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O.S.A.Nos.152 and 154 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.Nos.152 and 154 of 2023

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C.M.P.No.19352 of 2023 in O.S.A.No.152 of 2023

&

C.M.P.No.19376 of 2023 in O.S.A.No.154 of 2023

Mr.M.A.M.R.Muthiah

Natural son of RM Sekkappa Chettiar

“Chettinad House”

Raja Annamalaipuram

Chennai – 600 028

.. Appellant
in both OSAs

Vs.

1. Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust

“Chettinad House” Raja Annamalaipuram

Chennai – 600 028

Rep. By its Trustee Dr.A.C.Muthiah

2. Smt.Kumara Rani Meena Muthiah

W/o.Late Kuamara Rajah M.A.M.Muthiah Chettiar

“Chettinad House”, Raja Annamalaipuram

Chennai – 600 028

3. Mr.AR.L.Sundaresan

S/o.Late Dr.Justice AR Lakshmanan

No.48/1, 3rd Main Road

Gandhinagar, Adyar, Chennai – 600 020



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4. Mr.Jawahar Vadivelu
S/o.Mr.A.L.Vadivelu
Kottur Garden, Chenani – 600 085

5. Dr.L.Alagu Sundaram
S/o.Mr.P.Lakshmanan Chettiar
Chittaranjan Road
Alwarpet, Chennai – 600 018

6. Mr.Ashwin Muthiah
S/o.Dr.Muthiah
Adyar Villa, Gandhi Mandapam Road
Kottur Garden, Chennai – 600 085

7.Mr.M.A.M.M.Annamalai
S/o.Late Kumara Rajah M.A.M.Muthiah Chettiar
“Chettinad House”
Raja Annamalaipuram, Chennai – 600 028

.. Respondents
in both OSAs

O.S.A.No.152 of 2023 :Original Side Appeals filed Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent to set aside the order dated 12.06.2023 passed in Application No.1536 of 2023 in T.O.S.No.27 of 2021.

O.S.A.No. 154 of 2023 : Original Side Appeals filed Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent to set aside the order dated 12.06.2023 passed in Application No.1534 of 2023 in T.O.S.No.27 of 2021.

For Appellants : Mr.V.Raghavachari
in both OSAs Senior counsel for Mr.T.Balaji



For Respondents: Ms.AL.Ganthimathi, Senior Counsel
(in both OSAs) for Mr.Palanimauthu
for R1, 2, 4, 5, 6 & 7
Mr.AR.L.Sundaresan (Party-in-person)

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common order will now dispose of the captioned two 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of brevity and convenience] and two 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity and convenience] thereat.

2. Captioned OSAs have been filed assailing a common order dated 12.06.2023 made in A.Nos.1534 and 1536 of 2023 in T.O.S.No.27 of 2021 (originally O.P.No.894 of 2016) by a Hon'ble single Judge on the original side of this Court. This '12.06.2023 common order' shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

3. The impugned order accedes to prayers in two applications [A.Nos.1534 and 1536 of 2023] which have been filed *inter alia* under Order VI Rule 17 of 'Code of Civil Procedure, 1908 (Central Act V of



1908)' [hereinafter 'CPC' for the sake of brevity] with an amendment plea.

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4. Factual matrix in a nutshell or in other words, essential facts imperative for appreciating this order are that the epicentre of the litigation in the Testamentary Court is a 'Will/Testament dated 18.02.2015' [hereinafter 'said testament' for the sake of convenience]; that the testator is Dr.M.A.M.Ramaswamy; that the date of demise of testator is 02.12.2015; that thereafter on 10.06.2016, O.P.No.894 of 2016 was filed by a Trust *inter alia* under Sections 232 and 278 of Indian Succession Act, 1925 with prayers for Letters of Administration qua said testament; that in this OP for Letters of Administration, three individuals were arrayed as respondents; that on caveatable interest being made out, OP was converted into 'Testamentary Original Suit' ['TOS' for the sake of brevity] and it became T.O.S.No.27 of 2021; that in the *interregnum*, the Trustees of the petitioner Trust [five in number] joined the TOS and therefore, there are six plaintiffs in the TOS (as one of the three respondents in OP is also a Trustee, he was transposed) and therefore, there are two defendants in the suit; that under such circumstances, Order VI Rule 17 applications were taken out by the plaintiffs saying that immovable properties in the form of shares in seven companies, National Savings Certificates and deposits said to have been



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made by late Testator in a Company which goes by the name 'Chettinad Cool Washeries Private Limited' [hereinafter 'said Company' for the sake of convenience and clarity] have been left out and the same have to be brought by way of amendments to pleadings in Testamentary Court; that after contest, the Testamentary Court allowed the amendment applications and the first defendant in the suit is on appeal before us.

