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*A.No.2084 of 2024
in TOS.No.40 of 2016*



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Reserved on: 14.06.2024

Pronounced on: 21.06.2024

P.B.BALAJI, J.,

The sole defendant in the Testamentary Original Suit has taken out the present application under Section 340 of the Criminal Procedure Code, 1973, for the alleged offence of perjury and generating false evidence before the court wilfully and to punish the respondent in accordance with law.

2.I have heard Mr. C.Sivanesan, learned counsel appearing on behalf of Applicant and Mr. R. Subramanian, learned counsel appearing for the Respondent.

3.Mr.C.Sivanesan, learned counsel for the Applicant would submit that the respondent, who is the plaintiff in the testamentary suit, is none else than her father, who claims to be the sole beneficiary under the alleged Will said to be executed by her mother, that is the wife of the respondent.

4.The learned counsel for the applicant would take me through the documents filed in support of the application and contend that the



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respondent has undervalued the assets and has also suppressed material facts and circumstances, especially, the existence of the assets belonging to her mother, besides also her interest in partnership firms. He would also submit that when specifically confronted with questions regarding the left out assets, the respondent has stated that there are no other assets left behind by his wife. Therefore, the learned counsel would submit that it is a clear case of perjury committed by the respondent and suitable action needs to be initiated under Section 340 of the Criminal Procedure Code, 1973.

5.Per contra, Mr.R.Subramanian, learned counsel for the respondent/plaintiff would submit that the Will has been executed by the wife of the respondent, disinheriting all her children. He would also point out that excepting the applicant, all the other children have given their consent. The learned counsel would further submit that the respondent is aged about 85 years and the applicant is in the habit of taking out one application after the other in order to delay final adjudication in the Testamentary Original Suit. This is yet another attempt, according to the learned counsel for the respondent, to protract the proceedings, so that the respondent/plaintiff would in the meantime pass away, which appears to be the motive of the applicant.



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6.He would also take me through various earlier proceedings where earlier applications and also other applications were taken out under Arbitration Act and also the Civil Court, in respect of the assets of the mother. The learned counsel for the respondent would further submit that the issue in the Testamentary Original Suit is only revolving the genuineness of the Will of the mother and even the question of title of the testatrix is alien for consideration in probate proceeding. He would therefore state that the application is nothing but an abuse of process of law and deserves to be dismissed.

7.I have carefully considered the submissions advanced by the counsels on both sides.

8.Admittedly, the applicant and the respondent are daughter and father. The testatrix is none else than the mother of the applicant and wife of the respondent. The Original Petition has been filed by the father against all his children, including the applicant. Excepting the applicant, his other children have not objected for the grant in his favour and in fact, have executed consent affidavits. In view of the objections raised by the applicant by way of caveat, the Original Petition has been converted into a Testamentary Original Suit.



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9.The parties have already entered the witness box and adduced evidence. In fact, after the evidence of the applicant was completed, the applicant has taken out applications to examine the handwriting by a handwriting expert and the matter is pending at that stage.

10.As rightly contended by the learned counsel for the respondent, the scope of probate proceedings is very limited, that too, to the truth and genuineness of the will in question. If the plaintiff has not chosen to include all the assets of the deceased in the affidavit of assets, then the probate granted shall be restricted and limited only to such assets set out in the affidavit of assets. In other words, the remaining assets will be available for division as per the law of inheritance of the parties. Therefore, mere fact that certain assets have not been mentioned is not a ground for perjury, for invoking Section 340 of Criminal Procedure Code, 1973.

11.Though, the learned counsel for the respondent would take me through the counter affidavit, where there is elaborate reference to the several proceedings initiated by the applicant, to somehow or the other defeat and delay the probate proceedings, I do not find the same being relevant for the purposes of the present application.



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12.Be that as it may, I do not find any ground whatsoever made out for invoking Section 340 of Code of Criminal Procedure. At best, any inconsistencies in the evidence can always be taken advantage of by the adversary party and in view of the nature of evidence being adduced in probate proceedings, it cannot be examined in such a fashion in order to clothe the party who intends taking criminal action, to do so.

13.Admittedly, the respondent is aged 85 years and the applicant is none else than his own daughter, who has rejected the offer of her father to even her entitled share but for the Will and wants to somehow or the other put her father behind bars. The application is nothing but a vent of frustration of a disgruntled daughter who wants to try and settle scores with her father in respect of property issues. None of the grounds raised in the affidavit warrant invocation of provisions of Section 340 of the Criminal Procedure Code, 1973.

14.For all the above reasons, I do not find any merit in the application to be allowed. Accordingly, this application is dismissed.

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