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A.Nos.2574 of 2024 etc

Appln.Nos.2574, 2578, 2579, 2580 & 2582 of 2024

in

O.P.No.65 of 2022

RESERVED ON 26.07.2024	PRONOUNCED ON 23.10.2024
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K.KUMARESH BABU.,J

COMMON ORDER

These applications have been filed seeking to recall the order of this Court dated 20.04.2023, wherein this Court had allowed the impleading applications filed by the various persons.

2.The primordial contentions of Mr.T.Mohan, the learned Senior counsel appearing for Mr.C.Raghavan, learned counsel appearing for the petitioner is that inspite of the counter filed by the petitioner, this Court only on the basis of the averments made in the affidavit filed in support of the applications, had marked the non-appearance of the petitioner and ordered the impleading applications. His non-appearance on the day was due to the ill-health of the petitioner and he was not able to engage a counsel due to his ill-health.

3. The learned Senior counsel appearing on behalf of the petitioner



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would contend that the non-appearance of the petitioner either by himself or through his counsel was to the reason that he had suffered from some nervous problem and was advised to take bed rest. He would further submit that while passing the order, this Court has not considered the counter affidavit filed by the petitioner to the impleading applications. He would submit that the impleading petitioners have no locustandi to file the petition. The properties were all acquired by the maternal grandfather of the petitioner one Mr.Gulabdoss Narayana Doss based upon the sale certificate issued by a Principal Sub-Court in the Court auction. He would heavily rely upon the Letters of Administration issued in his favour by the High Court of Bombay indicating that the petitioner is a sole legal heir of the said Gulabdoss Narayana Doss. He would further contend that Mr.Gulabdoss Narayana Doss, his maternal grandfather had not adopted any one by name Ranchondoss and no settlement deed as alleged has been executed by his maternal grandfather. He would submit that no proof of adoption had also been pleaded in the application. He would also vehemently contest the impleading applications of the third parties claiming to have title to the property based upon the judgment and Decree of the District Munsif



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Court, Poonmallee, which had attained finality before the Hon'ble Apex Court. He would submit that the subsequent civil suit on the file of the XIII Assistant City Civil Court, Chennai, based upon an alleged partition deed of the year 1975, are all created to grab the property that belongs to the maternal grandfather of the petitioner of whom, he alone is the legal heir. He had also relied upon the judgments of the Hon'ble Apex Court in the case of *Mrs.Elizabeth Antony vs. Michel Charles John Chown Lengera* reported in *1990 0 Supreme (SC) 246*; *G.Gopal vs. C.Baskar & Ors.*, reported in *(2008) 10 SCC 489*; *A.Krishnammal (alias) Krishnaveni & Ors., vs. Kamala Perumal (alias) Babu & Ors.*, reported in *2009 0 Supreme (Mad) 3772* and *Panna Surendra Mehta vs. Jaisukh Krishnalal Shal* reported in *2013 SCC Online Bom 1713*, to drive home his contentions that the impleading petitioners firstly do not have the caveatable interest, even if they have a caveatable interest it would not preclude this Court from granting Letters of Administration of the OP scheduled mentioned property, as he has already been declared as a sole legal heir of Gulabdoss Narayana Doss. Hence, he would seek this Court to recall the order passed by this Court dated 20.04.2023.



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4. Countering his arguments, Mr.P.T.Perumal, learned counsel appearing for the respondent in application in Appln.No.2574 of 2024 would submit that they are the legal heirs of the foster son of the said Gulabdoss Narayana Doss, who had settled various properties in favour of their father Ranchondoss. He would also submit that the petitioner is trying to grab the property under the pretext of being a grandson of Gulabdoss Narayana Doss, being the son through his daughter. He would submit that the said Gulabdoss Narayana Doss did not have any issues out of the wedlock and i.e., the reason he had taken on adoption one Mr.Ranchondoss, who is the father of the respondents. He would further submit that the Hon'ble Apex Court in a judgment in the case of ***Jagjit Singh & Ors., vs. Pamela Manmohan Singh*** reported in (2010) 5 ***SCC 157***, had held that any one who has a caveatable interest or even some interest in the estate of the deceased can come forward and oppose the grant of probate. He would further submit that the judgments relied upon by the learned Senior counsel appearing for the petitioner are all judgments, which had been rendered prior to the judgment of the Hon'ble Apex Court that he had relied. Hence, he would submit that he has every right for getting impleaded.



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5. Mr.V.Chandrakanthan, learned counsel appearing for the respondents in application No.2582 of 2024, would submit firstly that the Original Petition for grant of Letters of Administration had been predominately filed based upon the Letters of Administration granted by the High Court at Bombay. He would submit that the respondent herein had taken out a Miscellaneous Petition in the said testamentary petition filed before the Bombay High Court and the Bombay High Court by order dated 08.05.2024, had *prima facie* held that the respondents had made out a case of fabrication of copies of the death certificate produced by the petitioner, had also restrained the petitioner or any one under him from acting upon, using or impeding the Letters of Administration granted by the Bombay High Court, dated 03.01.2019. Therefore, he would submit that the OP itself cannot be proceeded with in view of the injunction granted by the Bombay High Court only upon which the petitioner had preferred the OP for grant of Letters of Administration of the property. He would further submit that the respondent is also the son of the foster son of Ranchondoss and therefore, he would seek that he has a right to be impleaded as the parties to the application.



