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OSA No.62 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.No. 62 of 2023

and

C.M.P.No.6014 of 2023 in O.S.A.No.62 of 2023

K.Sukumari

.. Appellant

Vs

1.Shanthi

2.Revathi

3.Balaji

.. Respondents

Appeal filed under Clause 15 of Letters Patent read with Order 36 Rule 1 of O.S. Rules to set aside the order of learned Judge passed in Application No.2336 of 2022 in O.P.No.759 of 2016 dated 19.01.2023.

For Appellant : Mr.M.Boopathy

For Respondents : Dr.G.Krishnamurthy



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JUDGMENT

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(Judgement of the Court was delivered by **M.Sundar, J.**)

Captioned 'Original Side Appeal' (hereinafter 'OSA' for the sake of brevity) is an intra-court appeal and the same is directed against an order dated 19.01.2023 made in A.No.2336 of 2022 in O.P.No.759 of 2016 by a Hon'ble Single Judge of this Court. This '19.01.2023 order' shall hereinafter be referred to as 'impugned order'. 'O.P.No.759 of 2016' which has been filed under 'Indian Succession Act, 1925' (hereinafter 'said Act' for the sake of brevity) *inter-alia* under Section 372 with a prayer for grant of succession certificate shall hereinafter be referred to as 'Succession Certificate OP'. To be noted, this Succession Certificate OP was allowed (*exparte*) on 02.11.2018. Thereafter, A.No.2336 of 2022 was taken out by the lone respondent in the Succession Certificate OP with a prayer for revocation of 02.11.2018 order in Succession Certificate O.P.No.759 of 2016 and therefore A.No.2336 of 2022 shall hereinafter be referred to 'Revocation Application'. '02.11.2018 order in O.P.No.759 of 2016' (*exparte* order) shall be referred to as 'OP order'.

2. In the light of the trajectory the matter has taken



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before this Court, short facts will suffice. Factual matrix in a nut shell is that succession certificate sought pertains to one Thiru.T.Kathiresan, who was working as Chief Pharmacist in the office of the Chief Medical Officer, ESI Dispensary I and Thiru.T.Kathiresan died on 22.08.2015; that post demise of Thiru.T.Kathiresan, one Ms.Shanthi, her daughter Ms.Revathi and son Mr.Balaji (hereinafter petitioners and/or I petitioner, II petitioner and III petitioner respectively for the sake of convenience based on their rank in the main Succession Certificate OP) filed O.P.No.759 of 2016 (Succession Certificate OP) with a prayer for succession certificate saying that Thiru.T.Kathiresan died intestate on 22.08.2015; that in this Succession Certificate OP, Ms.K.Sukumari is the lone respondent; that the succession certificate sought is qua terminal benefits, general provident fund, gratuity, earned leave salary etc., totalling Rs.6.85 lakhs; that in the Succession Certificate OP, lone respondent remained *exparte*; that based on the documentary evidence, OP Court allowed the Succession Certificate OP i.e., granted succession certificate vide aforementioned order dated 02.11.2018; that lone respondent thereafter filed aforementioned Revocation Application *inter-alia* contending that her marriage to Thiru.T.Kathiresan was on 30.05.2004; that Thiru.T.Kathiresan suppressed his earlier marriage



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(with I petitioner) on 15.12.1985; that she is entitled to revocation *inter-alia* under Section 383 of said Act; that Hon'ble Single Judge (OP Court) after hearing both sides dismissed the Revocation Application; that against dismissal of Revocation Application, captioned intra-court appeal i.e., OSA has been preferred by the lone respondent.

3. In the hearing today, Mr.M.Boopathy, learned counsel for lone respondent (appellant before us) and Dr.G.Krishnamurthy, learned counsel for I, II and III petitioners (three respondents before us) were before this Court. Both learned counsel were heard out. To be noted, the lone respondent Ms.K.Sukumari and I petitioner Ms.Shanthi were present and they were giving instructions to their respective counsel.

4. After some arguments, it came to light that there is no evidence as regards whether Thiru.T.Kathiresan had made a nomination qua terminal benefits, gratuity etc., This aspect assumes significance in the light of judgment of Hon'ble Supreme Court in **Vidhyadhari** case being **Vidhyadhari Vs. Sukhrana Bai** reported in **(2008) 2 SCC 238** wherein Hon'ble Supreme Court while making it clear that a finding that the first wife alone would be



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the legally wedded wife and that the second wife cannot claim the status of wife as the marriage was admittedly during the subsistence of the earlier marriage held that it is necessary to look into who the nominee is, as in **Vidhyadhari** case, the succession certificate was for provident fund, life cover claim, pension, life insurance amount and other dues in the nature of death benefits of the deceased thereat. To be noted, in **Vidhyadhari** case, Vidhyadhari (second wife) was a nominee. In the case on hand, the question as to whether there is nomination at all and if yes who was the nominee is an aspect which remains unanswered i.e., without any evidence as the Succession Certificate OP was decided *exparte*. We therefore put it to both sides that it may be desirable to send the matter back to the OP Court for the lone respondent (Ms.K.Sukumari) to let in evidence *inter-alia* in this regard. Both learned counsel and their respective clients viz., lone respondent and I petitioner also fairly consented. To be noted, consent by the learned counsel for respondents is on behalf of I petitioner as well as II petitioner and III petitioner. Therefore, without expressing any view or opinion, leaving open all questions to be decided by the OP Court, we make the following order:



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4.1 The impugned order i.e., order dated 19.01.2023 in A.No.2336 of 2022 in O.P.No.759 of 2016 and the order dated 02.11.2018 in O.P.No.759 of 2016 are set aside by consent;

4.2 To be noted, the aforementioned orders are set aside solely for the purpose of facilitating the de novo trial by the OP Court and it is not on merits (Though obvious we have also made it clear that we have not expressed any view or opinion on the merits of the matter);

4.3 De novo trial has become necessary owing to the peculiar facts and circumstances of the case which have been alluded to and adverted to supra;

4.4 Anything that has been done by any authority, entity or individual thus far on the basis of 02.11.2018 order and the succession certificate issued thereto will remain undisturbed until the OP Court decides the matter de novo and this aspect also will be decided by the OP Court post de novo



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trial;

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4.5 No other authority, individual or person shall now act on the 02.11.2018 order or succession certificate thereat between today and the date on which the OP Court decides the matter de novo/afresh;

4.6 Learned Master is directed to record evidence as expeditiously as possible but in any event within the month of June, 2024 as the Court reopens after summer vacation recess on 03.06.2024, in other words, learned Master shall complete recording of evidence by 28.06.2024;

4.7 Thereafter, the matter shall be listed before the OP Court in the first week of July, 2024 and it would be desirable for the OP Court to decide the matter as expeditiously as possible subject of course to the business of the OP Court;

4.8 List O.P.No.759 of 2016 before the



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learned Master (main Master) on 03.06.2024 for recording evidence afresh in O.P.No.759 of 2016;

4.9 List O.P.No.759 of 2016 before the OP.

Court in the first week of July, 2024.

4.10 The OP Court shall decide the matter untrammelled by any observation made in this order as it has been made for the limited purpose of facilitating de novo recording of evidence. It is also made clear that this order shall not serve as a precedent inter-alia as it is a consent order.

5. Captioned OSA and captioned CMP thereat are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
24.04.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To



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The Sub Assistant Registrar,
Original Side, High Court,
Madras.

**M.SUNDAR.J.,
and**



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mmi

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