

In Re: V. Arunachalam

In Re: V. Arunachalam

SooperKanoon Citation : sooperkanoon.com/835181

Court : Chennai

Decided On : Apr-05-2002

Reported in : (2002)2MLJ407

Appellant : In Re: V. Arunachalam

Judgement :

K. Sampath, J.

1. The application is for revocation and annulment of the grant of Probate in favour of the petitioner in O.P. No. 625 of 2000 with respect to the property more fully set out in the application and with respect to the Will 'fraudulently obtained and made up by the respondent' till the veracity and genuineness is on the following allegations:

The first applicant is the mother of the other applicants residing at No. 15, 'F' Block, Pensioners' Lane, Perambur Barracks, Chennai- 600 012 They are the legal representatives of de-ceased Vasudevan, who passed away on 10.11.1993. Even during the life time of Vasudevan, the applicants were in absolute possession and enjoyment of the property and after the death of Vasudevan, they had become the owners Legal heirship certificate was also issued to the applicants by the Tahsildar on 29.12.1994 wherein it is clearly mentioned that Vasudevan left behind the applicants as his legal representatives. The applicants have the necessary documents like Birth Certificates, School Certificates, etc. to

prove beyond doubt that the first applicant is the wife and the other applicants are the daughters of late Vasudevan and that they are the only legal representatives of Vasudevan. Vasudevan had not executed any Will and even if any such Will had been produced by the respondent in the application, it is a fabricated document made by him. He is in no way related to Vasudevan. The respondent and the lady by name Thilortha alias Santha Bai are trying to grab the properties belonging to the applicants. The respondent is a professional land grabber and in no way related either to the applicants or to Vasudevan or Thilortha alias Santha Bai.

In 1994 the respondent had filed a criminal complaint in C.C No. 2520 of 1994 against the applicants. The same was dismissed and in the same year, the respondent and Thilortha alias Santha Bai filed O.S. No. 1135 of 1994, in which the applicants entered appearance and filed a written statement. The suit was also dismissed. The applicants had been persistently declaring before the Police Station, the X Metropolitan Magistrate 's Court and in the Second Assistant City Civil Court that they are legal representatives of late Vasudevan and that they have the necessary proof for the same. They have been further maintaining that the Will set up by the respondent is a fraudulent one and a caveat also had been lodged long time back. The respondent, in spite of all the legal proceedings, without disclosing the applicant's name and without informing the Court and without making them as parties in the O.P. for Probate, fraudulently by misrepresenting the facts and by hiding and not disclosing the earlier proceedings, has somehow or other managed to obtain the Probate of the Will. It is a blatant act of forgery and against the rules as laid down for obtaining Probate. Revocation and annulment are asked for a just cause. The respondent having obtained the grant fraudulently, is trying to assert his ownership and also attempting to dispossess the applicants by using unfair methods. He is also illegally trying to effect mutation and change of name and ownership with respect to the property in question in all public records. In these circumstances, the application has been taken out.

2. A counter has been filed by the respondent denying the various allegations in the affidavit in support of the application and has further stated as follows:

The property originally belonged to Vasudevan. He was very friendly with the respondent for more than 25 years. He lived as a bachelor and did not marry anybody. His sister Thilortha alias Santha Bai was deserted by her husband Kannayiram. She lived along with her mother and brother Vasudevan. After her mother's death during 1970 Santha Bai lived with her brother Vasudevan. Vasudevan, after retirement from services, started a shop 'News Mart' and for distributing the daily newspaper, he appointed one Pannerselvam as his office boy and only he performed the last rites of Vasudevan as per Hindu Custom. Vasudevan lived with his pension from the Army and from the Government and also from the meager profits available from the News Mart. He availed loan from Indian Bank, Ooteri, and the respondent stood as surety. Sometimes Vasudevan used to take loan from the respondent also. In 1993 Vasudevan suffered with an ailment of severe cough. As nobody was with him, the respondent admitted him at Chetpet T.B. Hospital. After clinical test was done, he was directed to take treatment at General Hospital Chennai, where it was diagnosed as lungs T.B. He was admitted in General Hospital for three days and was discharged later on. At that time he had no family members to look after him and his sister. For the expenses incurred for his medical expenses, he executed a Will in the presence of three witnesses. He died on 10.11.1993 leaving behind his only sister Thilortha alias Santha Bai as his legal heir to succeed to his estate. Nobody other than his sister stayed with him in the house. Under the Will dated 27.7.1993 Vasudevan bequeathed his property in favour of his sister Thilortha alias Santha Bai. The respondent was appointed to administer the property. In view of that, he filed the petition for Probate and the same was granted on 25.9.2000.

