A.No.3291 of 2024
in
O.P.No.832 of 2023

Orders reserved	Orders pronounced
08.08.2024	21.08.2024

RMT.TEEKAA RAMAN,J.,

This petition has been filed under Order XIV Rule VIII of O.S.Rules read with Order 1 Rule 10(2) of C.P.C.,seeking to implead the petitioner as the proposed respondent in the main O.P.No.832 of 2023.

2. One Sivakamasundari filed the above O.P for probate of the Will, alleged to be the last Will and testament of G.Chandrasekarn on 14.11.2014. She claims as the foster daughter of the testator, Chandrasekaran. Besides, Chandrasekaran's wife's sister's daughter the subject Will is dated 14.11.2014, and the testator died on 29.03.2020.

3. The matter is in the stage of recording of evidence before Master Court.

4. While so, one Murugan, the proposed respondent, appeared in person and filed the above application to implead himself as the 8th respondent.

5. Heard the petitioner-in-person and the respondent counsel.

6. On perusal of the main O.P.No.832 of 2023, It is found that the property originally owned by Mr.K.Gopal Naicker, and his wife is Mrs.Kathayee Ammal. They had 6 children i.e., G.Govindarajan, G.Chandrasekar, S.Jayalakshmi, S.Yasodha, N.Saraswathi & E.Parvathi. Mr.K.Gopala Naicker purchased the properties bearing S.No.3788/4 and 3787/39, which are the subject matter of this petition. Mr.K.Gopal Naicker died on 09.08.1994, and Mrs.Kathayee predeceased him. The 6 LRs succeeded to his estate. S.Jayalakshmi, S.Yasodha, N.Saraswathi & E.Parvathi filed O.S.No.12140/1996 for partition and separate possession from the Chandrasekar. An exparte decree was passed on 10.09.1998.

7(a) It is stated that the wife of the testator, Suganthal died on 6.6.2002. The petitioner is the beneficiary under the Will.

(b) The 1st petitioner is the adopted daughter of testator, and the respondents 1 to 3 are the sister of the testator, and the respondents 4 to 6 are the legal heir of the testator's 2nd sister, Yasodha, who died on 06.05.2021 after testator's death. The 4th respondent is the husband of the testator's deceased 2nd sister, and 5th and 6th respondents are the son and daughter of testator's deceased 2nd sister. The testator's elder brother, Govindaraj, died on 14.06.2002 before the testator's death. All the respondent have given their consent in favour of the petitioners.

(c) The testator has no children; hence, his wife was the only legal heir. Now she has also died.

8 (a). On the above factual ground, the petitioner seeks to implead as II class legal heir of the testator. The party has filed an application to implead himself. The petitioner herein is the son of the predeceased brother of the testator, namely G.Chandrasekaran. Chandrasekaran's elder brother is Govindarajan. Govindarajan died intestate on 14.06.2002, leaving behind the petitioner and two children.

(b) The original respondents in the main O.P as stated above, are the sisters of the testator, namely R1 to R3. The respondents 4 to 6 are the legal heirs of the testator's second sister, Yasodha, who died on 06.05.2021. Whether respondents 4 to 6 are necessary parties is a point to determine in the trial. The petitioner now claims that he is the II class legal heir of the Hindu man died and has invoked Section 8 of the Hindu Succession Act.

9.Section 8 of the Hindu Succession Act defines the general rules of succession in case of a Hindu male dying intestate shall devolve firstly upon the heirs, which are the relatives specified in the schedule. Thus, Class I & II legal heirs have been described.

10. When reading Section 9 of the Hindu Succession Act, it becomes clear that the schedules in Class I shall take simultaneously and to the exclusion of all other heirs those in the first entry. Class II shall be preferred to those in the third entry and so on in succession. Likewise, persons who are relatives mentioned in the second entry shall have preference over the third entry.

11. When reading Section 9 of the Hindu Succession Act, a legal heir falling within the purview of Class III Entry IV could not supersede the legal heirs in Class II entry II of the schedule. Therefore, after a combined reading of Section 8, 9 & 10 of the Hindu Succession Act, the petitioner, who is the son of the pre-deceased brother, cannot be placed ahead of the sister of the deceased G.Chandrasekaran.

12. Accordingly, I find that due to the presence of the sister of the deceased Chandrasekaran, namely respondents R1 to R3. They fall under the Class II Entry II sub division IV whereas the petitioner who is the son of the deceased brother of the testator falls under Class II Entry IV sub Division 1.

13(a). In view of the clear cut provision in Section 11, only the sister of the deceased testator shall be the legal heirs who takes the share in the property and in the presence of the sister, the son of the deceased brother of the testator who falls under the Class II Entry IV cannot supersede living sisters, namely respondents R1 to R3.

(b) Hence, in view of the clear provision contained in the Act, which has been discussed by this Court in S.A.No.269 of 2021 dated 21.06.2024, a similar position has been dealt with by me and held as above. The preference and position between Entry II and Entry IV in the schedule regarding clause II heirs is no longer res integra. The same has been addressed by me in S.A.No.269 of 2021. Hence, the petitioner is not having any caveatable interest.

14. Accordingly, I find that the petitioner, who is a beneficiary under the Will seeking the probate of the Will, has clearly added the sister of the deceased testator as respondents R1 to R3 since they fall under category Class II Entry IV sub division 4. Hence, the petitioner cannot seek right over and above supersede the Entry II, as the petitioner falls under Entry IV.

15. In this view of the matter, I find that he is not a necessary party for adjudication of the probate of the Will and hence, **this application is dismissed.**

21.08.2024

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RMT.TEEKAA RAMAN,J.,

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Pre-Delivery order in
A.No.3291 of 2024 in
O.,P.No.832 of 2023

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