



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 31.07.2025	PRONOUNCED ON 07.10.2025
---------------------------	-----------------------------

CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.Nos.2547 & 2548 of 2025

in

A.No.8112 of 2017

in

O.P.D.No.17329 of 2016

Mr.S.Dhanushkodi

... Applicant in both applications

vs.

1.S.Swaminathan

2.Mrs.S.Kamala Devi

3.Mrs.S.Kalyani Devi

4.Mrs.S.Vasuki Devi

5.M.Pari

... Respondents in both applications

In both Applications:

For Applicant : Mr.K.Chandrasekaran

For Respondent : Mr.K.V.Babu for R1

COMMON ORDER

The Application in A.No.2547 of 2025 had been filed to set aside the order of the learned Master dated 30.04.2025 in A.No.8112 of 2017 in



O.P.D.No.17329 of 2016 pending disposal of the O.P.D.No.17329 of 2016.

2. The Application in A.No.2548 of 2025 had been filed to stay the operation of the order dated 30.04.2025 in A.No.8112 of 2017 in O.P.D.No.17329 of 2019 pending disposal of the appeal.

3. Heard Mr.K.Chandrasekaran, learned counsel for the applicant and Mr.K.V.Babu, learned counsel appearing on behalf of the first respondent.

4. Mr.K.Chandrasekaran, learned counsel appearing for the applicant would submit that the father of the applicant had died on 03.09.1973 leaving behind four daughters and two sons namely the applicant, respondents 1 to 4 and one another daughter Vennila Devi, whose legal heir is the fifth respondent. He would submit that the property left behind by his father was the subject matter of the partition deed in which the suit properties were divided by metes and bounds . He would submit that the first respondent alleging that the father has executed a Will registered as Document No.23 of 1973 on the file of the Joint Sub-Registrar Office, Royapuram dated 02.08.1973 had originally filed an O.P. for probate along with his mother which was returned for certain compliance. He would submit that the original Will was filed along



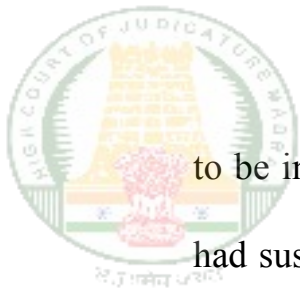
with the said Original Petition which was also returned along with the Original Petition for certain compliance and the said Original Petition was never represented. After the death of the mother, again the first respondent had filed an O.P. along with an application for issue of Citation. The said application was contested by the applicant and after detailed arguments the said application was dismissed as withdrawn with an endorsement made by the learned counsel appearing for the first respondent. Again he had filed the instant O.P. along with an application in A.No.5258 of 2016 seeking for citation and the said application after contest was dismissed by the learned Master by his order dated 02.08.2017 by holding that there are no reasonable grounds to believe that the registered Will is in the hands of the applicant.

5. He would further submit that there was a finding given inter-alia that when the earlier application for Citation was withdrawn and when there was no liberty granted to the petitioner to file a fresh application, the application was not maintainable. He would submit that the said order had become final between the parties. However, by an application in A.No.8112 of 2017, the applicant had filed an application seeking to number the O.P. for Letters of Administration based upon the certified copy of the said Will. The said

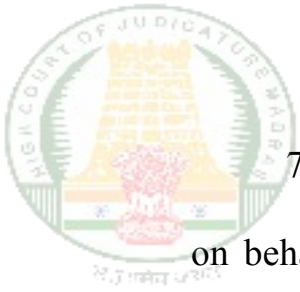


application was ordered even without notice to the respondents in the said application. Hence, the applicant had filed A.No.3078 of 2019 by way of an appeal against the order passed by the learned Master. He would submit that by order dated 10.06.2019, the learned Single Judge considering that the learned Master had passed an order without even issuing notice to the applicant and other respondents had set aside the said order and directed de-numbering of TOS and remitted the matter back to the learned Master for passing appropriate orders after hearing the respective parties.