During his long association with Vasudevan, he never saw the applicants in the house. The original name of the first applicant is Beulah, Christian by religion. The other applicants are married to Christians. They continued to be Christians by religion. They are not entitled to any relief in the matter, since they belonged to Christian region. Vasudevan did not embrace Christianity at any time. He belonged to Hindu Bahja Naidu Community. The applicants are not his legal heirs. They cannot claim any interest in the estate of deceased Vasudevan. They did not enjoy the property during the life time of Vasudevan. The question of ownership does not arise. The documents produced are not genuine. They had not been

obtained from the competent authority. They are not relevant for the purpose on hand. None of the documents contains the signatures of Vasudevan. The Will dated 27.9.1993 is a genuine one. The present application has been filed to blackmail him with ulterior motive. Against the dismissal of the criminal case, the respondent has preferred a criminal appeal before this Court. The suit in O.S. No. 1135 of 1994 was dismissed for default as the respondent was laid down with epilepsy, high blood pressure, etc. Suitable applications for restoration have been taken out. No notice of caveat was received by him. No misrepresentation was made to the Court. The applicants have not disclosed their family background. They are influential people and with the help of rowdy elements, they did not allow the respondent to see the house. The respondent reserves his right to call for the records for the job done by deceased Vasudevan, both as Ex-serviceman and in the Judicial Department. The first applicant did not receive even a single pre after the demise of Vasudevan from his benefits. The certificates do not relate to deceased Vasudevan. Marriage between the first applicant and Vasudevan has to be proved with documentary evidence. Vasudevan joined the Army on 4.6.1941 and due to his health problem, he was discharged on 13.1.1946. As he had served in the Army, the property situate at No. 15, F Block Pensioners' Lane, Chennai-12, was allotted to him. In the same year he served as Peon at Saidapet Sub Court and then he was promoted as L.D.C. and joined in the District Court. He also served as Interpreter. Finally he retired from service in 1973. The affidavit in support of the application for revocation is bereft of particulars. The applicants have no caveatable interest in the matter. None of the requirements under Section 262 is satisfied. No grounds are made out for revocation.

3. A reply affidavit has been filed on behalf of the applicants by the fourth applicant reiterating the contents of the main affidavit. The further fact set out is that he beneficiary under the alleged will, viz, Santha Bai died long back on 10.11.1995 leaving behind no issue. The respondent even without disclosing about the death of the beneficiary and without even telling that she had not left any issue, fraudulently by abusing the process of Court, had obtained Probate behind the applicants back. At the time of Vasudevan's death it was raining. The first applicant was feeling giddy and after closing the doors, all the applicants went to the tea shop to have tea. At that time, the respondent locked the house

Immediately the applicants rushed to the Police Station and gave a complaint about the illegal locking of the house. The police officials accompanied them, broke the lock of the house and gave back possession to the applicants. They went inside the house and saw that the house had been ransacked. The respondent took away the box and all the belongings of Vasudevan and all the documents and filed them in this Court as typed set. In the criminal complaint, the applicants had mentioned about the theft of documents by the respondent. The first applicant became sick in the year 1958. She took a vow that she would get converted to Christianity if she became alright. After she became alright, she embraced Christianity. The trouble arose and Vasudevan deserted the first applicant and thereafter they were living separately. Vasudevan used to beat the first applicant and that too in the school itself at Perambur Barracks Corporation School. The respondent cannot take up the plea that the applicants are Christians and therefore they are not entitled to the properties of Vasudevan. The documents filed along with the typed set are all genuine documents issued by competent authorities long back. During the period the applicants resided in the subject property, the respondent used to frequent their house only as a friend. The applicants never dreamt that the respondent, a close friend, would go to the extent of obtaining a probate on a fraudulent and forged Will and that too after the passing away of the only beneficiary, who had no issue. In 1994, the respondent demanded money from the applicants stating that he had spent money for the medical expenses of Vasudevan. Though there was no evidence of his spending, still the applicants agreed to give the medical expenses in the presence of local Headman, but all of a sudden, the respondent changed his mind and after three months issued a notice through his lawyer. As late as 2.12.2001 the respondent and other people came to the applicants' house and demanded money and threatened that if they did not give the money, the house would not go to anybody. In these circumstances, the order granting Probate has to be revoked.

