



A.No.3292 of 2024

in

O.P.No.163 of 2020

C.V.KARTHIKEYAN, J.

This Application has been filed seeking to revoke the order dated 14.09.2022, by which order, probate had been granted of a Will dated 02.07.2003 executed by K.Ramasamy, father of the petitioner in the original petition and also of this applicant who died on 30.08.2009. The original petition had been filed by the son of K.Ramasamy. The 1st, 2nd and 3rd respondents were his sisters and the 4th and 5th respondents were the daughters of another deceased sister. All the respondents had been set exparte and thereafter, on examination of evidence presented, the probate was granted.

2.By this Application, revocation of grant of such probate is sought. In the affidavit filed, it had been stated that in the year 2011, one of the sisters had filed a partition suit in C.S.No.441 of 2011, wherein, the applicant had filed written statement. The suit was transferred to the VII Additional City Civil Court and re-numbered as O.S.No.7093 of 2019. When that suit was pending, the petition seeking probate was filed. It had



been stated that though the applicant had engaged a counsel, owing to Covid -19 Pandemic, the applicant was not able to follow the matter and her husband also unfortunately died on 23.07.2021. It had also been stated that she had been set-exparte on 22.04.2022 and subsequently, the Original Petition was allowed on 14.09.2022. The Original Suit in O.S.No.7093 of 2019 had been dismissed for default on 18.10.2022. It had been stated that earlier the application seeking to condone the delay had been allowed and this application should now be considered by this Court.

3.A counter affidavit had been filed on behalf of the 1st respondent / petitioner in the original petition, wherein, it had been stated that the applicant was aware of the pendency of the original petition and that she had deliberately not appeared before the Court.

4.The only issue to be examined under Section 263 of the Indian Succession Act, 1925 is whether the applicant who now seeks to revoke the grant of probate would have a caveatable interest. Illustrations have also been given in the said provisions and one of the reasons to revoke a grant is just cause. A perusal of the record shows that one of the sisters had filed a suit seeking partition and separate possession and when that



was pending, the present original petition had been filed seeking probate of the Will. The Will had actually been executed in the year 2003 by the father, but the petition seeking probate had been initially presented only on 20.12.2019 nearly after 16 years. These are all factors which will necessarily have to be examined. The applicant herein would also have to be given an opportunity to question the delay even though the rules do not stipulate delay as a ground for revocation of grant of probate, but there are circumstances which will have to be examined.

5. Taking all these facts, this application stands allowed and the order dated 14.09.2022 granting probate stands revoked.

29.07.2024

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