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A.No.4319 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 29.04.2025	PRONOUNCED ON 23.06.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.4319 of 2024

in

O.P.No.341 of 2001

1.R.K.Kavikka

2.R.K.Ragassiya

... Applicant/Third Party

vs.

Me.Rajkumar (Deceased)

1.Geetha Rajkumar

2.Mrs.Rina Menon

3.Mrs.Seema Menon

4.Mr.Arjun Menon

5.Mr.Aashish Jain

6.Mr.Gajraj Jain

... Purchasers/Respondents

For Applicant : Mr.K.Sridhar

For Respondent : Mr.Mr.Manisekaran for RR1 to 4

Mr.V.Raghavachari Sr., Counsel for

Mr.V.Vasita for RR5 & 6

ORDER

This application has been filed to revoke the Probate with administration



granted in O.P.No.341 of 2001 dated 20.12.2001 in favour of the Executor Mr.Rajkumar on the file of this Court.

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2) Heard Mr.K.Sridhar, learned counsel for the Applicants and Mr.Manisekaran, learned counsel for the Respondents 1 to 4 and Mr.V.Raghavachari, learned Senior Counsel for the Respondents 5 and 6.

3) Mr. K. Sridhar, learned counsel for the applicants contends that the applicants are the daughters of the late R.K. Meena, who died intestate on 19.05.2000. He further contends that Mr. Rajkumar who is deceased first respondent falsely claimed to be the testatrix's husband and obtained probate of a fabricated Will dated 05.05.2000. He submits that at the time, the applicants were minors and unaware of the proceedings. They only discovered the probate on 18.01.2024, during a land dispute inquiry called upon by the Police, and argue that the limitation period to challenge the probate starts from the date of knowledge, relying on the Supreme Court judgment in ***Manju Puri vs. Rajiv Singh Hanspal*** reported in **(2019) 13 SCR 829**.

4) He further submits that the Will is fraudulent, as forensic analysis



shows that the signature of the testatrix does not match her admitted signatures.

He contends that Rajkumar, who was actually married to another person, misrepresented his relationship with the testatrix and failed to comply with statutory duties, including filing an inventory and providing funeral funds. He further contends that the applicants also claim that the executor did not honor the Will's provisions, such as the financial support for them, and that he misappropriated the property sale proceeds. In this context, he relied upon a Supreme Court judgment in **Krishna Kumar Birla vs. Rajendra Singh Lodha** reported in **(2008) 4 SCC 300**, which holds that a probate obtained in violation of statutory provisions is invalid.

5) He further contends that as Class-I heirs, the applicants inherently have a caveatable interest and were unlawfully excluded from the probate proceedings. In this context, he relies on **G. Gopal vs. C. Baskar** reported **(2008) 10 SCC 489**, which confirms that Class-I heirs have a caveatable interest. Additionally, he cites **Basanti Devi vs. Ravi Prakash Ram Prasad Jaiswal** reported in **(2007 INSC 1080)** to assert that an aggrieved party unaware of probate proceedings is entitled to seek revocation. He, therefore,



seeks to revoke the probate granted to Rajkumar, contending that it was obtained through fraud, suppression of facts, and violation of statutory provisions.

6) Supporting the arguments of the learned counsel for the Applicants, Mr. V. Manisekaran, learned counsel for respondents 1 to 4, submits that Mr. Rajkumar misled this Hon'ble Court by suppressing the fact of his marriage with the first respondent, who is his legally wedded wife. He further argues that had Mr. Rajkumar had not misrepresented his relationship, the interests of the minor daughters, the applicants, would have been duly protected. In light of these facts, he expresses no objection to the revocation of the probate granted in favor of the alleged Will dated 05.05.2000.

7) Countering the arguments advanced by the learned counsel for the applicant, Mr. V. Raghavachari, learned Senior Counsel for the respondents 5 and 6, submits that the respondents are bona fide purchasers of the Kanagapattu Village property through a sale deed dated 28.07.2004, registered as Document No. 3149 of 2004. The said sale deed was executed by Mr. Rajkumar, the executor of the Will dated 05.05.2000, who is the husband of the testatrix. The



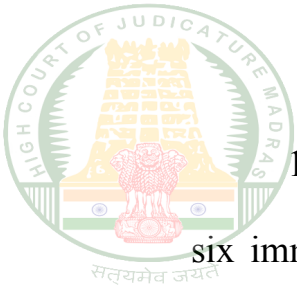
testatrix, being the second wife of Mr. Rajkumar, executed the Will on 05.05.2000, which was duly probated on 20.12.2001. He contends that the sale deed executed by Mr. Rajkumar is valid as it was based on the probate order, and the applicants have not challenged these sale deeds.

