



O.S.A.Nos.139 and 142 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

and

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

O.S.A.Nos.139 and 142 of 2019

and

C.M.P.Nos.12265 and 12272 of 2019

O.S.A.No.139 of 2019

1.M.Sunderraj (Deceased)

2.Mrs.S.Ramani

[2nd appellant impleaded as proposed appellant
vide Court order dated 18.02.2022 made in CMP.

Nos.2532 & 2533 of 2021 in OSA.No.139 & 142 of 2019]

.... Appellants

Vs

G.Malliga

.... Respondent

Prayer : Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules, praying to set aside the fair order and decretal order passed in Appln.No.6406 of 2013 in O.P No.290 of 2010 dated 22.06.2016.



O.S.A.Nos.139 and 142 of 2019

O.S.A.No.142 of 2019

1.M.Sunderraj (Deceased)

2.Mrs.S.Ramani

[2nd appellant impleaded as per proposed appellant
vide Court order dated 18.02.2022 made in CMP.

Nos.2532 & 2533 of 2021 in OSA.No.139 & 142 of 2019]

.... Appellants

Vs

1.G.Kumar @ Kalyanakumar

2.G.Sugumar

3.G.Karunakaran

4.G.Malliga

.... Respondents

Prayer : Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules, praying to set aside the fair order and decretal order passed in Appl.No.844 of 2014 in O.P.No.290 of 2010 dated 22.06.2016.

O.S.A.No.139 of 2019 :

For Appellant : Mr.B.Natarajan

For Respondent : Mr.J.Joseph Stalin

O.S.A.No.142 of 2019 :

For Appellant : Mr.B.Natarajan

For Respondent : Mr.S.Ambigapathi for R1

Mr.J.Joseph Stalin for R4

R2 and R3 - Died

(vide Batta SR.22622/2019)



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COMMON JUDGMENT

This common consent judgment/order will now govern captioned two 'intra-Court appeals' i.e., captioned 'Original Side Appeals' [hereinafter 'OSAs' for the sake of brevity] and captioned two 'Civil Miscellaneous Petitions' [hereinafter 'CMPs' in plural and 'CMP' in singular for the sake of brevity] thereat.

2. The epicentre of the litigation is a 'testament' i.e., 'registered Will dated 12.03.1996' [hereinafter 'said Will' for the sake of convenience and clarity] executed by one Amaravathy Ammal. There are two items of immovable properties both situate in Madras within the territorial jurisdiction of the Original Side of this Court, which are shown as Items 1 and 2 in the Will. We deem it appropriate to not to delve much on the said Will and we deem it appropriate to merely say that certain allocations have been made for Annadhanam qua Tirumala Tirupathi Devasthanam, Sri Adikesava Perumal Devasthanam, Sriperumbudur (to be noted, this temple form part of Ramanuja Mutt), and Sri Veeraraghava Swamy Devasthanam, Thiruvallur etc., A sum of Rs.2,00,000/- from and out of certain sale proceeds have also been set apart to one Mrs.G.Malliga.



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3. In the aforesaid backdrop, O.P.No.290 of 2010 dated 30.10.2010 was filed in the Original Side of this Court *inter alia* under Sections 222 and 276 of the Indian Succession Act, 1925 (Act XXXIX of 1925) with a prayer for probate qua said Will. In this O.P., aforementioned G.Malliga was arrayed as sole respondent but it is not clear as to when she was added and in any event, there was no disputation and probate was granted on 11.03.2011. Thereafter, three siblings namely G.Kumar @ Kalyanakumar, G.Sugumar and G.Karunakaran (sons of late Gopal) claiming to be the grandchildren of one Kuppammal, who is the sister of testatrix Amaravathy Ammal came up with a case that their father late Gopal was the adopted son of testatrix but we express no opinion on the same owing to the nature of order which we propose to make.