5. Mr.V.Raghavachari, learned Senior counsel instructed by Mr.T.Balaji learned counsel for appellant, Ms.AL.Ganthimathi, learned Senior counsel appearing for Mr.Palanimuthu, counsel on record for Respondents 1, 2, 4, 5, 6 and 7 and Mr.AR.L.Sundaresan, party-in-person (R3) are before us.

6. The meat of the matter is a deposit of a little over Rs.55.21 Crores [Rs.55,21,38, 122.91 to be precise] said to have been made by the late testator in said Company which is Serial No.9 in the movable properties which are now sought to be added (as they were left out earlier) to the schedule by way of amendments; that it is to be noted that this tabulation is as follows:



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Sl. No.	Name of Companies	Equity No.of share of Rs.10/- each	Value Rs.
1	Apollo Hospital and Enterprises Limited	10,000	1,00,000/-
2	Vijaya Commercial Credit Limited	870/-	8,700/-
3	Chettinad Morimura Semi-Conductor Material P.Ltd.	21,81,321/-	2,18,13,210/-
4	Manipal Industries Limited	40	400/-
5	Bharat Paper Mill (P) Limited	5,000/-	50,000/-
6	Karur K.C.P.Packaging Limited	2,500/-	25,000/-
7	Navabharath Ferro Alloys Limited	18,835/-	1,88,350/-
8	National Savings Certificate of face value of	No.39EE 709742	10,000/-
	-do-	No.14DD 957673 for	5,000/-
	-do-	No.14DD 221255	5,000/-
9	Deposit by Dr.M.A.M.Ramasamy		55,21,38,122.91

7. The Testamentary Court while allowing the application has made it clear that the defendants are at liberty to raise all the contentions raised in the counter qua amendment applications by way of additional written statement which they will be filing subsequent to the amendment applications being allowed; that D1, as alluded to earlier, is on appeal qua captioned OSAs; that there are two appeals as the impugned order is a common order in two amendment applications.



8. This Court having captured the crux and gravamen of the issue in the captioned appeals and having set out the trajectory the matter has taken in reaching this Court, now proceeds to consider the submissions made on either side i.e, kernel of the legal drill at hand.

9. Before considering the submissions, it is necessary to set out that as regards Serial No.9 supra, i.e., deposit of a little over Rs.55.21 Crores in said Company, Late Testator has filed a petition in C.A.No.1 of 2014 on the file of erstwhile Company Law Board, Chennai, (now NCLT) *inter alia* under Section 74(1) read with Section 73(4) of the Companies Act, 2013 with a prayer to direct the said Company to repay the sum of money and this was resisted by the said Company. Pending this application in NCLT, the testator died on 02.12.2015 as alluded to supra. The Trustees of the public Trust, which originally filed the OP, who are now plaintiffs, filed an application and got themselves substituted as applicant/depositor before NCLT. D1 also filed an application with a prayer that D1 should be substituted as applicant/depositor but the same was dismissed by NCLT vide order dated 26.05.2022. The orders of NCLT were carried to NCLAT vide Company Appeal (AT) No.43 of 2022 *inter alia* under Section 421 of the Companies Act, 2013. NCLAT vide a detailed order set aside both the



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orders of NCLT i.e., order allowing substitution of trustees / plaintiffs as well as order dismissing substitution plea of D1 and remitted the matter back to NCLT preserving the liberties of the parties to mention and proceed further soon after the testamentary proceedings i.e., T.O.S.No.27 of 2021. For the sake of convenience and clarity, we deem it appropriate to extract and reproduce the operative portion of the order of NCLAT i.e., Paragraph No.114 followed by the paragraph captioned 'Disposition' and the same read as follows:

'114. As a logical corollary, the 'impugned order ' dated 26.05.2022 in TCA/1/2016 in TCP/1/2016 and in CA/69/2016 in TCP/1/2016, on the file of the National Company Law Tribunal, Division South-I, Chennai is set aside for the reason ascribed by the 'Tribunal' in these two 'Appeals'. The matter is remitted back to the 'National Company Law Tribunal' Division Bench-I, Chennai for fresh consideration, and for passing a reasoned speaking order (ofcourse, un-influenced and untrammelled with any of the observations made by the 'Tribunal' in these 'Appeals') granting liberties to the respective 'Parties' to make a mention and to proceed further, in the subject matter in issue, soon after the adjudication of pending 'Testamentary Proceedings', between the 'Parties' before the Hon'ble High Court of Madras.



Disposition:

With the aforesaid observations and directions, the Comp.App (AT) (CH) No.43 of 2022 and Com,App (AT) (CH) No.45 of 2022 are Disposed of. No costs. The I.A.No.540 of 2022 ('For Stay') in Comp.App (AT) (CH) No.45 of 2022 is Closed.'

