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**(2013) 11 MAD CK 0101**

**Madras High Court**

**Case No:** A. No. 3509 of 2013 in O.P. No. 198 of 2013

R. Karunanidhi

APPELLANT

Vs

Mayilvahanam

RESPONDENT

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**Date of Decision:** Nov. 13, 2013

**Hon'ble Judges:** R. Subbiah, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

R. Subbiah, J.

The present applications have been filed by one J. Gomathi and R. Karunanidhi respectively to implead them as party respondents in O.P. No. 198 of 2013. O.P. No. 198 of 2013 has been filed by the respondent herein for grant of Letters of Administration in respect of the will dated 28.3.1987 executed by one K. Shanmugam. In the said OP, it is the contention of the respondent that the deceased K. Shanmugam, the testator of the will possessed self acquired immovable properties viz., all that piece and parcel of Nanja Land, Plot Nos. 144, 145, 146, 147 and 148 in Srinivasa Nagar Layout bearing Survey No. 89/3, Part, and 90/2 part of Moolakothalam Varisi, No. 26/15 and No. 26/12, Paimash No. 1298, measuring to an extent of 5 grounds or 12,000 sq. ft. He purchased the said property by way of a deed of sale dated 19.6.1964 registered as document No. 1550 of 1964 on the file of the Sub Registrar Office, Pallavaram from one Rajapandian Nadar and A.S.L. Raja Nadar. During his life time, the said K. Shanmugam executed a will dated 28.3.1987 bequeathing the properties in favour of the respondent herein, who is his friend's son. The said K. Shanmugam had no issues and his wife pre-deceased him. The said K. Shanmugam died at Chennai on 15.9.1988 leaving behind his last will and Testament dated 28.3.1987 in respect of his self acquired property. The will dated 28.3.1987 was executed by the said K. Shanmugam in the presence of witnesses viz., (i) P. Balaraman, son of Palani and (ii) S. Ravi, son of P. Subramani. The parents of

the deceased pre-deceased him and he had no brothers and sisters as he was the only son for his parents. The testator had no class-I and class-II legal heirs as per Hindu Succession Act. Hence, he executed a will in favour of his friend's son. Thus, the respondent herein sought for issuance of Letters of Administration.

2. During the pendency of the said OP, the present applications have been filed by the applicants/proposed respondents to implead them as party respondents in the said OP.

3. The sum and substance of the applications filed by the applicants, in nutshell, are as follows:-

(a) The said OP has been filed by the respondent only with an intention to make a fake document to get a legal tinge by obtaining Letters of Administration. The respondent is a land grabber, who is attempting to grab the lands of the applicants. Plot No. 145 measuring an extent of 2400 sq. ft. belongs to the applicant R. Karunanithi and the Plot No. 147 measuring an extent of 2400 sq. ft., belongs to the applicant J. Gomathi, which are the lands alleged to have been bequeathed by K. Shanmugam to the respondent.

(b) According to the applicants, the said plots viz., Plot Nos. 145 and 147 were originally purchased by one Mukherjee, who was the then Senior Scientific Officer, Central Leather Institute of Technology, Government of India, Adyar, along with three other plots in and by a registered sale deed dated 19.6.1964 registered as document No. 1550 of 1964. Subsequently, the said Mukherjee sold Plot No. 145 to one Vijayarangan through a sale deed dated 3.11.1980 registered as document No. 4604 of 1980 before the Joint Sub Registrar-II, North Madras. The said Vijayarangan sold the said plot to the applicant R. Karunanidhi by a registered sale deed dated 14.5.1982 as document No. 1731. Likewise, the said Mukherjee sold Plot No. 147 to one Ramamoorthy through a sale deed dated 3.11.1980 registered as document No. 4607 of 1980 before the Joint Sub Registrar-II, North Madras. The said Ramamoorthy sold the same to one S. Selvam by a registered sale deed dated 26.10.1988 as document No. 3910/1988 before the Sub Registrar Office at Alandur. The said Selvam, who is the blood brother of the applicant J. Gomathi, settled Plot No. 147 in her favour by a registered settlement deed dated 15.4.2013 as document No. 2175 of 2013. Similarly, the other three plots were also sold by the said Mukherjee to other persons. Therefore, the testator of the will viz., K. Shanmugam had no right at any point of time in Plot Nos. 144 to 148.