4. In the aforementioned circumstances, Malliga took out A.No.6406 of 2013 with a prayer to revoke the probate granted on 11.03.2011. The three siblings [i.e., G.Kumar @ Kalyanakumar and 2 others] also approached this Court vide A.No.844 of 2014 with a similar prayer i.e., to revoke the probate granted on 11.03.2011 and also a prayer to implead them as party respondents 2 to 4 in O.P.No.290 of 2010. A Hon'ble Single Judge of this Court disposed of both these applications vide 'common order dated



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22.06.2016' [hereinafter 'impugned order' for convenience] *inter alia* holding that Malliga had filed a caveat even before filing of probate petition but probate was granted without hearing her and one of the house properties forming subject matter of the said Will has been sold to one S.Ramani, W/o.Srinivasan, who is none other than the sister of G.Kumar @ Kalyanakumar and two others. In and vide impugned order, it was made clear that the validity of the Will and nature of disposal of the property as mentioned in the schedule therein have to be gone into in the legal drill in the testamentary Court in the O.P.

5. Post aforementioned impugned order, the executor who was a lawyer by profession died on 23.11.2019. To be noted this executor was the petitioner in O.P.No.290 of 2010.

6. It is the case of Ramani, the sister of G.Kumar @ Kalyanakumar and two others that the two items of immovable properties qua said Will were purchased by her from the executor vide two sale deeds dated 11.01.2013 and 08.04.2013 but we refrain from expressing any opinion on this also and we merely record this submission made at the Bar as we are going to relegate the matter to the Testamentary Court.

7. In the aforementioned scenario, Nature has overtaken G.Kumar @



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Kalyanakumar. To be noted, we are informed that G.Kumar @ Kalyanakumar died on 02.09.2023 and his wife Ms.Latha is the legal heir and Mr.S.Ambigapathi, learned counsel has instructions to bring her on record. The address of Ms.Latha is same as that of G.Kumar @ Kalyanakumar.

8. In the light of narrative thus far, it becomes clear that all the parties concerned have a grievance that probate is being granted without hearing them. We are acutely conscious of the obtaining legal position that probate does not confer title but it is imperative that the testament and the covenants thereat are executed as per the Will of the testatrix, of course subject to the testament being proved in accordance with law before the OP Court.

9.1 In this backdrop, with the consent of all the counsel representing the parties, the following order is made :

- (a) The impugned order is sustained;
- (b) S.Ramani W/o.Mr.A.Srinivasan shall now be the propounder of the said Will;
- (c) Owing to the contest by Malliga and as the Hon'ble Judge has observed that a caveatable interest has been made by Malliga, the O.P has to be converted as 'TOS' i.e., 'Testamentary Original Suit' by



following the due procedures. Registry to do the needful in this regard;

(d) Malliga, Latha, G.Sugumar and G.Karunakaran would be D1 to D4 in TOS proceedings. It is informed that some of the parties to the litigation had died pending the OSA proceedings, and therefore, it is open to the parties concerned to bring on record the legal representative of the deceased in TOS proceedings.

9.2 As the impugned order is sustained, it is necessary that the legal drill in the Testamentary Court is taken up.

10. Considering the nature of the matter and considering the reference to various temples and ceremonial activities in the aforementioned temples qua said Will, we are of the considered view that it is desirable to have the evidence recorded before the Testamentary Court rather than the learned Master but this is subject to the discretion of the Hon'ble Judge concerned. We also deem it appropriate to record that all the counsel before us have agreed to let in evidence as expeditiously as possible if the Hon'ble Judge is willing to record evidence in Court, otherwise the matter will go before the learned Master for recording evidence.

11. We have only set out the legal position that probate does not confer



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any title but for the sake of specificity, we make it clear that this is no opinion on merits and legal drill in testamentary Court shall be on its own merits and in accordance with law depending on the evidence that is being let in the TOS.

12. Considering that the testament itself is now more than a quarter century old and the demise of the testatrix was also quarter century ago, we make the observation that it would be desirable to have the testamentary original suit drill i.e., trial, arguments and verdict concluded as expeditiously as the business of the Hon'ble Court would permit. If the recording of evidence is before learned Master, the same shall be concluded in eight weeks time i.e., 22.08.2024.

13. Captioned two OSAs and captioned CMPs are disposed of in the aforementioned manner with the aforesaid observations/directions and preservation of rights. There shall be no order as to costs.

[M.S.,J.] [K.G.T.,J.]
27.06.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
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