6. He would further submit that the learned Judge had inter-alia recorded a finding that the affidavit filed in support of the application, there is no averment in compliance with Section 237 of the Indian Succession Act, 1925. The first respondent had preferred an Intra-Court Appeal against the order passed by the learned Single Judge and the Division Bench after having considered the issue on merit had held that no prejudice would be caused to the first respondent if the learned Master passes an order after hearing all the respective parties. He would submit that on remand the learned Master had passed an order directing to number the O.P. He would submit that the learned Master had given a contra finding of the facts particularly in respect of the Will



to be in possession of the applicant. He would submit that the learned Master had suspected the Will to be in the hands of the applicant as the applicant had produced the xerox copies of the earlier application filed by the first respondent for grant of Probate where he had produced the original Will. Such a finding goes contrary to the factual finding rendered by the learned Master in A.No.258 of 2016 which has not been challenged by the applicant. He would submit that the learned Master had in fact sat on a review of an earlier order which had given a factual finding that the applicant cannot be said to be in custody of the Will. He would further submit that there has been no explanation submitted by the first respondent as to how the Will which was in his possession when he had filed the earlier O.P. had gone out of his hands. He would further submit that when there was a finding of fact that the averments made in application do not contain any averment in conformity with Section 237, the learned Master had casually held that the application should not be thrown out on mere technicalities and that such allegations can be determined after full-fledged trial. The order of the learned Master contravenes the Provisions of the Indian Succession Act, 1925 and therefore, he seek this Court's indulgence to set aside the order of the learned Master.



7. Countering his arguments, Mr.K.V.Babu, learned counsel appearing on behalf of the first respondent would vehemently contend that the parties were living in a joint family till 2013. When the Probate was originally filed along with his mother, the same returned noting certain deficiencies in the O.P., to be complied. The said return along with the original Will was kept in the residence of the joint family where the applicant and the first respondent also resided. It is during which time the applicant had clandestinely removed the original Will and forced the first respondent to enter into a partition along with the other legal heirs. Only in the year 2013, the petitioner having noted that the Will has been missing had approached this Court for a Citation. The first application filed was withdrawn and thereafter, the present O.P., had been initiated for issuance of Letters of Administration of the property based on the Will. Even though, the learned Master had rejected the Citation application, he would submit that there is no bar for numbering of the O.P. based upon the certified copy of the Will. Hence, the learned Master had passed an order in the year 2017 which was set aside by the learned single Judge on the appeal filed by the applicant on the grounds that no notice was served on the respondents in the application namely the applicant and the respondents 2 to 5. He would submit that the learned Master after considering the facts of the



case had given a categorical finding that it is for the applicant to disprove that he has not been possession of the Will. He would submit that even assuming that the Citation was refused there is no bar in numbering the O.P. which can be always decided after the contest between the parties. Therefore, he would submit that there is no error in the orders of the learned Master in directing the numbering of the O.P.

8. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

9. A perusal of the affidavit filed in support of the application in A.No.8112 of 2017 would indicate that the first respondent had come to know of the execution of the Will by his father one P.S.Singaraja Nadar only in the month of November 2013 when he had obtained the certified copy of the same. He had not spoken about the original O.P. filed by him in the year 1990 along with his mother in which the original Will had been filed.

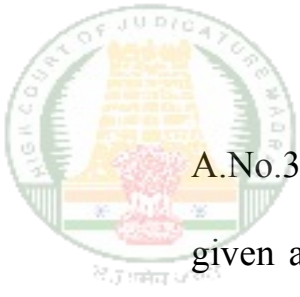
10. It is to be noted that the said O.P. had been verified by the first respondent along with his mother. The original Will had been filed along with the aforesaid O.P. and returned with the O.P. for compliance of certain



deficiencies found therein. The first respondent has not pleaded the aforesaid factum in his application. He had specifically averred that he had the knowledge of the Will only in the month of November 2013. Such a factual assertion by way of an affidavit before this Court would show that the first respondent had not approached this Court with clean hands.