8) He further submits that the applicants themselves, in the sale deed dated 01.04.2011 vide Document No. 3159 of 2011, acknowledged that their mother was the second wife of Mr. Rajkumar, though not legally wedded. However, in their pleadings, the applicants contradict this statement by asserting that Mr. Rajkumar was not the husband of the testatrix, claiming that both were in a live-in relationship. This inconsistency, according to the respondents, undermines the applicants' case. He further put forth that the legal heirship certificate which identifies Mr. Rajkumar as the husband and the applicants as daughters, thereby corroborating the respondents' stance. Moreover, the applicants have inconsistently claimed that their marriage expenses were met through the sale of Thiruporur land on 01.04.2011, despite the fact that this property had already been sold to respondents 5 and 6 on 28.07.2004.



9) He contends that the revocation petition lacks bona fides and is collusive and fraudulent, merely intended to counter the complaint lodged by the respondents 5 and 6 as early as in 2016. He relies on the precedent set in

Manoram Chowdhurani v. Shiva Sundari Mozumdar(MANU/WB/0044/1914), which states that an unsubstantiated and delayed challenge to probate cannot be entertained. Furthermore, he relies on **AIR 1955 SC 566** to assert that annulment requires a substantial cause and prima facie reason for re-probate. Citing **AIR 1978 MP 201**, he contends that revocation can be rejected in the absence of just cause under special circumstances. Additionally, he argues that the police summons relied on by the applicants to explain the delay, lacks credibility due to varying dates. The respondents also filed a police complaint against the applicants and others for land grabbing and cheating in Crime No. 35 of 2016, and the subsequent suit O.S. No. 160 of 2020 filed by the subsequent purchaser for a permanent injunction was dismissed and the plaint was rejected for want of cause of action on 02.08.2022 based on the application made by the respondents 5 and 6. This, according to the respondents, indicates that the applicants had constructive notice of the Will and probate, thereby negating their claim of lack of knowledge.



10) The learned Senior counsel would further contend that under the Will six immovable properties were bequeathed in favour of the said Rajkumar.

The applicants had not stated what is the status of such properties indicated in the Will. He would submit all the properties were disposed of by the said Rajkumar during his lifetime only to the benefit of the applicants. He would vehemently contend that even according to the applicants, they were living in a property at Srinivasan Street, Mandaveli, which was vacated and in which an apartment had been constructed and sold to various third parties on the strength of the Power of Attorney given by the said executor and Beneficiary of the Will Rajkumar. The Applicants cannot feign ignorance, at least of the said property and they have not made any claim whatsoever immediately on them attaining majority. This itself would be suffice to show that the applicants were aware of the Will executed by the mother on the strength of which the husband of the testatrix Rajkumar had sold the properties. Only because of the complaint given by the respondents 5 & 6 as against the Rajkumar and the applicants as early as in 2016 and to wriggle out of the said complaint, the present application had been made as an after thought only in respect of this property. Therefore, he would submit that the present application had been filed with an ulterior motive only against the respondents 5 & 6. Therefore, he prays this Court to dismiss the present Application. Hence, he prays to dismiss the above



application as devoid of merits.

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11) I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

12) The applicant herein had approached this Court seeking to revoke the probate granted by this Court as early as on 20.12.2001. The claim of the applicants in this application is that they are the class I legal heirs of the testatrix. The primordial contention is that no proper citation had been made by showing them as the parties to the Original Petition and that they have a caveatable interest. The forged Will is alleged to have been executed two weeks prior to the death of the testatrix and that the executor is not the husband of the testatrix. That apart, the executor had not complied with the terms of the Will nor has he complied with the provisions of the Indian Succession Act by filing the necessary returns as contemplated therein. They had also contended that the attesting witness, who was the sister of the testatrix had also acted against their interest and had kept to herself the various moveable belonging to their mother/testatrix. It had come only to their knowledge in the year 2024, when they were called upon to attend an enquiry by the District Crime Branch, Chengalpet, on a complaint given by the respondents 5 & 6. They also relied upon forensic report given by a private expert indicating that the signature in

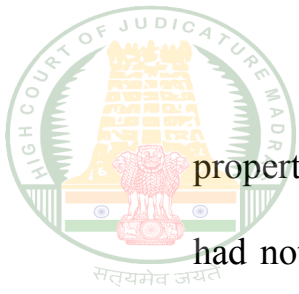


the Will had been forged and is not the signature of the testatrix based upon certain documents that is said to have been executed by her.

