applicant is at liberty to enter his caveat and contest the Original Petition once it is restored to file.

27.07.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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Pre-Delivery Order made in
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