



WEB COPY



A.No.2022 of 2024
in TOS.No.17 of 2021
& C.S.No.653 of 2019

Orders reserved on : 23.07.2024

Orders pronounced on : .07.2024

P.B.BALAJI, J.

The present application has been taken out by the defendant to proceed against the respondent/plaintiff for perjury under Section 195 r/w Section 340 of the Code of Criminal Procedure, 1973.

2.I have heard Mr.R.Palaniandavan, learned counsel for the applicant and Mrs.Chitra Sampath, learned Senior Counsel for Mr.T.S.Baskaran, learned counsel for the respondent.

3.Mr.R.Palaniandavan, learned counsel for the applicant would submit that the above Testamentary Original Suit has been initiated in respect of the Will said to have been executed by one, Krishnadas Dutia. He would further submit that in a suit for partition pending before the City Civil Court, the respondent herein has taken totally a different stand, especially with regard to the knowledge of the date of the Will and in contra, a totally false and misleading statement has been made in the present proceedings. He would also take me through the relevant documents in this regard. He would further submit that the respondent has not even offered an explanation as to



which is the correct date on which he came to know about the Will and therefore, he has committed perjury and he is liable to be prosecuted as prayed for.

4.Per contra, Mrs.Chitra Sampath, learned Senior Counsel for the respondent would submit that the different versions regarding the date of knowledge of the Will being factors which do not affect the final decision or render any undue advantage or unfair gain to the respondent, there is no necessity for initiating proceedings for perjury. She would further submit that the inconsistent versions are only because of the respondent's old age and therefore, he was not in a position to recollect the exact date of knowledge of his father's Will.

5.Having heard the learned counsel for the applicant and the learned Senior Counsel for the respondent, the moot question that calls for an answer in the present application is as to whether there has been willful or wanton statement, in other words, a deliberate false statement made by the respondent with regard to the date of knowledge of his father's Will. Admittedly, at one place, the applicant appears to have stated that the Will was found by him in January 2016, however, in the petition, he has stated



that he came to know about the Will only in January 2017.

WEB COPY

6. One of the contentions raised by the learned counsel for the applicant is that the misleading statement has been made in this petition giving an incorrect and false date of knowledge only to get over the limitation in filing the Original Petition and obtained an order in his favour and therefore, it is not an innocent mistake.

7. With regard to the issue of limitation, the Hon'ble Division Bench of this Court in *S. Vatsala Vs. K.S. Mohan and Others* reported in **(2016) 1 CTC 257**, has already settled the controversy regarding the limitation for filing of probate petitions, holding that Article 137 of the Limitation Act would not apply. Even if ultimately, the incorrect statement is not going to affect the decision with regard to the limitation of the Original Petition, in view of the settled legal position as laid down by the Division Bench of this Court in the above said matter, it is to be seen if a false statement has been made only for the purposes of getting over the question of limitation and obtaining a favourable order.

8. Section 340 of the Code of Criminal Procedure sets out the



procedure where the Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195 of Cr.P.C., in respect of the documents produced or evidence given in a proceeding in that Court, such Court is entitled to hold a preliminary inquiry, record a finding and made a complaint in writing and forwarded to the Magistrate of first class having jurisdiction to take further action in respect of the said offence.

9.It is settled law that the Courts have to be cautious and careful in invoking the discretionary power under Section 340 of Cr.P.C. Unless the perjury is deliberate, it is not necessary for the Courts to invoke the power available under the Code of Criminal Procedure. Mere inaccuracy in a statement cannot and does not amount to perjury. Admittedly, this is only a case where the respondent has given different versions with regard to only the date of knowledge of the Will of his father. Therefore, I do not see any deliberate or wanton or misleading statement made with regard to the date of knowledge. It is always open to the respondent to explain the correct date of knowledge while giving evidence and as rightly pointed by the learned Senior Counsel, this does not have a direct bearing on the final decision of this Court which is only regarding the entitlement of the respondent to a



grant of probate or not.

WEB COPY

10. In such view of the matter, I do not find it a fit case to exercise discretionary power under Section 340 of the Code of Criminal Procedure. In view of the above, this application is dismissed.

.07.2024

ata

P.B.BALAJI, J.,



WEB COPY



ata

A.No.2022 of 2024
in TOS.No.17 of 2021
& C.S.No.653 of 2019

.07.2024