11. It is further to be noted that originally, the first respondent had taken out an application in A.No.5258 of 2016 for issuance of Citation. The learned Master by his order dated 02.08.2017 refused to issue such citation by giving a factual finding that there are no reasonable grounds to believe that the registered Will is in the hands of the respondent namely the applicant herein. In the present order impugned, the learned Master had given a specific finding that there are all reasons to hold that there is no bar for grant of Letters of Administration and that the allegations and counter allegations made by the respective parties even in respect of whether the relevant pleadings are there not could only be proved or determined after a full-fledged trial and the Court should not look into the same at the stage of numbering.

12. It is to be noted that the learned Single Judge while passing order in

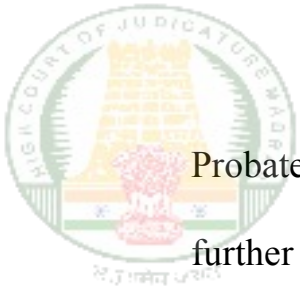


A.No.3078 against the earlier order made in the very same application had given a categorical finding that no such averments in compliance of Section 237 had been made in the instant application also. For better appreciation, the relevant paragraphs are extracted hereunder:-

“2.This application has been ordered by the learned Master without notice to the respondents. Of course, Section 237 of the Indian Succession Act enables the party to obtain Probate or Letters of Administration for a copy or the draft of the lost Will. In order to enable the party to obtain Probate or Letters of Administration for a copy or draft of the lost Will it should atleast be averred that the Original Will has either been mislaid or destroyed by wrong or accident and not by the act of the Testator.

3. A perusal of the application in A.No.8112 of 2017 shows no such averment has been made while filing the application to number the Original Petition without production of the Original Will.”

13. As referred supra, it is to be noted that the first respondent while filing the O.P. in the year 1990 along with his mother had produced the original Will before this Court, which was returned along with the O.P. for compliance of certain defects noted therein. The factum of filing the earlier



Probate O.P. in the year 1990 had been suppressed by the first respondent. It is further to be noted that a specific averment had been made in the affidavit filed in support of the application that the first respondent had the knowledge of the Will only in the month of November 2013, this would show the conduct of the first respondent in approaching this Court is malicious. It is also to be further noted that the first respondent had also filed an application for Citation in the year 2014 which came to dismissed as withdrawn, where he had also not sought for any liberty to move a fresh application. This fact has also not been disputed by the first respondent.

14. Having found that the first respondent had not come with clean hands suppressing material facts in approaching this Court, this Court is of the view that he would not be entitled for any relief as prayed for. This Courts makes strong reliance on the judgment of the Hon'ble Apex Court in the **case of *M/s.Tomorrowland Limited Vs Housing and Urban Development Corporation Limited and Another* reported in 2025 INSC 207** wherein the Hon'ble Apex Court had held that the Courts shall not give any indulgence to a person who had approached the Court with unclean hands. For better appreciation, the relevant portion is extracted hereunder:-



A.No.2547 of.

“57. It needs no emphasis that whosoever comes to the court claiming equity, must come with clean hands. The expression ‘clean hands’ connotes that the suitor or the defendant have not concealed material facts from the court and there is no attempt by them to secure illegitimate gains. Any contrary conduct must warrant turning down relief to such a party, owing to it not acting in good faith and beguiling the court with a view to secure undue gain. A court of law cannot be the abettor of inequity by siding with the party approaching it with unclean hands. This also brings to mind the oft-quoted legal maxim—he who seeks equity must do equity.”

15. For the aforesaid reasons, the order passed by the learned Master is set aside, thereby the application in A.No.2547 of 2025 stands allowed and O.P.D.No.17329 of 2016 stands rejected.

16. In view of the order passed in A.No.2547 of 2025, the application in A.No.2548 of 2025 stands closed. However, there shall be no order as to costs.

07.10.2025

Index : Yes / No
Internet : Yes / No
Gba

11/12



WEB COPY



A.No.2547 of.

K.KUMARESH BABU.J.,

Gba

Pre-Delivery Order in
A.Nos.2547 & 2548 of 2025
in
O.P.D.No.17329 of 2016

07.10.2025