

J.S. Rajkumar Vs. Shyna Paul

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Court : Chennai

Decided On : Nov-08-2012

Reported in : 2012(3)MWN(Civil)678

Judge : K. Chandru

Appeal No. : Application No.3484 of 2011 in O.P. No.520 of 2004

Appellant : J.S. Rajkumar

Respondent : Shyna Paul

Advocate for Pet/Ap. : For the Petitioner: Rajnish Pathiyil, Advocate. For The Respondent: Shyna Paul, Advocate.

Judgement :

K. CHANDRU, J.

1. This application is filed by a third party to the Original Petition seeking to revoke the letters of administration granted in O.P.No.520 of 2004 vide order dated 14.6.2007 in favour of the first respondent. On notice being served, a counter affidavit has been filed by the first respondent, dated 12.10.2012. The first respondent also filed a written submission.

2. Heard the arguments of Ms.S.Geetha, learned counsel appearing for the applicant and Mr.G.Ilamurugu, learned counsel appearing for the first respondent /

original petitioner.

3. The original petition was filed by the first respondent for the grant of letters of administration to the petitioner with the Will annexed left by late Dr.V.M.Chandrabhas, dated 08.11.2001 being the sole beneficiary under the Will, having the effect throughout the State of Tamil Nadu. The O.P was admitted on 20.9.2004. After following due procedures, this court had granted letters of administration to the first respondent by an order dated 14.6.2007.

4. This applicant claims that the schedule property is a flat in a residential complex situated in New Door No.10, Valliammal Street, Kilpauk, measuring an extent of 480 square feet of undivided share out of an extent of 4800 sq.ft. The entire extent of land was purchased by the testator Dr.V.M.Chandrabhas from one A.V.Gopinath and A.V.Jayakumar through their power agent Mr.Ashish Nanda by way of a registered sale deed dated 27.12.2000. Subsequently, he had constructed a flat to an extent of 1000 sq.ft. through one Mahalakshmin Enterprises. The testator was a Gastrointestinal surgeon. The applicant is running hospitals under the name and style of Rigid Hospitals and Life Line Hospitals. He is the Chairman and Chief Surgeon of the said hospitals. The testator was the family friend of the applicant's father and known to the applicant from his childhood. He used to regularly attend the testator during his ailment and used to take care of his health. His wife predeceased him without any issue in the year 1997. The testator had voluntarily executed a gift deed on 16.7.2001 which was registered as a document in the Sub Registrar Office, Periamet, Chennai in his favour in respect of the said property while he was in a sound and disposing state of mind with full power of alienation. He had handed over the duplicate set of keys of the flat thereby giving symbolic possession. He reserved his right to reside in the flat till his life time and only thereafter, the applicant was entitled to take the physical possession and can enjoy the property. He had also delivered the original title deeds and other connected records pertaining to the property on the same day. The testator died on 17.3.2002 in the same flat.

5. It was further stated that the first respondent brought to the notice of the applicant that the testator had left the alleged Will and had appointed the second

respondent as an executor. The first respondent with a view to grab the property sent a letter dated 18.7.2002 regarding the Will dated 08.11.2001. It was stated that the testator had bequeathed the petition schedule mentioned property to the first respondent. A suitable reply was also sent on 25.07.2002 stating that the Will nowhere referred to the petition schedule mentioned property. The Will merely narrated that whatever left behind him at the time of his demise, both movable and immovable, will go to the first respondent. Therefore, the schedule property having been gifted much earlier by a registered gift deed earlier to the Will, there is no question of having the property bequeathed to the first respondent. The first respondent had approached this court and had obtained the letters of administration by suppression, fraud and misrepresentation. The applicant had already sold the property to one Thillai Selvam of Royapuram for a valuable consideration by a registered sale deed. But the first respondent had filed a suit in C.S.No.759 of 2009 before this court against the applicant as well as the purchaser Thillai Selvam. The suit was later transferred to the city civil court and is pending on the file of the Fast Track Court-V and renumbered as O.S.No.12123 of 2010. In that suit, the first respondent claimed the relief of declaration of the gift deed dated 16.7.2001 executed in favour of the applicant as null and void. It is under these circumstances, the applicant is entitled to file an application for revocation of the letters of administration. It was further stated by him that he is contesting the suit before the city civil court. Unless the letters of administration is revoked, the respondents are entitled to take advantage of the order passed by this court.

6. In the counter affidavit filed by the first respondent, it was stated that the suit property was purchased by the testator. Apart from that, the testator was having movable and immovable properties. The first respondent was helping the testator for his daily needs since she is a Nurse and also a close friend of the testator. The testator had no legal heirs and that his father and wife predeceased him. He had executed a Will on 08.11.2001 and it was registered as a document before the Sub Registrar Office, Thousand Lights. The testator was staying in the suit property at that time. The second respondent was appointed as an executor of the Will. When the second respondent had asked her certain details, for which she replied through her counsel. But he did not take any steps to initiate proceedings

for Probate. Therefore, she filed the petition for letters of administration. Even after getting the order, she was not allowed to enter into the property. The person who was in possession of the suit property, refused to allow her stating that he had purchased the property from the applicant. She made due search and found that he got the property by the alleged gift deed dated 16.7.2001 which was allegedly executed by the testator. The gift deed was a fabricated document as on the date of registration, the testator was not in good health and he had so many health problems.