10. Reverting to the issue on hand, the sheet anchor contention of the learned Senior counsel for the appellant is that the plaintiffs have specifically contended / pleaded *inter alia* vide paragraph 9 of the Original Petition (now plaint) that the Testator had orally gifted the shares to the Trust on 30.09.2015 itself and that therefore they were not available at the time of death of the testator for the petitioners to be bequeathed with the same under the said testament. Learned Senior counsel emphatically contended that this tantamounts to withdrawal of an admission, which is impermissible by taking the Order VI Rule 17 route.

11. Contesting respondents submitted to the contrary and primary contention of the respondents is the residuary clause in the said testament, namely Clause 9 which reads as follows:

'9.I hereby bequeath the entirety of properties movables and immovables, rights, claims and interest to nay property belonging to me as on the date of my death to and in favour of "Dr.M.A.M.Ramaswamy Chettiar of Chettinad



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Charitable Trust”, which has been created by me on 09.12.2015, vide registered Trust Deed in Document Number.51 of 2015 on the file of Sub Registrar, Mylapore.'

12. It was also contended on the respondents' side that aforementioned paragraph 9 cannot be construed as an admission, as an admission should necessarily be to the detriment of the person making the averment whereas paragraph 9 is only a contention i.e., contention that there is a oral gift by the Late Testator on 30.09.2015 qua shares.

13. By way of reply, learned Senior counsel for appellant submitted that even on a demurrer i.e., even if the oral gift is to be construed to be true, on the date of demise of testator, the aforementioned sum of a little over Rs.55.21 Crores was not available with the testator for being bequeathed.

14. We carefully considered the rival submissions.

15. Before we give our dispositive reasoning, we make it clear that notwithstanding very many pleadings and multiple documents that are before us as part of the case file, the captioned appeals were argued very precisely and pointedly on the aforementioned bone of contention and therefore, we are dealing with the lone bone of contention alone i.e., the sheet anchor point on the basis which appeal legal drill was carried out before this Section 37 Court.



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16. This Court is of the considered view that the impugned order does not warrant interference and the reasons are set out infra. To be noted, while setting out the reasons, we are rolling the point, discussion and dispositive reasoning into one and the adumbration is as follows:

i) As already alluded to supra vide the impugned order itself a window has been made available and therefore, the question as to whether aforementioned Rs.55.21 Crores deposit in said Company should form part of said Testament will be subject matter of dispute/trial. In this regard, we are also informed that another suit in C.S.No.11 of 2019 filed by the Trust as regards some movables belonging to the testator has also been tagged with the TOS and there is joint trial.

ii) The most compelling reason is the order of NCLAT {which has been given legal quietus} as it would be evident from Paragraph 114 and the paragraph captioned 'Disposition' (extracted and reproduced supra), has left open the question of the claim of late testator and has made it clear that the substitution and who would continue the claim



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as against said Company is subject to the verdict of the testamentary Court.;

iii) As regards the submission of oral gift on 30.09.2015, we are of the considered view that as on 30.09.2015, the matter was pending before NCLT vide C.A.No.1 of 2014. Therefore, the question as to whether the testator is entitled to a little over Rs.55.21 Crores or as to whether that is only a short term deposit qua said Company and whether said Company is entitled to appropriate the same was at large (to be noted, it continues to at large) and therefore, it cannot be gainsaid that this sum of a little over Rs.55.21 Crores was also subject matter of oral gift;

iv) We are of the considered view that if at all and if that be so, on a demurrer, the oral gift can only be the litigation/claim of testator for a little over Rs.55.21 Crores. This means that the legatee, who ultimately succeeds in the legal tussle before the Testamentary Court, would step into the shoes of the Late Testator before the NCLT.



17. Having set out the discussion and dispositive reasoning qua the terse but pointed arguments that were projected before us, we make it clear that the window provided by the Hon'ble single Judge is now reiterated and amplified making it clear that the question as to who would be the legatee qua Rs.55.21 Crores and odd claim will also be a question / issue before the Testamentary Court. All the rights and contentions of the parties are left open in this regard. In other words, we have not expressed any view or opinion with regard to legatee qua this Rs.55.21 Crores and odd. All the contentions of all the parties concerned as raised would be considered on merits and in accordance with law untrammelled by this order which has been made for the limited purpose of testing the impugned order vide which the Testamentary Court has allowed two amendment applications.

18. We make it clear that with regard to time to file additional written statement which has been mentioned in the impugned order itself, the time spent in the captioned OSAs will stand excluded.

19. Consequently, captioned OSAs are dismissed sustaining the impugned order albeit with the aforementioned observation qua the



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window provided by the learned single Judge and the trial that is to
ensue. Consequently, captioned CMPs are also dismissed.

(M.S.J.) (K.G.T.J.)
26.06.2024

Index: Yes/No

Neutral Citation: Yes/No

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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
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