



WEB COPY

A.No.303 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 10.03.2025	PRONOUNCED ON 23.04.2025
---------------------------	-----------------------------

CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.303 of 2024

in

O.P.No.792 of 1998

Mahaveer Chand Jain ... Applicant/Proposed respondent

vs.

1.S.Sharat Babu

Mrs.Vasanthammalm (deceased) ... Respondent/petitioner

2.C.Sukanya

3.Sugunakar

4.Amulnath

5.Dwarakanath

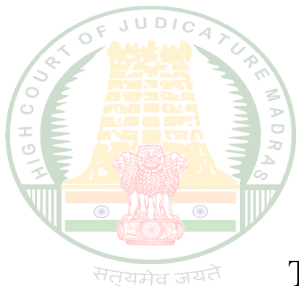
6.Mrs.Selvi ... Respondents

For Applicant : Mr.K.V.Babu

For Respondent : Mr.G.Rajagopalan, Sr., counsel for

Mr.G.Gautam Ganesh for R1

No Appearance for RR2 to 6



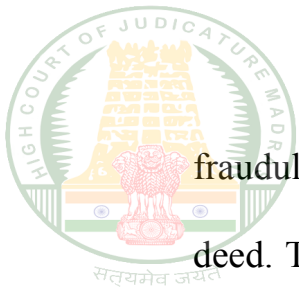
ORDER

WEB COPY

This instant application has been filed by the Trustee of the Trust to revoke the Will dated 26.06.1997 probated in O.P.No.792 of 1998 dated 29.04.2005.

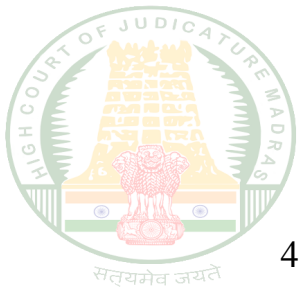
2) Heard Mr.K.V.Babu, learned counsel appearing for Mr.H.Prosper, Learned counsel for the Applicant and Mr.G.Rajagopalan, learned Senior Counsel appearing on behalf of Mr. G.Gautam Ganesh, learned counsel for the first respondent.

3) Mr.K.V.Babu, learned counsel for the Applicant submits that one Mr.Sathrasala Venkataram who is the testator in the main OP, created a Public Charitable Trust in the name of “Satrasala Venkataraman Trust” through registered Trust deed dated 24.03.1997. He appointed 5 trustees including the applicant. The wife of the testator predeceased him and there were no issues for them. The testator filed a Civil suit in C.S.No.770 of 1997 on the file of this Hon'ble Court for declaration of Ownership and permanent injunction of the suit schedule property situated at Govindappa Naickken Street on the ground that the first defendant in the suit, who is the tenant of the testator had



WEB COPY

fraudulently induced the testator to execute Trust deed in the name of the lease deed. The testator died on 21.01.1998 and the legal representative who is the actual plaintiff was impleaded vide order dated 18.04.1998 in A.No.770 of 1998, claiming that he was appointed as executor under the Will dated 05.12.1997. The defendants were set exparte on 19.04.2006. In the meanwhile the probate was granted in favour of the first respondent herein on 29.04.2005. He submits that the first defendant in the suit filed two applications in A.No.3381 of 2006 to condone the delay and in A.No.3126 of 2006 to set aside the exparte order. Both the applications was dismissed on 03.07.2006 and the said suit was decreed in favour of the testator on 06.07.2006. He further submits that the first defendant in the suit and third party to the probate proceedings filed O.S.A.No.236 to 238 of 2006 as against the dismissal orders dated 03.07.2006 and the decree dated 06.07.2006. The O.S.A.Nos.236 to 238 of 2006 were dismissed by this Hon'ble Court on 02.09.2008 against which the first defendant preferred Special Leave Petition in S.L.P.(Civil)No.25807-25810 of 2008. The said SLPs were dismissed on 07.11.2008. He further contends that the Review Petition No.53-56 of 2009 has been filed by the first defendant against the said dismissal order of Apex Court and the same was dismissed on 05.02.2009.



