



O.S.A.No.439 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR  
AND  
THE HON'BLE Mr. JUSTICE P.DHANABAL

O.S.A.No.439 of 2018

J.Rajageetham

.. Appellant

Vs.

1.K.Sankar

2.T.Chamundeeswari

3.Seethalakshmi (deceased)

4.S.P.Mathan

5.M.Harish

6.Kirupaul

7.M.Rumesh

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent, against the order dated 31.01.2018 passed by the learned Single Judge in A.No.355 of 2014 in T.O.S.No.19 of 2001.

For Appellant : Ms.R.Latha

For Respondents : No appearance



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## **JUDGMENT**

(Delivered by S.S.SUNDAR, J.)

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This original side appeal is directed against the order of the learned Single Judge dated 31.01.2018 passed in A.No.355 of 2014 in T.O.S.No.19 of 2001 to revoke the Letters of Administration granted on 15.07.2013 in T.O.S.No.19 of 2001 in respect of the will executed by the father of the appellant on 20.02.1980.

2. The brief facts that are necessary for the disposal of this appeal are as under :

2.1. The appellant is the 3<sup>rd</sup> defendant in T.O.S.No.19 of 2001, which was earlier filed as O.P.No.27 of 2001.

2.2. The proceedings are in respect of the will executed by one G.Krishnappa Naidu, father of the appellant. It is not in dispute that the appellant's father married one Navaneethammal. Out of the wedlock, the testator had a son by name Shankar and three daughters viz., Rajageetham/appellant, Chamundeeswari/2<sup>nd</sup> respondent and Seethalakshmi/deceased (w/o.3<sup>rd</sup> respondent).



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2.3. Originally, the brother of the appellant/1<sup>st</sup> respondent and the mother of the appellant filed O.P.No.27 of 2001 for grant of Letters of Administration, which was later converted as T.O.S.No.19 of 2001. The appellant contested the testamentary suit raising objections as to the genuineness of the will. The learned Single Judge, by order dated 15.07.2013, allowed the T.O.S. No.19/2001 granting Letters of Administration of the will to the plaintiffs.

2.4. Thereafter, the 3<sup>rd</sup> defendant filed an application in A.No.355 of 2014 in T.O.S.No.19 of 2001, for revocation of the order granting Letters of Administration dated 15.07.2013, on the ground that the Letters of Administration was obtained by misleading the Court. However, the plaintiffs contested the application, mainly on the ground that the appellant filed a consent affidavit in the suit and the same was marked as document.

2.5. Since service was effected on all the parties, including the appellant, and the appellant did not participate in the proceedings, the learned Single Judge found that the appellant was set *ex parte*. Since there was no irregularity in obtaining the Letters of Administration, the application was dismissed. Challenging the same, the appellant has preferred this original side appeal.



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3. This Court carefully considered the submission of the learned counsel for the appellant and found that the appellant, though did not participate in the proceedings, was unable to explain his own affidavit that was filed before the Court. The relationship between the parties are not in issue.

4. The learned counsel for the appellant admitted that the appellant has received certain amount as stated in the will, immediately after the execution of the will. The consent affidavits of the defendants 1, 2 and the appellant were marked as Exs.P4, P5 and P6, respectively. The properties were bequeathed in favour of the 2<sup>nd</sup> plaintiff viz., the mother of the appellant, who is none other than the wife of the testator. After the lifetime of the 2<sup>nd</sup> plaintiff, the property should devolve absolutely on the 1<sup>st</sup> plaintiff, who is the 1<sup>st</sup> respondent in this proceedings. It is seen that the Will was never an issue in the testamentary proceedings. It is found that the appellant was duly served and the appellant did not participate in the proceedings.

5. The Court consciously held that there is no suspicious circumstance, in view of the fact that the parties have filed consent affidavits. There is no reason, why the consent affidavit could not be acted upon. The appellant's counsel has not challenged the affidavit and on the admitted facts, the learned Single Judge



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finds no reason to revoke the letters of administration and dismissed the application for revocation of the Letters of Administration. In view of the foregoing reasons, we find no merits and this original side appeal stands dismissed. No costs.

[S.S.S.R.,J.] [P.D.B., J.]  
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Index : Yes/No  
Neutral Citation : Yes/No  
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