



Reserved on	16.04.2024
Pronounced on	25.04.2024

A.No.6476 of 2023 in
O.P.No.531 of 2016

C.V.KARTHIKEYAN,J.

This application has been filed under Section 263 of the Indian Succession Act, 1925, seeking to revoke the order dated 13.04.2017, granting Letters of Administration in favour of the respondents.

2. The respondents had filed an Original Petition in O.P.No.531 of 2016 seeking Letters of Administration with respect to the Will executed by K.Soundararajan who died on 14.08.2014. He had executed a Will dated 06.06.1996 which had been registered as document No.21 of 1996 on the file of the Sub-Registrar, Velacherry. The father of the respondents viz., Ramachandran and the father of the applicants herein viz., Lakshmanan were the brothers of the testator K.Soundararajan. At that time when K.Soundararajan died on 14.08.2014, only the father of the respondents, Ramachandran was alive. The father of the applicants Lakshmanan had died



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much earlier on 16.04.1986. The respondents therefore in their capacity as the beneficiaries under the Will, had filed O.P.No.531 of 2016 seeking Letters of Administration with respect of the Will executed by K.Soundararajan dated 06.06.1996. That particular petition in O.P.No.531 of 2016 had been ordered on 13.04.2017.

3. During evidence, the second respondent R.Surya Prakash had examined himself as P.W.1 and marked the relevant documents including the Will which was marked as Ex.P2. Thereafter, they also examined one Subramani who was the first attesting witness and Kamalanathan, the second attesting witness, who both spoke about their knowledge of the signature of the testator in the Will. Taking into consideration the evidences produced, both oral and documentary, a learned Single Judge of this Court had allowed the Petition by order dated 13.04.2017. That particular order granting Letters of Administration is sought to be revoked by filing this application.

4. It is contended by the applicants herein that they are also Class II



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legal heirs of the deceased K.Soundararajan and that they should have been put on notice when the Petition seeking Letters of Administration was filed.

It had been stated that the said K.Soundararajan did not disclose about the execution of the Will during his life time. They also stated that they had also filed a suit for partition of the properties which have been bequeathed to the respondents. In effect, they claim that they are also necessary parties in O.P.No.531 of 2016, and since they were not impleaded in the Petition, the order granting Letters of Administration should be revoked.

5. A counter has been filed, wherein, the relationship among the parties had not been denied. The averment that K.Soundararajan did not disclose about the execution of the Will during his life time was also not denied. However, it is contended that the applicants cannot be classified as class II legal heirs since their father / brother of K.Soundararajan had predeceased him and therefore they stood ousted from being categorised as Class II legal heirs, in view of the fact that the father of the respondents Ramachandran was alive at the time of death of K.Soundararajan. It had also been contended that under Section 8 of the Hindu Succession Act and



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Schedule to Section 8 in Entry II, the surviving brother alone can be considered as Class II legal heir and the children of predeceased brother can only come under Entry IV and it is therefore contended that even if the Will is to be ignored, the applicants would not be in a position to claim a share in the property. It is thus contended that the application should be dismissed.

6. Heard arguments advanced by Mr.K.Sitharthan, learned counsel for the applicants and Mr.R.Rajesh, learned counsel for the respondents.

7. The facts are straight forward. Letters of Administration in O.P.No.531 of 2016 was sought with respect of the Will executed by one K.Soundararajan who died on 06.06.1996. He did not have any children. His only legal heirs were Class II legal heirs. He had two brothers viz., Lakshmanan, father of the applicants and Ramachandran, father of the respondents. On the date of the death of K.Soundarajan, Ramachandran alone was alive. Lakshmanan had died much earlier on 16.04.1986. Thus, on the date of death of K.Soundarajan, Ramachandran alone was the class II legal heir and since he was alive, the children of another predeceased



brother stood ousted.

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8. In this connection, Section 8 of the Hindu Succession Act, 1956, can be referred. The said provision is as follows:

*"8. General rules of succession in the case of males --
The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:--*

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

9. In the Schedule, relating to Clause II legal heirs, the sequence is that if a Hindu male dies intestate, in Entry I, the father comes first and in Entry II, among others, the brother comes. In Entry IV, the brother's son



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comes. Thus, if K.Soundararajan had not executed any Will, the father of the respondents who was alive would have succeeded his estate as a surviving brother.