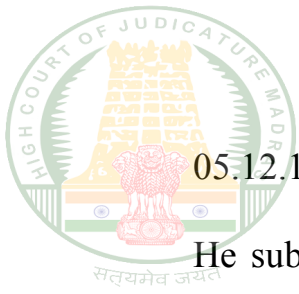
WEB COPY

4) He further submits that the petitioner in probate proceedings and the plaintiff in the suit filed execution petition in E.P.No.511 of 2008 in C.S.No.770 of 1997 wherein the first defendant filed an application in A.No.1213 of 2009 challenging the decree as nullity, non-est in the eyes of law and is incapable of execution. He submits that the executing court allowed the application on the ground that the decree for possession sought to be executed against the petitioner is considered as in-executable by its order dated 25.02.2011. The decree holder filed two applications in A.No.1469 of 2011 to set aside the dismissal order of Execution petition and A.No.1470 of 2011 to set aside the order dated 25.02.2011. Both the applications were allowed in order dated 17.07.2018 against which the judgment debtor preferred O.S.A.No.430 and 433 of 2018 and both the appeals were dismissed on 06.01.2020. He further submits that the judgement debtor filed S.L.P.Nos.9300-01 of 2020 and the same was also dismissed by the Hon'ble Apex Court. He contends that the first defendant filed three applications in A.Nos.172 to 174 of 2021 challenging the exparte order of delivery of possession vide order dated 26.10.2018 and to stay the same. The said applications were closed on 02.11.2023. He further submits that the first



defendant filed an application in A.No.6778 of 2023 to grant extension of time to vacate and handover the premises and the same was dismissed on 20.12.2023.

5) He contends that the first defendant in the suit and third party in the probate proceedings made two applications in A.No.1186 and 1187 of 2012 in O.P.No.792 of 1998, one to revoke the probate and another one to stay the operation. Both the applications were dismissed on 05.06.2012 by this Hon'ble Court on the ground that there is no tangible evidence to prove the will is not genuine. He contends that the filing of the suit and immediate death of the testator and the date of will are suspicious in sequence. In this context, he relied upon the judgment of the Apex Court in InduBala Bose and others Vs.Manindra Chandra Bose and others reported in AIR 1982 SC 133 and state that when there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. He further submits that the plaintiff managed to obtain the letter of administration on the alleged will without including the blood brother of the testator and the trustees who are interested in the Will property. Further he submits that the first respondent herein who was beneficiary of the Will dated



05.12.1997, was well aware of the Trust Deed and never challenged it till date.

He submits that the applicant herein who is the trustee has sent the copy of

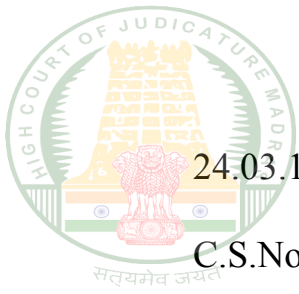
Will for opinion of Authorised Forensic Expert during October, 2023 attaching the copies of the admitted documents bearing the true signatures of the testator and the report was received on 23.11.2023. As per the said Forensic Document Export Report, the signature of the testator did not tally with the true signature. Further, the age of the testator differs in trust deed and the Will which were executed in the same year. He further submits that if the beneficiary committed fraud on the Court, it is necessary to send the alleged Will to the Forensic Department or to the Export Opinion for comparison of the signature of the testator.

