
(2006) 12 MAD CK 0194

In the Madras High Court

Case No : Application No. 2985 of 2006 in O.P. No. 451 of 2004

Mrs. T. Ponnalagi

APPELLANT

Vs

RM. Ramachandran, RM. Sabarathinam and RM. Subbiah

RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Succession Act, 1925 — Section 263, 278

Citation : (2007) 2 MLJ 254

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : AR. L. Sundaresan for AL. Ganthimathi, for the Appellant; AR. Ramanathan, for the Respondent

Judgement

S. Rajeswaran, J.—The sister of respondents 1 to 3 herein has filed the above application u/s 263 of the Indian Succession Act to revoke the order dated 7.10.2004 in O.P.No. 451/2004 granting Letters of Administration in favour of the 1st respondent.

2. The brief facts as culled out from the application are as under:

The applicant herein along with the other two sisters and respondents 1 to 3 herein are the children of late RM. Ramasamy Ambalam who is the elder brother of RM. Solai Pillai. The said RM. Solai Pillai died intestate on 18.8.2003. His wife Sarojini predeceased him and they did not have any issues. The applicant and her two sisters and respondents 1 to 3 herein are the class-II heirs coming under Entry IV of the Hindu Succession Act and all of them are entitled to succeed to the properties left behind by the late Solai Pillai in equal share.

3. After the death of the said RM. Solai Pillai, the applicant sent a notice dated 6.9.2003 to the respondents for which a reply dated 19.9.2003 was sent by the respondents denying the right of the applicant as a legal heir of RM. Solai Pillai. Hence she filed a suit in C.S.No. 198/2004 before this Court for partition and separate possession of her 1/6th share in the suit property and for other reliefs.

In O.A.No. 183/2004 in C.S.No. 198/2004 this Court granted an order of interim injunction.

4. It appears that the 1st respondent claiming that RM. Solai Pillai left behind a will dated 25.5.2003 filed a petition before this Court for grant of Letters of Administration, impleading only respondents 2 and 3 who are his brothers as parties and an order dated 7.10.2004 was granted by this Court in favour of the 1st respondent.

5. After coming to know about the order of this Court dated 7.10.2004 the applicant filed an application for getting certified copies of the petition and order in O.P.No. 451/2004 and obtained certified copies on 2.8.2006. Thereafter she has filed the above application for the above said relief.

6. It is the case of the applicant that the respondents who are well aware of the claim for partition of the applicant and rights of their 3 sisters suppressed the fact before this Court by not adding them as parties in O.P.No. 451/2004 and obtained an order behind the back of the applicant. A specific mention was made by the applicant to the fact that when she sent a notice on 6.9.2003, the respondents sent a reply dated 19.9.2003 wherein there is no whisper about the will dated 25.5.2003 alleged to have been left behind by late RM. Solai Pillai. Even in the counter affidavit filed by the respondents in O.A.No. 184/2004 in C.S.No. 198/2004, they have not mentioned about the filing of O.P.No. 451/2004, which was filed on 15.4.2004, whereas the above said counter affidavits were signed on 17.7.2004.

7. The 1st respondent filed a counter affidavit and respondents 2 and 3 filed a common counter affidavit.

8. It is stated by the respondents that the above application to revoke the grant of Letters of Administration is not maintainable as she is not party to the Will. The Will has been proved before this Court in accordance with law and therefore the same cannot be proved at her instance. Hence they prayed for dismissal of the above application.

9. The respondents have also filed an affidavit sworn by SP. Salatchi Ammal who is one of the sisters in support of their contentions.

10. Heard Mr. AR. L. Sundaresan, learned Senior counsel for the applicant and the learned Counsel for the respondents. I have also gone through the documents filed and the judgments referred to by them in support of their submissions.

11. The learned Senior counsel for the applicant vehemently contended that just cause has been shown by the applicant to revoke the grant of Letters of Administration as the grant was obtained by the respondents fraudulently by concealing the material fact namely, the applicant and her 2 sisters are also the legal heirs of RM. Solai Pillai and the applicant has already issued a legal notice claiming her 1/6th share in the assets left behind by the deceased RM. Solai Pillai.