10. This point is stressed by Mr.R.Rajesh, learned counsel for the respondents who stated that since the applicants cannot be classified as class - II legal heirs with right of succession, they cannot therefore be said to have any caveatable interest for the respondents to implead them as parties in O.P.No.531 of 2016. The learned counsel further stated that therefore, the application will have to suffer an order of dismissal.

11. In this connection, the learned counsel placed reliance on the observations of a learned Single Judge of this Court in a judgment reported in *27 law weekly 167, in the case of M.K.Sowbhagiammal Vs.Komalangi Ammal*. In that particular case, when an executor applied for a probate of the Will, a caveat was filed. The caveator claimed that her sreedhana jewels were sought to be disposed of by the testator in the Will. It was held that the



interest alleged by the caveator was for title and that the grant of probate would not confer upon the executor any title to the property, but only perfects the representative title of the executor. The facts are distinguishable.

12. The learned Single Judge in the course of discussion had observed as follows:

*"The function of the Court of Probate is to decide whether the will propounded is the last will of the testator and whether the right to represent the estate may be conferred upon the applicant. The Court of Probate does not profess to decide the disputed title to every item of property mentioned in the will. If, then, the scope of a testamentary proceeding is correctly understood, no difficulty can arise. Can the executor to whom probate is granted, on the strength of that probate, recover property which is not the testator's? Does the probate confer on the executor right to property to which he is otherwise not entitled? If it is remembered that these questions ought to be answered in the negative, it does not in the least matter, what the properties are, which the testator professes to treat as his own and to dispose of by his will. **The remarks I have made apply equally to applications***



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*for letters of administration. In dealing with the question --
Has the caveator the necessary interest? -- the test is, does
the grant displace any right to which the caveator would
otherwise be entitled? If so, he has such an interest, if not,
he has not. An heir on intestacy has an interest in
impeaching the will; for, but for the will, he would succeed to
the property. A legatee under a previous will has a similar
interest; for, he is interested in establishing the validity of
that will and impeaching the validity of the later will which
deprives him of the benefit."*

(Emphasis supplied)

13. Pointing out the above observations, the learned counsel Mr.R.Rajesh stated that this Court should examine whether the applicants would have succeeded to the estate of K.Soundararajan, if there had been no Will. Since the father of the respondents Ramachandran was alive, he alone would have succeeded to the estate and the applicants were much lower in the rank so far as class II legal heirs are concerned. Since they could not have succeeded to the estate, it is contended that they cannot maintain the application seeking to revoke the Letters of Administration.



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14. Mr.K.Sitharthan, learned counsel for the applicants, however disputed this particular contention. According to him, the applicants now seek to revoke the Letters of Administration, since they also stand in the same status as the respondents. It is pointed out that grant of Letters of Administration is a right in rem and therefore, any person who has an interest could apply for revocation of grant of Letters of Administration. In this connection, the learned counsel placed reliance on the judgment of the learned Single Judge of this Court reported in **2015 1 LW 723 in the case of K.Karthik & Another Vs. Jayanthi Iyengar & Others.**

15. The applicants in the above cited decision had also filed an application seeking to revoke the Letters of Administration and a learned Single Judge had examined the scope of "*just cause*" to file an application to revoke the grant. It was observed that the applicants had initially filed an application to implead themselves as respondents in the Original Petition claiming that they have a caveatable interest. That application had been dismissed, since they cannot question title in probate proceedings. Thereafter, they had filed an appeal which was also dismissed.



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Subsequently, after grant of Letters of Administration, they had filed an application to revoke the grant of Letters of Administration. While examining that particular application seeking to revoke the grant of Letters of Administration, the learned Single Judge had placed reliance on the judgment of the Hon'ble Supreme Court reported in **(1990) 3 SCC 333**, equivalent to **AIR 1990 SC 1576**, in the case of **Elizabeth Antony Vs. Michel Charles John Chown Lengera**. The Hon'ble Supreme Court had held that any slightest interest in the property would entitle the aggrieved person to invoke the provisions of Section 263 of the Indian Succession Act, 1925.

