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OSA NO. 256 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06-01-2025**

CORAM

THE HONOURABLE MR JUSTICE S. S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

OSA NO. 256 of 2024

K.Shanmughasundaram
S/o.Late Kannabiran, No.28, Sabapathy Street,
Ayanavaram, Chennai 600 023.

Appellant

Vs

1. J.Catherine
No.159/49, Solai 1st Street, Ayanavaram, Chennai 600
023

2. J.Sheela
No.159/49, Solai 1st Street, Ayanavaram, Chennai 600 023.

3. A.Muralidharan
No.2, Solai Street, Ayanavaram, Chennai 600 023.

4. A.Santharaj
No.2, Solai Street, Ayanavaram, Chennai 600 023.

5. A.Rangarajan
No.2, Solai Street, Ayanavaram, Chennai 600 023.

6. A.Balamurugan
No.2, Solai Street, Ayanavaram, Chennai 600 023.



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7. Miss.A.Majubashni

No.2, Solai Street, Ayanavaram, Chennai 600 023.

8. A.Sundaravadanan

No.2, Solai Street, Ayanavaram, Chennai 600 023.

9. V.Ranjani

No.2, Solai Street, Ayanavaram, Chennai 600 023.

10. J.Devaki Jayaraman

No.2, Solai Street, Ayanavaram, Chennai 600 023.

11. A.Padmini

No.2, Solai Street, Ayanavaram, Chennai 600 023.

12. C.Vijayakumari

No.2, Solai Street, Ayanavaram, Chennai 600 023.

13. A.Vijayalakshmi

No.2, Solai Street, Ayanavaram, Chennai 600 023.

14. S.Asokan

No.9/9, Sabapathy Street, Ayanavaram, Chennai 600 023.

15. S.Vimalavani

No.9/9, Sabapathy Street, Ayanavaram, Chennai 600 023.

16. B.Jagadeeswaran

No.4, Solai Street, Ayanavaram, Chennai 600 023.

17. B.Vijendra Selvan

No.4, Solai Street, Ayanavaram, Chennai 600 023.

18. B.Sarala

No.4, Solai Street, Ayanavaram, Chennai 600 023.

19. Mohana

No.4, Solai Street, Ayanavaram, Chennai 600 023.



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20. Harinee Rukmangathan

No.1, Solai Street, Ayanavaram, Chennai 600 023.

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21. Saran Rukmangathan

No.1, Solai Street, Ayanavaram, Chennai 600 023.

Respondent(s)

Prayer : Original Side Appeal is filed under Clause 15 of the Letters Patent r/w Order XXXIX Rule 9 of O.S. Rules to set aside the order passed by this Court in A.No.2535 of 2024 in O.P.No.539 of 2021, dated 11.07.2024

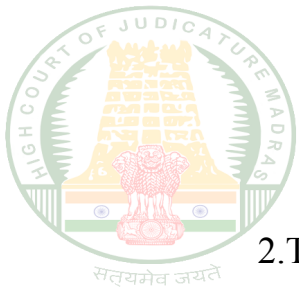
For Appellant: Mr. S.C.Sezhiyan

For Respondent: Mr. M.S. Mani

JUDGMENT

(Order of the Court was made by the Hon'ble S.S.Sundar J.)

This appeal is filed against the order of the learned Single Judge dated 17.07.2024 in the application filed in A.No. 2535 of 2024 in O.P.No. 539 of 2021, revoking the grant of letters of administration in respect of the Will by order in O.P.No. 531 of 2021, dated 25.12.2022.



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2. The appellant filed the original petition in O.P. No. 539 of 2021, seeking Letters of Administration in respect of a Will dated 09.05.2018, alleged to have been executed by one R. Nirmala, who died on 02.12.2018. It is admitted that the appellant did not implead anyone as respondents in the proceedings. In the absence of any respondents, the petitioner was directed to tender evidence. Regarding evidence, the appellant examined himself as PW1 and examined PW2 and PW3, who are the attestors of the alleged Will. The attestors deposed that they were called by the testatrix and that the alleged Will was executed by the testatrix on 09.05.2018 in their presence. Since their evidence satisfy the requirement of a valid attestation, the said original petition in O.P. No. 539 of 2021 was allowed by this Court, by order dated 25.02.2022, granting Letters of Administration as prayed for by the appellant herein.

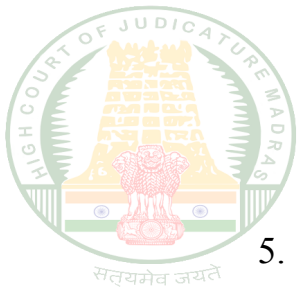
3. The respondents, who are 25 in number claimed to be the Class II heirs of the testatrix, filed Application No. 2535 of 2024 for revocation of the Letters of Administration granted by order dated 25.02.2022 and also sought for a direction to the registry to convert the original petition in O.P. No. 539 of 2021 into a Testamentary Original Suit for due trial. The appellant filed a reply, stating that he



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is the only legal heir to the testatrix and that the respondents are not legal heirs or interested persons who are required to be impleaded in the petition. It is also admitted that the deceased testatrix was the wife of the late Mr. Govarthan. The appellant claimed to be the only family member and cousin of the husband of the testatrix.

4. It is pertinent to mention that in the affidavit filed on behalf of the respondents, it is stated that they are all Class II legal heirs. It is further stated that the appellant played fraud and described himself as the sole Class II legal heir of the testatrix. The respondents also contended that the deceased was not the author of the alleged Will and that the same was fabricated by the appellant by forging her signature and anti-dating the document. Apart from that, the respondents raised several other grounds not only questioning the genuineness of the Will but also citing various suspicious circumstances. It is also stated that the Will relied upon by the appellant is an unregistered Will, although signed by two other witnesses.