6) He further contends that where there are defective substances in the grant of probate or letters of administration being obtained fraudulently may be revoked or annulled as per section 263 of Indian Succession Act and relied upon the judgment of the Apex Court in Ramesh Nivrutti Bhagwat Vs. Surendra Manohar Parakhe reported MANU/SC/1392/2019. He further submits that the applicant has direct and substantial interest in the estate of the testator who had given the Govindappa property to the Trust. He further



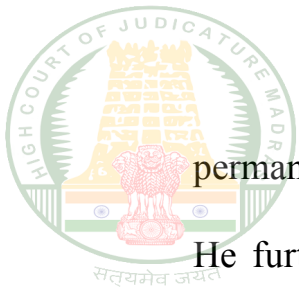
submits that he is the proper and necessary party to seek to revoke the letters of Administration granted based on the forged Will. He also contends that he had given a complaint to the Registrar General, Hon'ble High Court, Madras, explaining the facts requesting an enquiry and proceedings for forgery and perjury. He further contends that the Will probate was already entrusted to the trust and an individual cannot acquire its ownership once it is vested with the Trust, without obtaining orders from the Court. In order to substantiate his contention, he relied upon the judgments of Apex Court in Manju Puri Vs. Rajiv Singh Hanspal and Others reported in MANU/SC/1569/2019, Kavita Kamra Vs Pamela Mehta reported in AIR2020 SC 2614 and Swaminathan and Others Vs. Alankamony (Dead) through L.Rs. reported in MANU/SC/0339/2022. Hence, he prays to order the application.

7) Countering the arguments of the learned counsel for the applicant, Mr.G.Rajagopalan, learned Senior Counsel for the first respondent submits that a contempt has to be taken against the applicant herein as he has abused the process of court in collusion with his younger brother, who is the first defendant in the suit and been evicted from the subjected property through due process of law. He further submits that the so-called Trust deed dated



24.03.1997 and the lease deed were held to be invalid by this Hon'ble Court in C.S.No.770 of 1997 dated 06.07.2006, wherein the applicant is the seventh defendant and remained absent in the proceedings and the said suit was decreed. He further submits that the Will was probated on 20.04.2005 even before the suit was decreed on 06.07.2006. He contends that neither written statement in the suit nor any application to revoke the probate was filed by the applicant. He further submits that the present application was filed after a period of 25 years which is an abuse of court and is clearly barred by limitation. Further, he contends that the application for revocation could be filed within three years from the date of probate and the present application is liable to be dismissed.

8) He contends that though the younger brother of the applicant who is the first defendant in the suit filed two applications to condone the delay and to set aside the ex parte decree and both the applications came to be dismissed by this Hon'ble Court on 03.07.2006. The said order went for whole round litigation including the review petition before the Apex court and thus confirmed the judgment and decree passed in C.S.No.770 of 1997. He further contends that the applicant has no locus standi to revoke the probate since, there is a

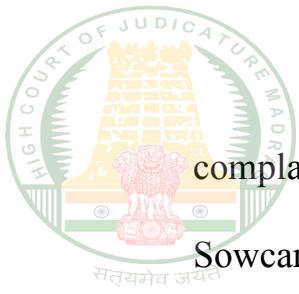


permanent injunction as against him and the same was not vacated as on date.

He further submits that the similar application was filed by the Applicant's brother in A.No.1186 and 1187 of 2012 in O.P.No.792 of 1998 which was dismissed on 05.06.2012 on the ground that One who has failed to succeed in the suit proceedings, is now making an attempt to revoke the leave granted by this court as another round of litigation. The same was confirmed by the Division Bench of this Hon'ble Court on the ground that the applicant has no caveatable interest. He further submits that forensic report also claimed by his brother in A.No.6778 of 2023 and this Hon'ble Court vide order dated 23.12.2023 passed the following order:-

“..All attempts made by the third parties, not accepted and orders granted letters of administration had reached finality and other tenants have also been vacated. At this stage this application has came up on novel ground of fraud. The matters have reached finality this court is of the view that if the application is allowed by this court, there will not be any end for the successful parties...”