4. A counter affidavit has been filed to the reply affidavit filed on behalf of the applicants stating that different allegations have been made in the reply affidavit contrary to what the original affidavit by the applicants contains. In February, 1994, the applicants illegally entered into the property and threatened Vasudevan's sister Santha Bai and Sarojini, who are already living in that house. In view of the threat,

an injunction suit in O.S. No. 1135 of 1994 was filed before the City Civil Court. The respondent also sent a notice dated 24.12.1993 to Sarojini Ammal to vacate the premises. However, the applicants sent Sarojini forcibly out of the house. The respondent used to send food to Santha Bai through his representative daily as the applicants did not allow the respondent's family members to see Santha Bai. It is not correct to say that the respondent was a third party. Vasudevan had written the Will as a friend and instructed the respondent to administer the property. He had no idea to take the property. The applicants did not allow the respondent to see Santha Bai. They took her to their place of residence at No. 40, Ayothiamman Koil Street, Anakaputhur. Only when Santha Bai was in the illegal custody of the applicants, she must have died. Even before the Magistrate there were nearly fifty hearings and the death of Santha Bai was never mentioned. The applicants told the respondent that Sarojini Ammal took Santha Bai to her native place at Suruttapalli Village and assuming that she was in a safe place, the respondent kept quiet. The applicants never informed the respondent about Santha Bai's whereabouts. There was no abuse of process by the respondent for obtaining the Probate.

The allegations about the first applicant feeling giddy and all the applicants going to the nearby tea shop and the respondent entering the house during that time and removing the things are all false. The first applicant is a christian by birth. The first applicant had stated that Santha Bai was a set up lady. That itself would show that the applicants had no idea about the family of Vasudevan. The documents are not true documents. Different addressees are given in the documents. The community also is given as Adi Dravida. Vasudevan did not belong to Adi Dravida Community. The beneficiary of the Will is not a stranger. The family ration card does not relate to the applicants' family. The death certificate of Santha Bai shows that she died when she was in the illegal custody of the applicants. No case is made out for revocation of the Will.

5. Powers are given under Section 263 of the Indian Succession Act for revocation of the grant of Probate or Letters of Administration. The Section runs as follows:

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 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 in inventory of 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 card,

(iii) The will of which probate as 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 been 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 letter 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.

6. The person applying for revocation of the grant of Probate or Letters of Administration must show that he is interested in the alleged Will. The interest may be slight or even a bare possibility, but there must be some interest which the applicant is prima facie entitled to claim in the estate of the deceased. The Court does not also become functus officio. It continues to possess and exercise, when it becomes necessary, the power of revoking or annulling for a just cause any grant which it has made. A clear case showing just cause has to be made out. The onus is on the person seeking revocation to prove his case.

7. It has been held in *Anil Behari Ghosh v. Smt. Latika Bala Dassi and Ors.* that the omission to issue citations to persons who should have been apprised of the Probate proceedings may well be in a normal case a ground by itself for revocation of grant. But this is not an absolute right irrespective of other considerations arising from proved facts of the case. The Court should have prima facie reasons to believe that it is necessary to have the Will proved afresh in the presence of interested parties.

8. Under Clause (c) of Section 263, the Court can revoke a grant where it has been obtained fraudulently and mala fide in either of the two ways, viz by making a directly false suggestion, or by surreptitious and clandestine conduct, in concealing from the Court something material to the case which it should have known to be a false allegation.

9. Section 44 of the Indian Evidence Act provides that any party to a suit or other proceedings may show that any judgment, order or decree which is relevant under Sections 40, 41 and 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion. It is open to the applicants to show that the respondent had obtained the Probate by practice of fraud.

10. As pointed out in *Eusoof v Ismail A.I.R. 1938 Rang 261* by a Full Bench of the Rangoon High Court that in cases where citation has not been issued or ordered, the party challenging on the ground of non-citation must first show that he is ought to have been cited before the burden of proof shifts to the executor to show that the defect in the proceedings was not one of substance and that no just cause for

revocation existed.

