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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.266 of 2024

and

C.M.P.No.1667 of 2024

Mr.Govindan

... Appellant

Vs.

The Sub Registrar,
Kaveripattinam,
Krishnagiri – 635 112.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal and set aside the order dated 12.10.2023 in W.P.No.29583 of 2023.

For Appellant : Mr.C.Umashankar

For Respondent : Mr.B.Vijay
Additional Government Pleader



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J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The present Intra Court Appeal has been instituted challenging the order dated 12.10.2023 passed in WP.No.29583 of 2023.

2. The petitioner presented “Will” for registration. The said 'Will' was executed by his mother on 02.11.2021. The mother of the writ petitioner / testator, died on 23.06.2022. The 'Will' was presented for registration on 28.08.2023. It is a posthumous presentation of a 'Will' for registration under the Act. The Registering Officer refused to register on the ground that the 'Will' has to be probated. The refusal slip has been challenged before the Writ Court. The Writ Court dismissed the writ petition on the ground that the Registering Officer had doubt in his mind regarding the genuinity of the 'Will' presented. The appellant has not produced the legal heir certificate for verification. Thus, the refusal slip was issued.

3. Mr.C.Umashankar, learned counsel for the appellant would submit that Sections 23, 27 and 40 of the Registration Act, 1908 would amplify the



legal position that posthumous registration of a 'Will' is permissible. On presentation of such 'Will' by the beneficiary, the Registering Officer has no option, but to register the same. Raising a doubt about the genuinity of the 'Will' does not arise at all. Therefore, the respondent has failed in his duty to verify the provisions of the Act and refused registration. The Writ Court supported the view of the Registering Officer on the ground that the appellant has failed to produce the legal heir certificate for verification. Production of legal heir certificate before the Registering Officer contemplated under the Act and Rules. Therefore, the writ appeal is to be allowed.

4. Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of the respondent would oppose the contentions of the appellant by stating that under Section 41 of the Registration Act, 1908, if the testator or donor is dead, then the Registering Officer is entitled to refuse the same, if any doubt arises regarding the genuinity of the 'Will' presented for registration. In the present case, the appellant has failed to produce the legal heir certificate and more so, the 'Will' was presented after a lapse of more than one year after the date of death of the testator. Thus, the refusal of



registration is in order. Consequently, the Writ order is also in consonance with the provisions of the Act.

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5. Considered the rival submissions made on behalf of the respective learned counsels appearing in the *lis* on hand.

6. Section 23 of the Registration Act, 1908 stipulates Time for presenting documents - “Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution: Provided that a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final”.

7. Section 27 of the Registration Act, 1908 stipulates “Wills may be presented or deposited at any time.— A will may at any time be presented for registration or deposited in manner hereinafter provided”.

8. Section 40 of the Registration Act, 1908 contemplates that “Persons



entitled to present wills and authorities to adopt.— (1) The testator or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration. (2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration”.

9. Section 41 of the Registration Act, 1908 contemplates that “Registration of wills and authorities to adopt.— (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document. (2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied— (a) that the will or authority was executed by the testator or donor, as the case may be; (b) that the testator or donor is dead; and (c) that the person presenting the will or authority is, under section 40, entitled to present the same”.

10. Perusal of the above provisions would be sufficient to form an opinion that posthumous registration of a 'Will' is permissible under the Registration Act, 1908. The 'Will' may be presented at any time for registration or deposited in any manner contemplated. If at all any doubt



arises to the Registering Officer about the genuinity of the Will under Section 41 of the Registration Act, 1908, then he is empowered to conduct a detailed enquiry under Chapter XIII Rule 69 onwards under the Registration Rules.

11. Rules 69 to 75 contemplates procedures to be followed for conducting a detailed enquiry. The Registering Officer has to issue notice to all the legal heirs of the testator and the interested parties and conduct an enquiry. Thereafter, form an opinion regarding the genuinity of the 'Will' presented for registration posthumously. If he is satisfied, then he is empowered to register the same by following the procedures as contemplated. However, in the present case, no such enquiry as contemplated under Rules 69 to 75 has been conducted.

12. The view of the Writ Court is based on the provisions of the Act, which would state that in the event of any doubt, the Registering Officer is empowered to refuse registration. No doubt the Registering Officer is empowered to refuse registration in the event of any doubt in his mind. However, the procedures contemplated under Rules 69 to 75 provides that in the event of any doubt, the Registering Officer shall conduct an enquiry by issuing notice to all the interested parties. When procedures are



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contemplated, affording an opportunity to the parties to establish the genuinity of the 'Will' and such procedures are to be adopted in the manner contemplated.

13. In view of the facts and circumstances, the order impugned dated 12.10.2023 in W.P.No.29583 of 2023 is set aside. The respondent Sub Registrar is directed to conduct a detailed enquiry under Rules 69 to 75 of the Registration Rules as contemplated and take a decision and pass appropriate orders. The said exercise is directed to be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

14. With the above directions, the Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [K.R.S., J.]
25.03.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



To

The Sub Registrar,
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