9) He further contends that the first respondent has given reply to the



WEB COPY

complaint filed by the applicant before the C1 Flower Bazaar Police Station, Sowcarpet, Chennai- 600 001. He further states that the testator never has any living brother and his brother has predeceased him. Further, one Mrs.Selvi, who is one of the trustees of the so-called trust, implicated herself in the probate proceedings. Hence, the claim of the applicant that none of the trustees were made party to the probate proceedings is false. Further, all the legal heirs of the testator were made as party and they had filed their consent affidavit to grant probate. Therefore, the probate was properly granted and there is no requirement of interference of this Hon'ble Court in the said order. Hence, he prays to dismiss the application as devoid of merits.

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

11) The present Application had been taken out on the pretext that the applicant herein is a Trustee of a Satharasala Venkatrama Trust created by the deceased testator. The claim of the applicant is that the deceased had created the Trust endowing the property of which probate had been granted by this Court in the instant Original Petition. He had contended that the probate had



been granted without bringing on record the Trustees of the Trust.

WEB COPY

12) It is to be noted that the author of the Trust had infact initiated a Suit in C.S.No.770 of 1997, seeking for a declaration that he is the owner of the property and also for a direction to direct the first defendant therein to put the plaintiff therein in possession of the said property and also for a permanent injunction restraining the defendants therein or any one of them from any manner dealing with the property described in Schedule A to the said Suit, apart from various other reliefs. The alleged Trustees of the Trust of which the applicant claims to be the Trustee were all impleaded as defendants. The applicant himself had been impleaded as the 7th defendant in the Suit. The Suit came to be decreed on 06.07.2006 setting the defendants *exparte*.

13) The first defendant in the Suit who was the tenant, had taken out an Application to set aside the *exparte* decree along with an application to condone the delay, which was dismissed by this Court, against which an Intra Court Appeals in O.S.A.Nos.236 to 238 of 2006 were preferred by the first defendant therein. The said Intra Court Appeals were also dismissed by this Court on 02.09.2008 and affirmed by the Hon'ble Apex Court in a Special



Leave Petition on 07.11.2008. An attempt for review of the said order was also made by the first defendant and the same also came to be dismissed by the Hon'ble Apex Court on 05.02.2009. Thereafter, the first defendant had taken out an application before the learned Master for a declaration to declare that the judgment and decree is a nullity, *non-est* in the eye of law and incapable of execution on account of the fraud perpetrated on the judgment-debtor and dismiss the execution petition. The learned Master of this Court by order dated 25.02.2011 had allowed the said application, which was subject matter of an appeal in Application Nos.1469 and 1470 of 2011, in which this Court by its order dated 17.07.2018 had set aside the orders of the Master and Master was directed to proceed further in the Execution proceedings. The same was subject matter of challenge in an Intra Court Appeal in O.S.A.Nos.430 & 433 of 2018 at the hands of the first defendant, which came to be dismissed by a Division Bench of this Court on 06.01.2020. The same was also a subject matter of Special Leave Petitions before the Hon'ble Apex Court and the Hon'ble Apex Court by its order dated 06.10.2023, had dismissed the SLP.

14) It is to be noted that the Trust deed upon which the present applicant claims a right to seek for revocation of the probate granted by this Court had



been found to have been obtained by fraud and had been held that the property notwithstanding the lease and the Trust deeds was declared to be the property of the author of the Trust in his individual capacity. The said findings had been affirmed up till the Apex Court in the multiple litigation initiated by the first defendant. The Hon'ble Apex Court while dismissing the Special Leave Petition filed by the first defendant had in clear terms held that there is no necessity to challenge the said documents namely the lease deed and the trust deed, since a specific finding had been given by the High Court in the earlier litigation that the same had been obtained by fraud.