11. In several decisions it has been held that the explanation of the term 'just cause' in Section 263 of the Indian Succession Act is not exhaustive, but only illustrative. An application for revocation need not be filed under one or more of the said grounds. The emphasis in Section 263 is on the just cause. See the following decisions

(1) G. Shanmugam Chetti and Anr. v Chinnammal ; (2) S. Govindaraj and Anr. v. K.R. Ramamani and Anr. (1991) 2 L.W. 380 and (3) Gita alias Gita Ravi v. Mary Jennet etc. (.

12. The Court has to find out whether at the time of granting the application for Probate the relevant facts has been considered before the Court arrived at the conclusion that the Will in question was genuine. The law has vested a judicial discretion in the Court to revoke the grant where the Court may have prima facie reasons to believe that it was necessary to have the Will proved afresh in the presence of interested parties.

13. In *Banga Chandra De and Ors. v. Smt. Menaka Sundan De* A.I.R. 1988 Cal. 74, it was held that failure to mention the existence of the relatives who had claim in the estate and to have them represented and cited is defect sufficient to revoke the Probate.

14. In *Narendra Nath and Anr. v. S.M. Fakirmani Dassi and Ors.* where the party entitled to citation was not cited and he was not aware of the pendency of the proceedings also, it was held that Letters of Administration granted were liable to be revoked on the application of that party.

15. So far as Clause (b) of the Explanation to Section 263 is concerned, it provides that it would be a just cause if the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case. Clause (c) provides that in case the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such an allegation was made in ignorance or inadvertently. No doubt, it has been held in

Anil Behari Ghosh v. Smt Latika Bala Dassi already referred to that the Court refusal to grant annulment in cases where there is no likelihood of proof being offered that the Will admitted to Probate was either not genuine or had not been validly executed.

16. The Supreme Court in Elizabeth Antony v. Michel Charles John Chown Lengera has held that finding of absence of caveatable interest cannot prevent invocation of Section 263. In that case, the Will was not filed before the Court. Later, Probate of the Will was granted by another Court. It was not known whether citations were issued to all the persons interested. The party concerned had no notice about the Probate proceedings. In those circumstances, the supreme Court held that the finding of absence of caveatable interest cannot prevent invocation of Section 263.

17. In A.C. Bopanna v. Dr. K.T. Achaya and Ors. (1997) 2 L.W. 726, Jayasimha Babu, J has held that even if there is failure to invoke Order 9, Rule 13 of the Code of Civil Procedure, still it is open to show just cause and get the grant of Probate revoked

18. Hearing the above principles in mind, we have to examine the case on hand. As I was going through the documents filed on either side what struck me was that the respondent's (Petitioner in O.P.) own document shows the existence of a wife to Vasudevan, the alleged testator It is the voters' list relating to Door No. 15, F Block, Pensioners' Line, Perambur Barracks, Chennai, for the year 1988 for Perambur Legislative Assembly Seat. The names of the voters are given as Vasudevan (Durgaiyah) Age given as 80, Santha (Kannabiran) Age 50, Gnanamba (Vasudevan) Age 53, Sarojini (Rangiah), Age 50. May be the name of the wife of Vasudevan is not given as Ganeshammal, but as Gnanamba. Still the fact remains that Vasudevan had a wife in 1988 The learned Counsel for the respondent was not able to explain as to how somebody is shown as wife, the wife of Vasudevan, when the very case of the respondent was that Vasudevan was a bachelor.

19. If we go through the documents filed on the side of the applicants, they date back to 1951. The earliest document is dated 7.8.1951, which is the corporation Birth Certificate of Sarala, daughter of Vasudevan. Sarala is the second applicant.