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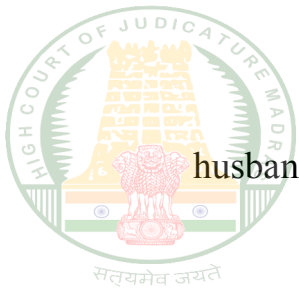
13) It is the contention of the respondents 5 & 6 that they are bonafide purchasers based upon the order of probate granted by this Court. That apart, it is the further contention that the applicants have not raised their little finger with regard to the various other properties which have found in the Will and particularly the property at Srinivasan Street, Mandaveli, where the applicants were residing. It was further contended that the said property was developed based upon a Power of Attorney executed by the said Rajkumar. The present owners of the various other properties have not been impleaded as party respondents to this application. That apart, it is their contention that a complaint had been lodged as early as in the year 2016 and the present copies of the summons placed before this Court are tampered xerox copies of the summons issued by the Investigating Authority. It is their contention that only to wriggle out of the criminal case that had been filed by them as against the Rajkumar, the applicants and the subsequent purchasers, the present Application had been filed.

14) The applicants even in their application had indicated the various



properties owned by their mother/testatrix. In the affidavit filed by them, they had not indicated what steps have they taken to manage the properties that is said to have been belonged to their mother/testatrix. Even they have admitted that they had been residing at Srinivasan Street, Mandaveli, till the death of the mother/testatrix. Immediately on attaining the majority, they have not raised any claim over the various properties, which were shown in the Will and captulated in their affidavit filed in support of the application. They have also not stated that what steps they have taken to claim the jewels and ornaments and other moveables which belonged to the testatrix. It is to be noted that the compliance of filing returns as per the Indian Succession Act, can also be made with a substantial application to condone the delay. That apart, the said ground is presently not available as the executor, who was the petitioner is no more.

15) The grant of probate is a summary and a discretionary proceedings. The application to revoke at the instance of any individual would have to be made before the Court within a reasonable time, muchless a time that is indicated under the Limitation Act. The claim of the applicant is that they had the knowledge of the Will only on 18.01.2024, whey they were in receipt summons based on the complaint given by the respondents 5 & 6. It is their categorical statement by way of an affidavit that the Rajkumar is not the



husband of the testatrix.

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16) The learned counsel appearing for the respondents 5 & 6 had brought to the notice of the Court of the recitals in the sale deed executed by the applicants in respect of one of the properties to a third party in which they have admitted that their mother/testatrix as the wife of one Rajkumar. A perusal of the recitals particularly in paragraphs 2 & 5 of the registered sale deed executed by the applicants in favour of one V.R.Gunasekaran dated 1st April 2011 would indicate that the applicants have acknowledged the relationship of the Rajkumar with the testatrix, but had expressly stated that since the mother was a second wife, the marriage was not legal and hence, they are excluding the said Rajkumar to the estate of the testatrix. The applicants therefore had not firstly come with clean hands and they have suppressed the facts that were well within their knowledge.

17) The applicants admit that the mother had owned a property at Srinivasa Street, Mandaveli. Even from 2001 to 2005, the said property was developed by a builder which also according to the applicant belonged to the respondents 5 & 6. The said property was developed and was sold to various parties. It is an admitted case by the applicants that they were residing in the



said property till the death of the mother.

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18) As rightly pointed out by the learned Senior counsel appearing for the respondents 5 & 6 that the applicants had not questioned the sale of the said property which would have been in their knowledge immediately after they attained the majority. Similarly even though they alleged that their maternal aunt had done away with the jewels and other moveables of the testatrix, they have not placed on record as to what action they had taken against the said maternal aunt during her lifetime. Even though they have claimed that the said Rajkumar had neglected them, even in their affidavit they have pleaded that the second respondent (wife of the Rajkumar) and Rajkumar had performed their marriage at Guruvayur. When that being so, this would only show that the applicants are approbating and reprobating their contentions to suit their needs and have filed the present application.

19) Further in the application, they have specifically pleaded that the Rajkumar was instrumental in arranging the sale of a agricultural land in favour of third party. The said Rajkumar was the executor of the Will and was also the vendor of the very same property in favour of respondents 5 & 6. This can only draw the Court to the conclusion that the applicants were aware of the



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Will that had been executed by their mother/testatrix. Had they not been aware, they would have questioned the said Rajkumar in respect of the other properties mentioned in the Will.

20) In view of the aforesaid reasonings and conclusions, this Court is not venturing upon the various judgments relied upon by the learned counsel appearing for the applicants, which are well settled propositions of law and cannot be made applicable to the present facts of the case as discussed supra.

21) For the aforesaid reasonings, I do not find any merits in the Application and accordingly, the same stand dismissed. However, there shall be no order as to costs.

23.06.2025

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K.KUMARESH BABU.J.,

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Pre-Delivery Order in
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in
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