



C.M.A.(MD)No.536 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.536 of 2024

and

CMP(MD)No.6930 of 2024

R.Venkateswaran

... Appellant

vs.

1. T.L.Harikrishnan
2. Sulochana
3. R.Subbulakshmi
4. R.Jeyagowri
5. Jeevarthnam

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(5) of C.P.C., to call for the records relating to the Fair and Decreetal order dated 22.04.2024 passed in I.A.No.9 of 2023 in Probate O.P.No.1 of 2023 on the file of Additional District Judge, Virudhunagar and to set aside the same as illegal and void by allowing this Civil Miscellaneous Appeal.

For appellant

: Mr.Isaac Mohanlal

for M/S.Isaac Chambers

For R-1

: Mr.R.R.Kannan

For R-2 R-3

: Mr.H.Thayumanaswamy

For R-4

: Mr.K.Seenu Ramachandran

For R-5

: Smt.Sudharshana Sundar



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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the Fair and Decreetal Order dated 22.04.2024 passed in I.A.No.9 of 2023 in Probate O.P.No.1 of 2023 by the Additional District Judge, Virudhunagar.

2. Heard the learned Counsel on either side and perused the records.

3. The learned Senior Counsel appearing for the appellant vehemently contended that no notice was given to the appellant/4th respondent and therefore, the order of the trial Court passed in I.A.No.9 of 2023 is impugned herein. In order to buttress his arguments, the below judgments were referred to.

(i) T.Krishnaswamy Chetty Vs. Thangavelu Chetty and others reported in ***AIR 1955 Mad 430***.

(ii) V.K.John Vs. W.S.Seetharaman reported in ***2008(3) CTC 812***

(iii) Kadar Hasan Maricar Vs. M.A.S Abdul Kadar Maricar and other reported in ***2019 SCC Online Mad 14904***.

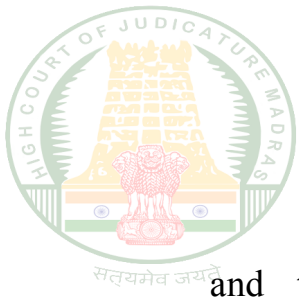


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4. Probate OP was filed before the District Court, Trichy in OP.No.160 of 2022 by one L.Harikrishnan, son of Lakshminarayanan against the legal heirs of the deceased K.K.S.R.Rajagopalan.

5. While so, the petitioner in the O.P.No.1 of 2023 moved an interim application in I.A.No.9 of 2023, for the appointment of receiver to administer the petition mentioned properties. The petition is filed to probate the registered will dated 27.09.2019 executed by the deceased K.K.S.R.Rajagopalan, who died on 06.02.2022. He filed I.A.No.5 of 2022 for appointment of curator and the same was allowed. On appeal, in CRP(MD)No.455 of 2022, the Hon'ble Madurai Bench of Madras High Court set aside the above order, directing the petitioner to file necessary petition under Order XL of C.P.C., before this Court. It has been stated that the said application is filed to protect and safeguard the interest of the beneficiaries of the will: The appellant/fourth respondent is taking benefits of income generated from the properties for the last two years: There is a reference to three wills and it would take some time to dispose the case. The appellant/fourth respondent has to be restrained from dealing with the affairs of the assets of the deceased. Receiver has to be appointed to take inventory



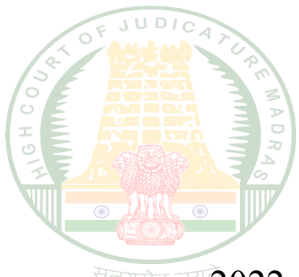
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and the premises for securing the property from misappropriation, maladministration or wastage. During the enquiry on behalf of respondents No.3 to 5, no counter was filed by them.

6. The sum and substance of the petition is that in order to safeguard the interest of the beneficiaries of the will, as the appellant/fourth respondent alone is getting the benefits of income generated from the properties of the deceased K.K.S.R.Rajagopalan for nearly two years, without accounting to any one, the application for appointment of receiver is filed.

7. Originally, the petition for Probate of will of the deceased K.K.S.R.Rajagopalan dated 27.09.2019 was filed before II Additional District Court, Trichy. In the meanwhile, one of the daughters of the deceased K.K.S.R.Rajagopalan, filed another suit for partition before the same Court in O.S.No.29 of 2023. Probate O.P.No.160 of 2022 on the file of II Additional District Court, Trichy, was transferred to the Additional District Court, Virudhunagar and the same was re-numbered as Probate OP.No.1 of 2023. While the case was pending before the learned II Additional District Judge, Trichy, the first respondent/petitioner has filed an application in I.A.No.5 of



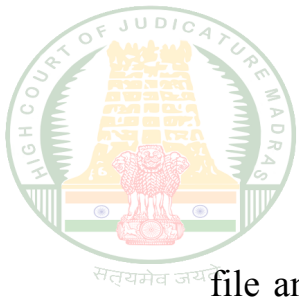
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2022 for appointment of Curator and the said petition was allowed as prayed for. Aggrieved over the said order, the appellant/fourth respondent preferred a revision petition before this Court in CRP.(MD)No.455 of 2023 and the order of the trial Court was set aside and the following order was passed i.e., “It is also open for the respondent to file appropriate application under Order XL of C.P.C., for appointment of Receiver. The petitioner shall also co-operate in the said proceedings.”

8. As the enquiry would take some time during the interregnum period, appellant/fourth respondent has been taking the benefits of income from the properties.

9. From the careful perusal of the records, it appears that the deceased K.K.S.R.Rajagopalan left behind his wife, namely, R.Sulochana and his four children, namely, R.Jeyagowri, R.Subbulakshmi, R.Venkateshwaran and R.Jeevarathnam. It appears that there are three wills yet together settled by the deceased K.K.S.R.Rajagopalan. The petitioner / first respondent's grievance is that the appellant / fourth respondent has been getting income from the properties for the past two years. Therefore, it necessitated him to



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file an application for the appointment of receiver. The legal heirs are 5 in number (wife and four children). OP is filed for 13 items of properties. In this case, the retired District Judge has been appointed as Receiver. The suit for partition is also pending between the legal heirs of the deceased K.K.S.R.Rajagopalan. The circumstances given by the petitioner is acceptable one. Therefore, the appointment of receiver by the trial Court in the given circumstances cannot be found fault with. In the given circumstances, I do not find any perversity or infirmity in the orders passed by the trial Court.

10. Based on the aforesaid discussions and observations, this Civil Miscellaneous Appeal stands dismissed. The impugned order passed by the trial Court stands confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

31.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
jbr



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- To
1. The Additional District Court, Virudhunagar.
 2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

jbr

Pre-delivery order made in
C.M.A.(MD) No.536 of 2024

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