The father's name is given as Vasudevan. The mother's name is given as Ganeshwari. The next document is the Birth Certificate relating to the third applicant Prema. The father's name is given as Vasudevan and mother's name is given as Ganeshammal, the first applicant herein. The Birth Certificate relating to the fourth applicant is dated 5.10.1957 giving the father's name as Vasudevan, but the mother's name as Ganeshwari. Much was made of the discrepancy in the name of the mother. Only in one document the name is correctly given and in the other two documents the name of the mother is given as Ganeshwari. In the second and the third birth certificate, the permanent address given is one and the same as No. 57, Tants Road, Perambur, while in the first document the address of the parents is given as No. 15, Sundaram Pillai Lane. The next document is the extract from the S.S.L.C. Book relating to the fourth applicant. The name of the community is given as Hindu Adi Dravida. The father's name is given as D. Vasudevan. The Ration Card produced gives the name of Head of the family as D. Vasudevan and the names of the family members as Gnanambal as wife, Santhi Bai as sister of Vasudevan. The address is given as No. 15, F Block, Pensioners' Lane, Chennai-12. Though the name of the wife is given as Gnanambal, the fact remains that at the time the Ration card was issued, Vasudevan had a wife. There is a list of voters of Vasudevan's family, a copy of which has been produced. It shows that Ganeshammal, the first applicant, is the wife of Vasudevan, Prema, the third applicant herein as wife of Charley James, and Mythili, the fourth applicant as the daughter of Vasudevan. The other documents produced are Ex-serviceman card, Indian Bank Passbook etc. course of study form relating to the second applicant gives the name of the parents as Vasudevan and Ganeshammal. This is dated 7.8.1952. It has been issued by the school. The community Certificate relating to the second applicant dated 15.7.1955 shows the second applicant as the daughter of Vasudevan. The address is given as 142, Dewelers Road, Madras- 600012. The marriage invitation for the marriage of Vasudevan's sister with one Kannayiram was issued in the name of Vasudevan. The complaint given by the respondent against applicants 2 to 4 before the X Metropolitan Magistrate, Madras, in C.C. No. 2520 of 1994 has also been filed.

20. The specific allegation made is that applicants 2 to 4 had unlawfully trespassed into Vasudevan's property at No. 15, B-Block, Pensioners' Lane,

Pattalam, Madras-12, with dishonest intention to misappropriate and covet the late Vasudevan's property to their own use. The complaint is dated 23.3.1994. It is the admitted case that the criminal case was dismissed. There is yet another document, which is an application for addition and deletion of names in the new family card to be issued. Vasudevan's name is given as the head of the family. The address is the same and the name of his wife is given as Gnanambal. The Death Certificate of Santha Bai is also produced, it is seen from the death certificate that she passed away on 10.11.1995. Notwithstanding the death of the beneficiary under the Will, without reference to the same, the respondent has applied for and obtained the Probate. When examined in cross on 28.8.2988 before the Criminal Court, the respondent initially stated that Santha Bai was alive. He admitted that Vasudevan passed away on 10.11.1993. Later he denied knowledge that Santha Bai died on 10.11.1995. One of the witnesses examined before the Magistrate was D. Muthuaram. He deposed that he knew about Vasudevan, but he did not know anything about his family members. He also admitted that the respondent was a friend of his. To the same effect is the deposition of another witness Ranganathan. He said that the respondent was very close to him. Thus there are several documents, which prima facie show that Vasudevan was not a bachelor as claimed by the respondent. He was married and he had children. May be some of the documents do not give the correct name of his wife. But that cannot by itself water down the effect of so many documents showing the existence of a wife to Vasudevan. The fact remains that the wife had not been made a party to the proceedings. It is not the respondent's case that the wife of Vasudevan was dead, his specific case being that Vasudevan was a bachelor. Apart from that, one other important aspect, which has to be noticed is that the respondent had been posted with the information even in 1997-98 that Santha Bai was no more. A definite suggestion had been made to him that Santha Bai died in 1995. In the written statement filed in the suit O.S. No. 1135 of 1994 it was further stated that the defendants viz., petitioners 2 to 4 herein were the legal representatives of Vasudevan. Notwithstanding such knowledge, the respondent went ahead with the filing of the O.P. for Probate in 2000 as if the beneficiary under the alleged Will Santha Bai was alive and the alleged testator had no other heirs and there was no other interested person. There has been wilful suppression

by the respondent and I have absolutely no hesitation in holding that he had played a fraud on the Court and obtained the Probate. A just cause as set out in Section 263 of the Indian Succession Act has indeed been made out by the applicants. The burden has been discharged. The omission to issue citations to persons, who should have been apprised of the Probate proceedings is a very valid ground by itself for revocation of grant. There are no other considerations arising from the true facts of the case.

21. Consequently the application will stand allowed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com