7. It was further stated that Dr.J.R.Sankaran was one of the person treating the testator and he got the gift deed by undue influence and obtained the so-called thumb impression from the deceased with the help of the Registrar of Assurances. The letter sent by the second respondent showed that Dr.J.R.Sankaran had certified that the testator could not use his finger to put his signature normally and his left thumb impression may be taken in the place of his signature. It gives suspicion on the genuineness of the document and evil intention of Dr.J.R.Sankaran and his son, the present applicant. The testator could not have used his left finger as per the certificate dated 12.6.2001. They might have intoxicated the testator. The testator had executed a registered Will in favour of the first respondent. The applicant had sold the property to a third party. The suit filed by her pending before the city civil court is ripe for trial. The applicant has no caveatable interest in the property as by his own admission he had alienated the subject matter of the property. Further, the present application is barred by limitation. It was further stated that the applicant was aware of the proceedings. Even after the alleged execution of the gift deed, the testator used to put his signature and had executed the registered Will. The testator was in possession of the property and had not handed over it to the applicant.

8. The learned counsel for the applicant however placed reliance upon a judgment of the Supreme Court in Jagjit Singh and others Vs. Pamela Manmohan Singh reported in (2010) 5 SCC 157. In that case, the Supreme Court referred to the earlier judgment and held that the probate court exercises limited jurisdiction and is not concerned with the question of title. It is not clear as to how the said decision is of any assistance to the applicant as the Supreme Court found a clear conflict of

opinion between the two set of judgments of the Supreme Court as found in paragraphs 13 and 14, which reads as follows :

"13. It is thus evident that apparently conflicting views have been expressed by coordinate Benches of this Court on the interpretation of the expression "caveatable interest". In Krishna Kumar Birla's case, the Bench did not approve the judgments of Calcutta High Court in Bhubosoonduri Dabee's case and Madras High Court in G.Jayakumar's case wherein it was held that any person having some interest in the estate of the deceased can come forward and oppose the grant of probate. As against this, in G.Gopal's case, the dictum that a person who is having a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate has been reiterated. This being the position, we feel that the issue deserves to be considered and decided by a larger Bench.

14. The Registry is directed to place the matter before Hon'ble the Chief Justice for appropriate order."

(Emphasis added)

9. She also referred to another judgment of a division bench of this court in S.Bhaskaran and S.Ganga Devi Vs. R.Loganathan reported in 2007 (6) MLJ 290 for the very same purpose. But a reading of the said judgment shows that it was rendered before the reference to the larger bench by the Supreme Court in Jagjit Singh's case (cited supra). It was merely held that the circumstances as set out in Section 263 of the Indian Succession Act is not exhaustive.

10. Per contra, learned counsel for the first respondent contended that the application is belated as the law of limitation would apply to Article 137. Reliance was placed upon a judgment of the Supreme Court in Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and others reported in 2008 (2) CTC 850 = (2008) 8 SCC 463. He also stated that in 2005 (4) CTC 165, a division bench held that a person who was not claiming any right nor beneficiary of the Will nor is likely to inherit the estate of the deceased, cannot file an application under section 263. He further referred to another judgment of this court in J.Malarvizhi Vs. D.Shankar reported in 2010 (2) CTC 680 for contending that limitation starts from the date

when the right to apply for setting aside the grant approved from the time letter of administration was granted. The application filed beyond three years is not valid.

11. Further, the Supreme Court in *Elizabeth Antony v. Michel Charles John Chown Lengera* reported in (1990) 3 SCC 333 in paragraph 9 had observed as follows :

9. The learned counsel, however, lastly submitted that the petitioner in spite of having substantial interest in the estate is losing her right, to prove that the alleged will by Miss Zoe Enid Browne is not a genuine one and that it is a fictitious one. We must point out that by granting a probate, the court is not deciding the disputes to the title. Even with regard to a probate granted, it can be revoked as provided under Section 263 of the Act in any one of the cases mentioned therein. But the learned counsel for the petitioner submits that the findings of the Sub-Court and the High Court regarding the caveatable interest will come in the petitioner's way in seeking revocation of the grant of probate. It is needless to say that the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive his right, if he has any, to invoke Section 263 of the Act and it is up to the petitioner to satisfy the court.

(Emphasis added)

12. This court is not inclined to entertain the application for more than one reason. Apart from the delay, it must be noted that the applicant, who is a third party, is not entitled to have any say in the matter of letters of administration. His objections did not come within the parameters indicated under Section 263. Even if the said provision is valid, it is not exhaustive. The applicant's contention that he is entitled to get the property by way of gift deed which was executed before the Will cannot be accepted. He is not a person who is said to have had any caveatable interest in the letters of administration as the genuineness of the gift deed is the subject matter of litigation before the city civil court and even as per the admission of the applicant, he had already sold the property. Therefore, there is no case made out to entertain the application. Hence the application will stand dismissed. No costs.