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Crp No.469 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.469 of 2024 and
CMP No.2224 of 2024

K.Rajagopalan

... Petitioner

Vs.

1. K.Radhakrishnan
2. R.Ashwin
3. Mohana @ Mohanambal
4. Bhuvana @ Bhuvaneshwari

... Respondents

Prayer: Civil Revision Petition filed under under Section 227 of the Constitution of India to set aside the order dated 18.08.2023 made in I.A.No.1/2022 in Probate O.P.No.185/2018, by the Principal District Judge, Tiruvallur.

For Petitioner : Mr.P.C.Harikumar

For Respondents : Mr.M/s S.Thamizharasi

and G.Pavithra for Respondents 1 and 2



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ORDER

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This Civil Revision Petition has been filed to set aside the order dated 18.08.2023 made in I.A.No.1/2022 in Probate O.P.No.185/2018, by the Principal District Judge, Tiruvallur.

2. The petitioner herein is the first respondent and the first respondent herein is the petitioner in the above said probate petition. The petitioner and the first respondent herein are sons and the respondents 2 and 3 herein are the daughters of the deceased N.M.Krishnamurthy. In the above said probate petition, the first respondent has sought to probate the Will dated 09.08.2006 executed by his father N.M.Krishnamurthy, in favour of him with regard to the property, viz., land and building, door No.82, plot No.98 'A', first street, Shri Krishna Nagar, Madhuravayal, Chennai, comprised in survey No.315, part, Maduravayal Village, now comes under Poonamallee Taluk, Thiruvallur District, measuring to an extent of 1200 sq.ft. UDS out of 2400 sq.ft. Land together with 975 sq.ft. Building in the ground floor. It is also stated in the above probate petition that, the remaining 50% of the property measuring to an extent



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of 1200 sq.ft. undivided share out of 2400 sq.ft and also the right to construct in the first floor was settled in favour of his younger son K.Rajagopalan (the petitioner herein) through a settlement deed dated 09.08.2006.

3. The petitioner herein has filed counter affidavit to the above probate petition, denying that K.Radhakrishnan (petitioner in the above probate petition) is neither testator nor beneficiary to the above said Will and hence, he cannot file the probate petition. It is further contended by the petitioner herein in the above counter affidavit that, the testator N.M.Krishnamoorthy has not bequeathed the property to his elder son, K.Radhakrishnan, but bequeathed the above the property in favour of Ashwin, son of K.Radhakrishnan.

4. Subsequently, K.Radhakrishnan/the first respondent herein, has filed I.A.No.1/2022 in the above probate petition to implead his son R.Ashwin as the second petitioner stating that, at the time of filing, the petitioner has filed the probate petition on his own capacity, not on the representative capacity; as per the Will, his son R.Ashwin,



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is the beneficiary of the Will; and the time of filing the probate petition his son was minor; now, his son attained majority and hence, has become eligible to conduct the case in his own capacity; therefore he may be impleaded. The above petition was allowed by the learned Trial Judge. Challenging the same, the present civil revision petition has been filed.

5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and I have perused the materials on records.

6. In the probate petition in O.P.No.185/2018, the first respondent stated that N.M.Krishnamurthy died on 11.04.2008 and his wife Mrs.Saguntala predeceased him on 23.11.2007 and while N.M.Krishnamurthy was alive in a sound state of mind and disposition, had executed a Will dated 09.08.2006 in favour of the petitioner (first respondent herein). But, on perusal of the Will dated 09.08.2006, it is noticed that the beneficiary is one Ashwin, s/o Radhakrishnan and no



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property was bequeathed to the first respondent, who is the original petitioner in the probate petition.

7. At this juncture, it the contention of the first respondent that, at the time of execution of the Will, his son was minor, now he became major and he being the beneficiary of the Will, he should be impleaded, as second petitioner for getting probate of the Will and hence, there is no infirmity in the impugned order, by allowing the impleading petition.

8. It is to be noted that, though the minor Ashwin, has become major and he is the beneficiary of the Will, he has not filed the affidavit to implead himself as a petitioner in the impleading petition to probate the Will. In the absence of any affidavit filed by the major beneficiary, the first respondent, who is neither beneficiary nor having any life interest upon the bequeathed property, is not a competent person to file the impleading petition. Also, the first respondent/petitioner in the probate petition was not even appointed as a guardian to his minor son. Further, in the Will, the life interest of the property



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was given to the testator/executor and his wife alone. In such circumstances, the affidavit filed by the first respondent in I.A.No.1/2022 to implead his son Ashwin, who attained majority and is the beneficiary of the Will, as proposed second petitioner in the probate petition is unsustainable. Therefore, the impugned order passed by the learned Judge is liable to be set aside.

9. Accordingly, the civil revision petition is allowed and the impugned order passed by the learned Trial Judge in I.A.No.1/2022 in the probate Petition No.185/2018, dated 18.08.2023 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

04.03.2024

Index: Yes/No
Internet : Yes/No
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To

The Principal District Judge, Tiruvallur.



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V.SIVAGNANAM ,J.

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