16. Since the order passed in probate proceedings is a right in rem, the learned Single Judge held that the applicants who were having caveatable interest, were entitled to seek Letters of Administration. In the decision reported in *Elizabeth Antony* (referred supra), the Hon'ble Supreme Court had held as follows:

"9.....We must point out that by granting a probate, the Court is not deciding the disputes to the title. Even with



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*regard to a probate granted, it can be revoked as provided under Section 263 of the Act in any one of the cases mentioned therein. But the learned counsel for the petitioner submits that the findings of the Sub Court and the High Court regarding the caveatable interest will come in the petitioner's way in seeking revocation of the grant of probate. **It is needless to say that the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive his right, if he has any, to invoke Section 263 of the Act and it is upon the petitioner to satisfy this Court.**"*

(Emphasis Supplied)

17. Before stating anything further, it would only be appropriate that Section 263 of the Indian Succession Act is also extracted. The said provision is as follows:

"263. Revocation or annulment for just cause -- The grant of probate or letters of administration may be revoked or annulled for just cause.

Just cause shall be deemed to exist where--

(a) the proceedings to obtain the grant were defective in substance; or



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(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the persons to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

In the illustrations given, illustration No.(ii) as follows:

"(ii) The grant was made without citing parties who ought to have been cited."

18. Now coming back to the facts of this case, it is seen that O.P.No.531 of 2016 had been presented on 06.10.2015. On that particular date, the father of the respondents Ramachandran was alive. The respondents were however the beneficiaries under the Will and they had therefore filed an application seeking grant of Letters of Administration.



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Their father subsequently died on 07.01.2016. The Petition for Letters of Administration was admitted on 10.08.2016. On that date, the applicants herein could also be reasonably classified as class II legal heirs, since the respondents and the applicants stood on the same footing viz., the children of deceased brothers of the testator.

19. The grant of Letters of Administration creates a right in rem. The applicants on that date had a "*just cause*" to seek to be heard before grant of Letters of Administration. Even otherwise, after the grant of Letters of Administration, even if they had no caveatable interest, they have acquired interest in the property. Even if such interest be very slight and dependent on the rules of succession, still at some point or the other, they could also be considered as the Class II legal heirs of the deceased K.Soundararajan.

20. In the decision reported in **2022 (2) CTC 658, in the case of Swaminathan & Others Vs. Alankamony**, the Hon'ble Supreme Court had examined an appeal to an order by which an application for revocation of



grant of Letters of Administration was allowed by the Hon'ble Division Bench. After extracting Section 263 of the Indian Succession Act, the learned Division Bench had held as follows:

"6. As per Section 263, the grant of Letters of Administration may be revoked for "just cause". Explanation (a) under Section 263 states that just cause shall be deemed to exist where the proceedings were defective in substance. Illustration (ii) under Section 263 deals with a case where "the grant was made without citing parties who ought to have been cited".

7. It may be of interest to note that some of the colonial statutes contain Illustrations which form part of the Statutes themselves. The Indian Succession Act, 1925, is one such enactment.

8. Therefore, the High Court was right in holding that a just cause existed for revoking the grant. Hence, we do not find any error in the Order of the High Court warranting our interference. Therefore, the Appeals are dismissed."

21. It is thus seen that grant of Letters of Administration which is an order creating right in rem, could be questioned by any person, but the



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reasons put forth for revocation must be a "*just cause*" as detailed in the explanation of Section 263 of the Act.

22. The respondents, at the time when O.P.No.531 of 2016 was admitted on 10.08.2016, should have informed the Court about the applicants herein and that they had acquired a reasonable right over the property and should have impleaded them as respondents. They have not impleaded them as respondents. The applicants have a just cause to seek revocation of grant of Letters of Administration.

23. In *AIR 1973 Cal 433, in the case of Sm.Annapurna Kumar Vs. Subodh Chandra Kumar*, it had been held as follows:

"It is well settled now that any interest, however slightly, and even the bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary paper. Even in a case where the person is not entitled to get a compulsory citation, but the citation is discretionary, the absence of citation to such a person, also would invalidate the grant in certain circumstances."



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WEB COPY **24.** It is thus seen that even if there is a slightest interest in the property, such interest would be sufficient to question any testamentary proceeding.

25. In view of these reasons, I hold that the applicants herein have made out a "*just cause*" to seek revocation of the grant of Letters of Administration. This application is allowed. No costs. The Letters of Administration granted to the respondents by order dated 13.04.2017 stands revoked.

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