



O.S.A.No.271 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

O.S.A.No.271 of 2021
and
C.M.P.Nos.906 of 2024 and 12794 of 2021
in
O.S.A.No.271 of 2021

Guna
S/o.Late N.Janakiraman

... Appellant

Vs.

1. J.Durga
W/o.Guruswamy Naidu
2. J.Sairam @ Anandan
S/o.Late N.Janakiram
3. J.Kumudha
W/o.K.Maruthi
4. Thulasi
D/o.Late N.Janakiraman
5. Raji @ S.Rajeswari
D/o.Late N.Janakiraman



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6. Pushpa @ B.Pushpalatha
D/o.Late N.Janakiraman
7. Babu
S/o.Late N.Janakiraman
8. Kutti @ Narasimhalu
S/o.Late N.Janakiraman

... Respondents

Original Side Appeal filed under Order XXXVI Rule 11 of CPC read with Clause 15 of Letters Patent praying to set aside the judgment and decree dated 01.03.2021 in Application No.669 of 2020 in O.P.No.474 of 2004 on the file of this Court.

For Appellant : Mr.R.Rajarajan

For Respondents : Mr.V.Balasubramanian of
M/s.V.Balasubramanian Associates (Law Firm)
for R1 and R2

J U D G M E N T

**[Judgment of the Court was made by
K.GOVINDARAJAN THILAKAVADI, J.,]**

This Original Side Appeal is directed against the judgment and decree dated 01.03.2021 in Application No.669 of 2020 in O.P.No.474 of 2004 on the file of this Court.

2.Grant of Letter of Administration (herein after referred to as LOA) in favour of the appellant on 25.07.2012 in O.P.No.474 of 2004, was sought to



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be revoked by the respondents herein in application A.No.4108 of 2019 along with condonation of delay petition in A.No.669 of 2020.

3.The facts briefly stated are that one Janakiraman was married to Kamalamal and she deserted him long back. Thereafter, he married the appellant/Guna (herein after referred to appellant) in the year 1968. The said Janakiraman said to have executed a registered Will dated 20.05.1998 in favour of the appellant. After the demise of the said Janakiraman, the appellant filed an application for obtaining the LOA in the year 2001 in O.P.No.474 of 2004 and LOA was granted on 25.07.2012. Thereafter, the respondents 1 & 2 herein (Son and Daughter of Mr.N.Janakiraman through his first wife Kamalamal) filed an application in A.No.4108 of 2019 for revocation of LOA, stating that, no notice was served upon them in O.P.No.474 of 2004. The respondents 1 & 2 also filed an application in A.No.669 of 2020 to condone the delay of 1376 days in filing the application for revocation of LOA dated 25.07.2012 in O.P.No.474 of 2004.

4.The LOA holder opposed the application for revocation of LOA stating that the said application was barred by law of limitation.



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5.After hearing the rival submissions, the Hon'ble Single Judge has passed the following orders:

"11.In view of the above, the submission made by the learned counsel appearing for the respondents herein that the application has not been filed within the period of limitation is not found correct and in this regard, this Court accepts the contentions raised by the applicants and hold that this application has been filed within the period of limitation.

12.Furthermore, the application for revoking the Letters of Administration in A.No.4108 of 2019, has been filed on 01.06.2016 itself, which is during the period wherein this Court was following the procedure that there is no limitation for filing the application to revoke the Letters of Administration. Therefore, this Court is of the considered opinion that the application filed by the applicants in Application in A.No.4108 of 2019, is well within the period of limitation. In otherwise, the merits of the applicants has to be decided only in Application No.4108 of 2019, which is filed for revoking the grant of Letters of Administration.

"13.Ultimately, since the present application



in A.No.669 of 2020 is filed only for the relief of condoning the delay, as already observed that the application is filed within the period of limitation, this application is an unnecessary one. In otherwise, the submission made by the learned counsel appearing for the applicants in respect to service of summons and other things has to be decided in A.No.4108 of 2019, which is filed for revoking the Letters of Administration dated 25.07.2012. The application is ordered accordingly."

6.Accordingly, the aforementioned A.No.669 of 2020 was disposed of by the Hon'ble Single Judge of this Court on 01.03.2021. Aggrieved by this, the appellant is on appeal.

7.Mr.R.Rajaraman, learned counsel for the appellant has challenged the impugned order of the Hon'ble Single Judge of this Court specifically on the ground that the application filed under Section 263 of the Indian Succession Act,1925 is an application to which Article 137 of the Limitation Act, 1963 applies and the same operates from the date of the grant of LOA. To support his contention, he has relied upon the case of **Lynette Fernandes Vs.**



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Mrs.Gertie Mathias, reported in **(2018) 1 SCC 271**. He would further submit that when a plea of limitation is taken, it is the duty of the Court to adjudicate upon its merits.

8.On the other hand, Mr.V.Balasubramanian, for caveator (R1 and R2) referring to ruling of this Court in **Smt.Jayalakshmi vs. S.Krishnaswamy** reported in **1990 1 LW 337**, strenuously contended that Article 137 of the Limitation Act has no application to a proceeding under Section 263 of the Act.

9..Mr.R.Ramkumar, learned counsel appeared for the 3rd respondent.

10.Despite service of notice R4 to R8 remained absent.

11.Heard, the rival submissions and perused the impugned order.

12.Having regard to the rulings cited by both sides on the ground of limitation is concerned, the facts which are not in dispute have already been stated and in respect of grant of LOA made in the year 2012, the present petition for revocation was filed in the year 2016. The petition filed under Section 263 of the Act is for revocation of the grant of LOA made in favour of the appellant, with delay. It cannot be disputed that laws of limitation are laws of repose and peace and are founded on public policy intended to



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eliminate the unsettling influence of perpetual threats of litigation.

Therefore, when a plea of limitation is taken, it is the duty of the Court to adjudicate upon its merits and decide whether the proceeding instituted before it was barred by time. The Hon'ble Single Judge failed to apply the ratio laid down by the Hon'ble Apex Court in the cases of ***Lynette Fernandes Vs. Mrs.Gertie Mathias***, reported in (2018) 1 SCC 271 and ***Ramesh Nivrutti Bhagwat vs. Surendra Manohar Parakhe*** in ***Civil Appeal No.1399 of 2010*** dated 04.10.2019. In the aforesaid decisions, the Hon'ble Apex Court has specifically laid down that for revocation of Probate, Article 137 of the Limitation Act is applicable. It was also laid down in the aforesaid decision that for the purpose of limitation under Article 137 of the Limitation Act, the probate operates from the date of its grant in proceedings for revocation of probate. Nowhere in the above decisions, the Hon'ble Apex Court has stated that the law declared by the Hon'ble Apex Court to be applied prospectively and will not apply to the pending applications. Therefore, there shall be no prospective overruling unless it is so indicated in the particular decision.

13. Therefore, in our considered opinion we deem it fit to remand



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back the matter to the O.P Court for adjudication whether the proceedings instituted by the respondents for revocation of LOA was barred by time.

Accordingly, the impugned order is set aside. Since the learned counsel appearing for the respondents 1 & 2 informed to this Court that examination of witnesses is likely to be commenced in the revocation application, we request the Hon'ble Single Judge to dispose the condonation of delay petition upon its merits expeditiously.

14.In the result, the original side appeal is disposed of with the aforementioned terms. Consequently, connected miscellaneous petitions are closed. No costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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Original Side,
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