

**(2009) 09 MAD CK 0257**

**In the Madras High Court**

**Case No :** A. No's. 1945 of 2006 and A. No. 4687 of 2006 in O.P. No. 436 of 2004

A. Krishnammal (alias) Krishnaveni and Others

APPELLANT

Vs

Kamala Perumal (alias) Babu, M. Rajab Mohideen and R. Saravan

RESPONDENT

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**Date of Decision :** 16-09-2009

**Acts Referred:**

Succession Act, 1925 — Section 263

**Citation :** (2009) 09 MAD CK 0257

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** C. Subramaniam, for the Appellant; A. Siddiq, for R1 and R2 and A. Prabhakar, for Proposed Party, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—A. No. 1945 of 2006 is to revoke the order of Probate granted by this Court in O.P. No. 436 of 2004 dated 06.12.2004. A. No. 4687 of 2006 is for impleading a proposed party as third respondent in A. No. 1945 of 2006 in O.P. No. 436 of 2004.

2. The original petition was filed, seeking for the grant of probate in respect of the last Will and Testament of late P. Yasodha. The petitioner was the Executor appointed by the testatrix. The testatrix was the mother of the respondent. The Original Petition was ordered after examining the petitioner as P.W.1. One R. Govindarajan was examined as P.W.2, who is one of the attesting witness of the Will dated 05.03.2002. The affidavit of the second attesting witness was also filed. This Court having satisfied with the evidence let in by the petitioner and the respondent granted the Probate.

3. A. No. 7636 of 2007 was taken out by the applicants/legal representatives of the deceased Krishnammal @ Krishnaveni (who has filed the application to revoke the probate) for getting themselves impleaded in A. No. 1945 of 2006

and the same was also ordered.

4. A. No. 1945 of 2006 was filed u/s 263 of the Indian Succession Act. It was stated the properties were sold on 30.02.1986 and 22.11.1989 and therefore, the question of bequeathing such properties may not arise. Similarly, A. No. 4687 of 2006 was also ordered to implead one R. Saravanan, a third party as he got a sale deed dated 10.02.2006 and that it should be declared as null and void.

5. It must be stated that a suit is pending in C.S. No. 267 of 2006 before this Court. Some tenants in the property have also filed suits before the City Civil Court in O.S. Nos. 5710, 5711 and 6331 of 2006. At this stage, this Court is not concerned with those suits pending before the City Civil Court.

6. The claim of the applicants is that one Sathappa Konar had three daughters namely Kamalammal, Krishnammal and Meenambal. P. Yasodha, the testatrix is the daughter of Kamalammal and A.K. Perumal. She got married to one S.R. Karmegam. The second daughter Krishnammal is still alive. The third daughter Meenambal married to A.K. Lakshmanan, leaving L. Thangaraj Kumar, L. Dilip Kumar and L. Ashok Kumar as their sons and Vimala, Saroja and Leela as their daughters and they are the surviving legal heirs. When Yasodha died leaving a Will, the properties of Kamalammal could not have gone to her. It should have gone to Sathappa Konar and through him, the present applicants will be entitled to get a share in that property. Therefore, their application should be allowed as the testatrix could not have bequeathed certain properties which did not belong to her.

7. In so far as the impleadment of a third party, who is a subsequent purchaser after the Will and Testament is concerned, it is not necessary to add such parties. Even during the pendency of the OP proceedings, no such third party purchaser could have come on record. This has been clarified by the Supreme Court in Sunil Gupta Vs. Kiran Girhotra and Others, . In Paragraph 13, it has been observed as follows:

13. A transferee of a property during the pendency of a proceeding is not a necessary party. Citations are necessary to be made to only those who, inter alia, claim through or under the will or deny or dispute the execution thereof.

Hence, A. No. 4687 of 2006 stands dismissed.

8. Similarly, the applicant cannot try to come on record only to contend that the property in question cannot be bequeathed by the testatrix. They are not a necessary and proper party. It must be stated that a person who want to intervene in a probate proceedings must have a caveatable interest. While evincing such interest, the caveator must disclose his real interest in the probate proceedings. But if he questions the title of the testatrix, that cannot be held to be caveatable interest to be expressed in a probate proceedings.

9. This position of law has been clarified in Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others, . The following passage found in paragraph 89 may be

usefully extracted below:

89. The propositions of law which in our considered view may be applied in a case of this nature are:

- (i) To sustain a caveat, a caveatable interest must be shown;
- (ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.
- (iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceedings inasmuch as none of such rights can effectively be adjudicated therein.

10. The learned Counsel for the applicants placed reliance upon the following decisions in support of his contentions:

- i) Aswini Kumar Chakravarty and Another Vs. Sukhaharan Chakravarty and Others,
- ii) Annapurna Kumar Vs. Subodh Chandra Kumar,
- iii) S.D. Ponnuswamy Mudaliar Vs. S.K. Somasundaram,
- iv) Banwarilal Shrinivas Vs. Kumari Kusum Bai and Others,
- v) Mutukdhari Singh Vs. Smt. Prem Debi and Others,
- vi) Pritam Dass Vs. Nand Ram,

11. In the light of the authoritative pronouncements of the Supreme Court referred above, the decisions referred by the applicants have no bearing on the issue on hand.

12. In the light of the above, A. No. 1945 of 2006 and A. No. 4687 of 2006 will stand dismissed. No costs.