12. He relied on the following decisions in support of his submissions:

- 1) 1995 2 L.W. 65 (Naagappan, G. v. Kalaiselvam)
- 2) 1995 2 L.W. 852 (Panchanathan S. v. Ellappan etc. and Ors.)
- 3) 1995 2 L.W. 862 (Muralidharan, V. v. R. Raghavendran)
- 4) 2001 (2) CTC 466 (Jayaraman, K. v. K. Rajagopalan)

13. Per contra, learned Counsel for the respondents submitted that as the applicant and their sisters are not parties to the will, there was nothing wrong in not impleading them in O.P.No. 451/2004.

14. I have considered the rival submissions carefully with reference to facts and citations.

15. The only point that arises for consideration is whether the applicant has shown a just cause to revoke the order dated 7.10.2004 in O.P.No. 451/2004 as per Section 263 of the Indian Succession Act?

16. u/s 263 of the Indian Succession Act the grant of probate or letters of administration may be revoked or annulled for just cause and what is just cause is explained in Sub-clause (a) to (e) with illustration (i) to (viii).

17. For better appreciation Section 263 of the Indian Succession Act is extracted below with the above explanation and illustration:

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

Explanation:- Just cause shall be deemed to exist where-

- (a) the proceedings to obtain the grant were defective in substance: or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently: or
- (d) the grant has become useless and inoperative through circumstances: or
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

- (i) The Court by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties who ought to have been cited.

- (iii) The Will of which probate was obtained was forged or revoked.
- (iv) A obtained letters of administration to the estate of B. as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.
- (vi) Since probate was granted, a latter Will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.
- (viii) The person to whom probate was or letters of administration were, granted has subsequently become of unsound mind.

18. The learned Senior Counsel for the applicant submitted that explanation (a) and (b) illustration (ii) will get attracted in the facts and circumstances of the case as the grant was obtained by the respondents concealing the fact that RM. Solai Pillai has got 6 legal heirs as per Clause 2 of the Hindu Succession Act. He further submitted that the respondents have completely suppressed the fact that the applicant had already sent lawyer's notice dated 6.9.2003 to the respondents and to the two sisters claiming 1/6th share in all the assets left behind by the deceased RM. Solai Pillai.

19. In 1995 2 L.W. 65 (cited supra), a Division Bench of this Court held that when other legal heirs were not made as respondents in the Original Petition the proceedings to obtain a grant is defective in substance as the necessary parties were not impleaded and it follows automatically that the grant of probate has to be revoked as there is a just cause.

20. In 1995 2 L.W. 852 (cited supra), another Division Bench of this Court held that when other legal heirs who ought to have been impleaded as parties, are not impleaded, there is just cause for revocation. The Division Bench further held that if there are certain circumstances, which do not fall within the ambit of Clauses (a) to (e), but which warrant the revocation of the grant, the court is entitled to revoke the grant.

21. In 1995 2 L.W. 862 (cited supra), a Division Bench of this Court held that there is a just cause within the meaning of Section 263 of the Indian Succession Act inasmuch as there is omission to disclose the material facts. In the above decision, this Court agreed with the view of the Calcutta High Court in (*Draupadi v. Rajkumar* AIR 1919 Cal 1012) which held that a legatee under a Will has been considerably cut down by an alleged Will, said to have been subsequently executed by the testator, revoking the earlier one, has locus standi to apply for revocation of the probate of the later Will on the ground of non-service of citation, even before he has obtained probate of the earlier Will.

22. In 2001 (2) CTC 466 (cited supra) another Division Bench of this Court held that normal rule is that probate already granted shall be revoked once it is

established that notice required to be given to a party had not been given.

23. In the light of the above discussion and decisions, let me consider the facts of the case.

24. Admittedly on 6.9.2003 lawyer's notice was issued by the applicant to the respondents herein and also to the two sisters stating that she is entitled to 1/6th share in all the assets, left behind by the deceased Solai Pillai. This notice dated 6.9.2003 was admittedly received by the respondents herein, who sent a reply notice dated 19.9.2003 admitting that all are children of K.V. RM. Ramasamv. But as rightly submitted by the learned Senior Counsel for the applicant, the respondents did not mention about the Will dated 25.5.2003. left behind by the deceased RM. Solai Pillai even, though the reply was given after nearly 4 months from the date of the execution of the Will. The learned Counsel for the respondents is not in a position to answer why the Will dated 25.5.2003 was not at all mentioned in the reply notice dated 19.9.2003.