15) It is also to be noted that the first defendant therein had also filed an Application to revoke the leave granted by this Court as early as in the year 2012. The said Application was dismissed and has been affirmed by the Hon'ble Division Bench of this Court as early as in the year 2016. It is also to be noted that the first defendant had filed an objection in the EP, which also attained finality by the dismissal of the SLP on 06.10.2023. The order of delivery made by the Master was challenged by the first defendant before this Court and this Court by order dated 21.11.2023 recording an undertaking given by the first defendant, granted him time to vacate the premises on or



before 31.12.2023. An Application in A.No.6778 of 2023 in the Execution Petition was filed by the first defendant seeking for grant of extension to vacate the premises. The said Application was taken out on the strength of a revoke filed by a third party based on report obtained from a private individual with regard to the execution of the Will. This Court rejecting the contention dismissed the said Application, which was also a subject matter of Original Side Appeal and the same was disposed of directing the keys to be handed over to the respondent counsel.

16) The present Application had been taken out by the applicant based on affidavit affirmed on 19.12.2023 and presented before this Court on 20.12.2023.

17) The learned Senior counsel appearing for the first respondent had also submitted that the present applicant is the brother of Santhilal Kothari, who was the first defendant in the Suit. This fact had not been disputed by the applicant.

18) From the events that had been extracted supra, it could be seen that



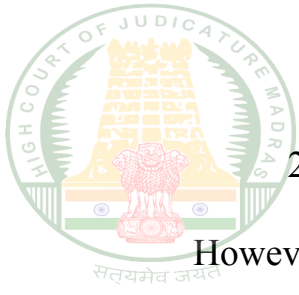
the first defendant/brother of the applicant had lost in all the forums in trying to assert his right as a lessee, in which proceedings this Court has also held that the Trust deed based upon which the present applicant seeks to claim to have a caveatable interest had categorically found that the documents were obtained by fraud.

19) The applicant herein had been arrayed as 7th defendant in the Suit and he had not chosen to enter appearance and has been set *exparte* as early as in the year 2006. The judgment and decree passed in the year 2006 had been taken up on appeal up till the Hon'ble Apex Court by his brother and the said judgment and decree has been affirmed holding that the property which is alleged to have been endowed with the Trust, to be a property only belonging to the author of the Trust in his individual capacity *inter alia* holding that the alleged Trust deed under which the applicant was appointed as a Trustee and the lease deed under which the brother of the applicant was given the lease deed were fraudulent documents. The Hon'ble Apex Court had also held in its judgment dated 06.10.2023, that since the Court has found that the documents had been obtained by playing fraud, there is no necessity to challenge the said documents. The applicant had not even attempted to set aside the *exparte*



judgment and decree passed against him even as of this date. When the Courts had found that the Trust deed itself had been obtained by fraud, the present claim of the applicant based upon such fraudulent Trust deed in making a claim to have a caveatable interest is liable to be out-rightly rejected.

20) Further the manner and the date in which the application had been taken out also creates a suspicion over the legitimacy of the claim made by the applicant. It could only be assumed that the brother of the applicant who had lost in all the forums has engaged this applicant, who had slept over his right as Trustee for all these years, to initiate the present application. If it is the claim of the applicant that the property had been endowed to a Trust for a Public Charitable purposes, there has been no reason stated by the applicant as to what steps, the Trustees had been taking to carry on the objects of the Trust. The absence of such averments would only strengthen the suspicion that had arisen in the minds of the Court. As stated supra, when the Trust deed itself had been found to be obtained by fraud, the applicant being a third party, cannot have any caveatable interest based on such fraudulent Trust deed, in the property of which the probate had been granted by this Court.



A.No.303 of.



21) In fine, the Application in A.No.303 of 2024 stands dismissed.

However, there shall be no order as to costs.

WEB COPY

23.04.2025

Index : Yes / No

Internet : Yes / No

Pbn



WEB COPY



A.No.303 of.

K.KUMARESH BABU.J.,

Pbn

Pre-Delivery Order in
A.No.303 of 2024
in
O.P.No.792 of 1998

23.04.2025