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**A.No.2535 of 2024 in**  
**O.P.No.539 of 2021**

**C.V.KARTHIKEYAN, J.**

This application has been filed seeking to revoke the grant of Letters of Administration with a Will annexed which has been granted by an order dated 25.02.2022.

2. It is stated that the Original Petition had been filed by K.Shanmugasundaram seeking Letters of Administration with respect of the Will dated 09.05.2018 by not impleading any respondent. It is also stated that the testatrix R.Nirmala had died on 02.12.2018. After following due procedure, the petitioner was directed to tender evidence. Accordingly, the evidence was recorded and Letters of Administration was granted by an order dated 25.02.2022. In the order granting Letters of Administration, it had been stated that the petitioner had examined himself as P.W.1 and one of the attesting witnesses had been examined as P.W.2 and the other attesting witness was examined as P.W.3. Taking note of the fact that necessary evidence had been produced, a learned Single Judge of this Court by an order dated 25.02.2022 had granted Letters of Administration. Now, this particular application has been filed seeking to revoke the said Letters of Administration.

3. It is informed that a reply had been filed on behalf of the respondent contesting the claim of the applicants.



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4. The ground on which the revocation of grant of Letters of Administration is sought is that the applicants claim to be legal heirs of the deceased R.Nirmala and have a caveatable interest with respect to the estate of the deceased. In the affidavit filed in support of this application, it had been stated that some of the legal heirs are not available as on record. Therefore, they were not shown as parties. It is claimed that the applicants are class- II legal heirs. It is also stated that the petitioner in the Original Petition is also a class -II legal heir of the testatrix. It is also contended that the applicants herein were not impleaded as parties in the main Original Petition and therefore, the Letters of Administration granted will have to be necessarily revoked.

5. Section 263 of the Indian Succession Act, 1925, gives stipulations under which probate or Letters of Administration could be revoked. It has been very specifically provided that 'for just cause', the Letters of Administration or probate already granted could be revoked and among the illustrations under Section 263 of the Indian Succession Act, 1925, illustration(ii) is that a party who should have been impleaded if not impleaded, would be a ground for the Letters of Administration or probate granted to be revoked.

6. The issue therefore which now will have to be examined is whether the applicants herein could qualify as necessary parties to be impleaded in the main Original Petition and whether they should be given with an opportunity to test the Will in proper form.



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7. Admittedly, none of the applicants had been impleaded as respondents in the Original Petition. In the affidavit filed on behalf of the applicants, it had been stated that the Will is a fabricated one and the deceased had never informed the applicants about the execution of the Will. It had also been stated that these applicants are class - II legal heirs of the testatrix and stand on the same footing as that of the petitioner in the main Original Petition who is also a class - II legal heir of the testatrix.

8. It is also to be noted that the applicants had filed a genealogical table. The respondent sought time to get further instructions in the genealogical table. But the fact is that the respondent, the class II legal heir, should have impleaded all the class - II legal heirs who have caveatable interest. More so, even if these applicants are not been impleaded, once the Letters of Administration is granted, then a right in rem is created and owing to such right in rem, every person affected by grant of Letters of Administration has a right to question the grant.

9. There are two aspects which are needed to be dealt with. The first is that these applicants are also class - II legal heirs and stand on the same footing as the petitioner in the Original Petition. The other one is that owing to grant of Letters of Administration, a right in rem had been granted to the petitioner in the Original Petition and therefore, these applicants have a right to seek revocation as they are necessary parties who should have been impleaded and have not been impleaded in the main petition. Illustration(ii)



under Section 263 of Indian Succession Act, 1925 is very clear on this particular aspect.

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10. In the genealogical table, it had been stated that the ancestor of the family is one Palayam Pillai. He had a son named Parthasarathy Pillai. The first applicant is the grand daughter of the said Parthasarathy Pillai. The testatrix is the wife of the son of yet another son of Palayam Pillai. Naturally, all the legal heirs are available as class - II legal heirs. It is not just the petitioner in the Original Petition alone.

11. The learned counsel for the respondent had placed a repeated request that he should also be heard. When the family tree is filed and once a right in rem had been created, any third party who had an interest in the Will which had been executed, has a right to seek revocation. It is also stated that taking advantage of the grant of Letters of Administration, the respondent herein had begun to demolish the property. It is for that reason, an adjournment was sought on behalf of the respondent.

12. The matter was actually being listed on earlier dates. A counter has been filed and the copy of the counter has also been served. The fact that these applicants are class - II legal heirs is not denied or disputed. The fact that a right in rem has been created has not been disputed. Then every class - II legal heir should be heard and opportunity should be given to them. In view of that reason, the of Letters of Administration granted by



order dated 25.02.2022, stands revoked. This application stands allowed.

No costs.

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