25. It is also not in dispute that O.P.No. 451/2004 was filed on 15.4.2004 by the 1st respondent showing only respondents 2 and 3 as respondents. In para 10 of O.P.No. 451/2004, it was only stated that respondents 1 to 3 are the legal heirs of deceased RM. Solai Pillai and Respondents 2 and 3 herein as respondents 1 and 2 in the O.P. filed consent affidavits along with the petition. There is not even a whisper about the other legal heirs namely the applicant herein and her 2 other sisters. Further the legal notice dated 6.9.2003 sent by the applicant, and the reply notice dated 19.9.2003 sent by the respondents herein were not at all disclosed in the O.P.No. 451/2004.

26. The learned Senior Counsel for the applicant drew my attention to Section 278 of the Indian Succession Act according to which application for letters of administration shall be made stating the other relatives of the deceased family and their respective residences and submitted that this was not at all followed by the 1st respondent and therefore the proceedings in O.P.No. 451/2004 are defective in substance.

27. I find force and merits in the submission of the learned Senior counsel for the applicant.

28. Just cause shall be deemed to exist when the proceedings in the O.P. are defective and also when the grant was obtained by concealing from the courts something material to the case. It is also important that the necessary parties should be made as parties to the petition for grant of letters of administration.

29. As already discussed in the preceding paragraphs the legal notice dated 6.9.2003 sent by the applicant and the reply notice dated 19.9.2003 sent by the respondents were not in dispute and they are definitely something material to the case. But the 1st respondent in O.P.No. 451/2004 has suppressed and concealed the above facts, which in my mind is a just cause shown by the applicant to revoke the order dated 7.10.2004. Further the other 3 legal heirs

namely the applicant and her two sisters were also stated in the petition, but the same should have been stated as per Clause (b) of Section 278 of the Indian Succession Act, 1925. Suppressing the very fact that there are 3 other legal heirs to the deceased is also a just cause to revoke the grant of letters of administration.

30. The learned Counsel for the respondents contended that as the other legal heirs are not legatees under the Will, they are not shown as parties in the O.P., and therefore there is nothing wrong in it.

31. I am not able to countenance this argument for the simple, reason that if there is no Will as alleged by the respondents, the 3 sisters of the respondents will have definite interest, in the properties and therefore they shall have been cited as parties in the Original Petition.

32. In S.D. Ponnuswamy Mudaliar Vs. S.K. Somasundaram, , a Division Bench of this Court held as follows:

6. It is easy thus on the facts of the instant case to say that the respondent has undoubtedly some interest in the property which he claimed as purchaser from Rajeswari and the heirs of Indirani. It is possible on the facts proved to accept that the appellant knew about the two sale deeds executed by Rajeswari and the heirs of Indirani respectively. He for the said reason was a person who ought to have been cited before the probate was granted.

33. Following the above decision, of the Division Bench. I have also held in Application No. 2753/2006 in O.P.No. 400/1996 (decided on 30.11.2006) that when all the next of kin and other persons interested are not impleaded in the petition, it is a serious flaw in the proceedings and that would be a prima facie case for revocation of probate.

34. Yet another fact which is to be noted is that even in the counter affidavit filed by the respondents in O.A.No. 184/2004 in C.S.No. 198/2004. which was signed by the respondents on 17.7.2004, there was no mention about the filing of O.P.No. 451/2004, even though the said O.P. was filed on 15.4.2004. Thus the counter was filed after more than 3 months of filing of O.P.No. 451/2004. From this an adverse inference can be drawn against the respondents that their intention to suppress the fact that O.P.No. 451/2004 was pending and if it was revealed, steps would be taken by the applicant to make that O.P., a contentious one.

35. In the affidavit filed by one of the sisters of the respondents namely, S.P. Salatchi Ammal (filed in support of the respondents herein), she has only stated that RM. Solai Pillai was living with the 1st respondent herein till his death and all the brothers are jointly administering the assets and business of late RM. Solai Pillai. She has further stated that in the year 1997 both Solai Pillai, his wife wanted to adopt the son of the 1st respondent in a function to be held on 6.10.1997, but the same was withdrawn due to the death of wife of Solai Pillai on

24.9.1997. But Tmt. SP. Salatchi Ammal did not utter a single word in her affidavit about the Will dated 25.5.2003 executed by late RM. Solai Pillai. Therefore the affidavit of SP. Salatchi Ammal, the eldest daughter of late RM. Ramasamy, the father of the applicant and the respondents herein do not support the case of the respondents in any way.

35. Therefore, I am inclined to revoke the grant of letters of administration in O.P.No. 451/2004 dated 7.10.2004 and the same is hereby revoked.

36. In the result, the application No. 2985/2006 is allowed as prayed for. No costs.