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5. In the reply affidavit filed by the appellant in Application No. 2535 of 2024, it is stated that Late Mrs. R. Nirmala, W/o. Late Govarthan, was a relative of the appellant and that she died on 02.12.2018, leaving behind no legal heirs. It was reiterated that the appellant is the only family member and cousin of Mr. Govarthan and had been taking care of Mrs. R. Nirmala. He claimed that Mrs. Nirmala died issueless and was in a sound disposing state of mind when she bequeathed the property through an unregistered Will dated 09.05.2018 in the presence of witnesses. The appellant contended that the testatrix duly signed the Will in the presence of the attestors. Therefore, the Will was proved in the manner required by law, and hence, the impugned order revoking the Letters of Administration is liable to be set aside.

6. The learned Single Judge found that the respondents herein are also Class II legal heirs of the deceased Mrs. Nirmala and had a caveatable interest in the estate of the deceased. Since the respondents are related in the same degree as the appellant, who claims to be the only legal heir of testatrix, it is relevant to rely upon Section 263 of the Indian Succession Act, which reads as follows:



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263. Revocation of annulment for just cause : *The grant of probate or letters of administration may be revoked or annulled for just cause.*

One of the just cause for revocation of Will is given in illustration (ii), which reads as follows;

“If The grant was made without citing parties who ought to have been cited, that will be a just cause for revocation.”

7. Learned counsel for the appellant submitted that the respondents do not have any caveatable interest to seek revocation of the Letters of Administration. He further submitted that none of the respondents fall within the definition of Class II legal heirs as per the Hindu Succession Act, 1956. In the grounds of appeal, it is contended that the appellant is the surviving son of Late A.P. Kannabiran, who is none other than the brother of Late A.P. Gopal Pillai, the father of Late Govarthan, the husband of Late Mrs. Nirmala, the testatrix, as per Entry VII of Clause II legal heirs. It is also stated that the respondents do not fall under any of the entries of the Class II schedule and therefore, they are not entitled to the relief of revocation of the Letters of Administration.



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8. The learned counsel for the appellant has not produced before this Court the genealogy tree. However, the learned counsel for the respondents produced the genealogy tree before this Court, which has also been served on the learned counsel for the appellant. From the genealogy tree, it is seen that the appellant and the respondents are the legal heirs of brothers of Late A.P. Gopal Pillai. Even in the original petition, the appellant stated that he is the sole Class II legal heir of the testatrix. However, the appellant, even in the said original petition, did not produce any material to show how he is the only legal heir.

9. The learned Single Judge, after going through the genealogy tree, found that the ancestor of the family was one Palayam Pillai. He had a son named Parthasarathy Pillai. The first applicant is the granddaughter of the said Parthasarathy Pillai. The testatrix was the wife of the son of yet another son of Palayam Pillai. Naturally, all the respondents are also Class II legal heirs. The genealogy table produced by the respondents was not seriously disputed before this Court. In fact, the learned counsel for the appellant did not even raise objections regarding the genealogy table, which clearly establishes how the appellant and the respondents are related to the testatrix in the same degree.



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10. As per Illustration (ii) of Section 263 of Hindu Succession Act, 1925, grant can be revoked if it was made without citing parties who ought to have been cited. This means that if a person who has legitimate interest in the estate such as legal heir, creditor, or any other person with a claim, was not notified or given a chance to contest the probate proceedings, the Court has the authority to set aside the grant. The learned Single Judge has rightly revoked the grant of Letters of Administration, on the ground that the parties who are necessary were not impleaded. The respondents also prayed for the conversion of the original petition into a testamentary original suit. The appellant had improperly obtained the Letters of Administration without disclosing the necessary parties who ought to have been cited.

11. The learned counsel for the appellant embarrassed the Court by repeatedly arguing that the appellant had proved the Will in accordance with the law. When the Letters of Administration was granted without citing any of the respondents, the Court need not evaluate the evidence of witnesses. When an opportunity should be given to the necessary parties and their version is heard

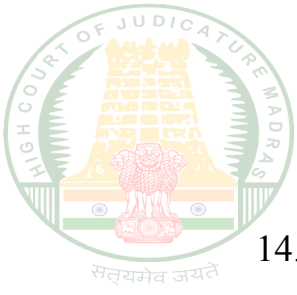


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regarding the genuineness and validity of the Will, the Court is expected to pass orders revoking the Will.

12. The learned counsel for the appellant was not even prepared to listen to the Court and continued making submissions that were completely irrelevant to the case. When questioned about the dispute regarding the genealogy tree produced by the respondents, the learned counsel for the appellant refused to give an answer. The learned counsel for the appellant did not even examine the genealogy tree to demonstrate before this Court how it failed to support the findings of the learned Single Judge.

13. This Court, based on the materials available, is of the view that the learned Single Judge meticulously considered the facts and pleadings and rightly allowed the application filed by the respondents, revoking the Letters of Administration granted by order dated 25.02.2022. This Court finds no error or irregularity in the order passed by the learned Single Judge, and the same is confirmed.



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14. When a person files a case for the revocation of Letters of Administration, any person interested in disputing the genuineness of the Will must be cited. In the present case, this Court has no option but to conclude that the appellant obtained the Letters of Administration by pleading a false case.



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15. Accordingly, the appeal is dismissed with costs of Rs. 20,000/- payable to the Tamil Nadu State Legal Services Authority within twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

16. The registry is directed to list the matter for reporting compliance after twelve weeks.

(S.S.SUNDAR J.) (P.DHANABAL J.)
06-01-2025

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S.S.SUNDAR, J.
And
P.DHANABAL, J.

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