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6. Mr.Kaushik N.Sharma, learned counsel appearing for the respondent in Appln.No.2579 of 2024 would contend that the property in question originally belong to one Ms.Mangaiyarkarasi, which had been reiterated by judgment and decree of the Additional District Munsif No.I, Poonmallee in O.S.No.248 of 1967, which has been confirmed in S.A.No.1417 of 1974, by judgment and decree dated 23.03.1981, even though, when a Special Leave Petition was preferred, the same was dismissed as withdrawn on 24.02.1984. He is the subsequent purchaser of the property, he claims title to the property based upon his predecessor's purchase of the property from the legal heirs. He would also contend that the suits for partition in C.S.No.548 of 1983 was originally filed and had been disposed based upon a compromise that had been entered between the parties. He would also submit that a Suit in O.S.No.5468 of 2019, on the file of the XIV Additional City Civil Court with respect to the very same property is pending adjudication with regard to the title of the property. Therefore, he would submit that the petitioner is suppressing all these materials and he is trying to take a Letters of Administration from this Court based upon an order, which



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had already been suspended by the Bombay High Court, which had granted the original Letters of Administration and therefore, he would submit that the respondent is a necessary party and there is no necessity to recall the order passed by this Court.

7. Mr.E.Senthil Kumar learned counsel appearing for Mr.Sampath Kumar, learned counsel appearing for the respondents in Appln.No.2580 of 2024 would submit that they are the legal heirs of Ms.Mangaiyarkarasi and the property is sought to be usurped by the petitioner and the respondents in other applications by playing fraud upon the Court. He would submit that a Suit between the respondents in the said application and the respondent in Appln.No.2579 of 2024 is already pending adjudication before the XIV Additional City Civil Court and therefore, they are also necessary parties in the Suit. He would contend that if the petitioner was granted with the Letters of Administration to deal with the property and if a judgment and decree is granted in his favour in the pending suit, it would cause severe hardship to the respondents.



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8. I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

9. Since the learned counsel appearing on either side had argued the merits of the impleading applications, I had posed a question whether this Court can assume that the arguments have been made on the merits of the impleading petitions to which the learned counsel appearing on either side had agreed that the same also can be taken on merits of the impleading applications and orders be passed by this Court.

10. The main contention of Mr.T.Mohan, learned Senior counsel appearing for the petitioner is that the petitioner was not able to appoint a counsel or appear himself due to the medical situation meted out by the petitioner. I am not able to countenance the said submission.

11. Since on 11.04.2023, in the presence of the petitioner himself who had appeared in person before the Court, the learned counsel who had filed vakalat on his behalf had filed a memo stating that the petitioner had taken change of vakalat. The said statement was not refuted by the petitioner herein. Only recording the said memo, name of



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the counsel was directed to be deleted and name of the petitioner was directed to be printed. Thereafter, the matter was taken up on 20.04.2023, the petitioner had not filed any change of vakalat and his name was printed in the cause list and the applications were ordered. On the very same day after the orders were pronounced and signed, a mentioning was made by the learned counsel appearing on behalf of the petitioner and the matter was again listed under the caption for “being mentioned” on 24.04.2023. On 24.04.2023, the learned counsel on record had submitted that he had filed a vakalat only on that day and wanted this Court to recall the order. Since the order was already signed, they were directed to take out an appropriate application, hence, these applications have been filed. The said reason assigned by the learned Senior counsel is without any merits.

12. Counter affidavit that had been filed by the petitioner on the merits of the OP itself, admittedly, deals only with the various disputes that have been decided or pending adjudication with regard to the property for which the Letters of Administration is being sought for. This itself would mean that with regard to the schedule mentioned



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properties of the OP, claims by various other third parties are subsisting, which could be only decided at the adjudication of the OP.

13. Even though the learned Senior counsel appearing for the petitioner had placed reliance upon the various judgments of the Hon'ble Apex Court with regard to the right of a person having caveatable interest, it could be seen that even in the judgment relied upon by the learned Senior counsel in the case of ***Krishna Kumar Birla vs. Rajendra Singh Lodha & Ors.***, reported in ***(2008) 4 SCC 300***, wherein the learned Senior counsel relied upon paragraph 86 of the said judgment, which had purportedly laid down the proposition of law on the issue, the very same judgment at paragraph 103 after extracting the judgment, which was also relied upon by the learned Senior counsel for the petitioner in the case of ***Mrs.Elizabeth Antony vs. Michel Charles John Chown Lengera*** reported in ***1990 0 Supreme SC 246*** had held that the caveatable interest would depend upon a facts and situation of the each case and no hard and fast Rule can be laid down. Further the Hon'ble Apex Court in the judgment in the case of ***Jagjit Singh & Ors vs. Pamela Manmohan Singh*** reported in ***(2010) 5 SCC 157***, after extracting the judgment in the



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case of **Krishna Kumar Birla** referred supra, had held that even a person having a slight interest in the estate of a testator is entitled to file a caveat and contest the grant of probate. Since it is undisputed for the very same property (estate) for which the Letters of Administration is sought for by the petitioner to Administer the property, there are rival claims by the different parties a) claiming to be the heir of one Mr.Gulabdoss Narayana Doss as being the legal heirs of his foster son; b) a person who had acquired a judgment and decree in a Civil Court with regard to the title of the property by adverse possession; c) a person who claims to have purchased from such decree-holder and therefore, if any Letters of Administration is granted to a party without hearing such persons, who are claiming title to the very same property, it would lead to an anomalous situation where for the very same property, there would be 3 or 4 claims as in this case.

14. It is also to be noted that on the application made by one of the parties, who have filed an application to implead himself, the Hon'ble High Court at Bombay had passed an injunction restraining the petitioner herein from in any manner acting or using or implementing the Letters of



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Administration granted by the Court in its order dated 03.01.2019.

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15. It is also to be noted that the Bombay High Court had in its order was aware of the petition for grant of Letters of Administration pending before this Court.

16. In such circumstances, I do not find any reason whatsoever to recall the order dated 20.04.2023 and in fine the applications are dismissed. However, there shall be no order as to costs.

23.10.2024

Index :Yes/No
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