(c) It appears that some fake documents have been prepared in the name of K. Shanmugam as if he purchased Plot Nos. 144 to 148 from one Rajapandian Nadar and A.S.L. Raja Nadar through a registered document No. 1550 of 1964. With this fake document, a loan for a sum of Rs. 9.9 Lakhs has been obtained from the Saidapet Cooperative Primary Agricultural and Rural Development Bank under mortgage deed dated 16.2.2000 as document No. 457 of 2000 before the Sub

Registrar, Velacherry. Under the said mortgage deed, all the five plots have been mortgaged by one M. Ravi and R. Sivashanar. The applicants came to know all these things when they applied for encumbrance certificate for their respective plots.

(d) In fact, the Sub Registrar, Pallavaram has preferred a complaint as against one S. Balasundaram, who had created the fake document and an FIR has also been registered on 27.8.2010. While so, the respondent herein has filed a suit in O.S. No. 121 of 2013 as against the applicants herein and seven others before the Sub Court Tambaram to declare the sale deed executed in favour of the applicants and others as void and also for permanent injunction. While the said suit was pending before the Sub Court, Tambaram, the respondent herein has filed the present OP for grant of Letters of Administration based on the alleged will executed by the deceased K. Shanmugam. The said K. Shanmugam had no right over the lands in Plot Nos. 144 to 148. The intention of the respondent is to obtain Letters of Administration based on the fake will and fake documents only to create a right over the said properties. The applicants are having a caveatable interest over the properties. Thus, they are proper and necessary parties and they have to be impleaded as party respondents in O.P. No. 198 of 2013, which was filed for grant of Letters of Administration. The respondent, knowing fully well that the applicants are necessary parties, has not chosen to make them as party respondents and is trying to get an order behind them.

4. The said application was opposed by the respondent by filing a detailed counter stating that the allegations that the respondent is a land grabber and is attempting to grab the lands of the applicants are false. An extent of 5 grounds of land comprised in Srinivasa Nagar layout bearing Survey Nos. 89/3, part, 90/2 in Paiymash No. 1298 of Puzhuthivakkam Village, was purchased by one K. Shanmugam from one Rajapandian Nadar and A.S.L. Raja Nadar under a registered sale deed dated 19.6.1964 bearing document No. 1550 of 1964 in the office of the Sub Registrar, Pallavaram. The said K. Shanmugam was in possession of the said lands till his death i.e., on 15.9.1988. The said K. Shanmugam had no issues and his wife pre-deceased him. Since the said K. Shanmugam was a very close friend of respondent's father, the respondent had performed the last rites of his wife Lakshmiammal. The said K. Shanmugam was living with the respondent after the death of his wife. Out of love and affection, the said K. Shanmugam executed a will on 28.3.1987 bequeathing the properties purchased by him under the sale deed dated 19.6.1964 to the respondent. Since the applicants are claiming title over the plots purchased by the said K. Shanmugam, the respondent has filed a suit in O.S. No. 121 of 2013 before the Sub Court, Tambaram and the applicants and other defendants entered appearance in the said suit. The question of genuineness of the sale deed will have to be decided only by the competent civil Court viz., the Sub Court, Tambaram in O.S. No. 121 of 2013. The present OP has been filed by the respondent seeking Letters of Administration for the limited purpose of complying with the legal requirement u/s 213 of the Indian Succession Act. This Court, while

exercising the testamentary jurisdiction cannot go into the question of validity of the title of the testator or the legatee. Therefore, there is no question of any third party claim to implead themselves in the proceedings for grant of Letters of Administration. Only the persons who have a caveatable interest can be made parties to a proceeding under Sections 276 or 278 of the Indian Succession Act. Thus, he prayed for the dismissal of the applications.

5. I have heard the submissions made on either side and perused the materials available on record.

6. The respondent herein has filed O.P. No. 198 of 2013 before this Court for grant of Letters of Administration in respect of a will dated 28.3.1987 executed by the deceased K. Shanmugam. By the said will, the said K. Shanmugam bequeathed his self acquired immovable property purchased by him from one Rajapandian Nadar and A.S.L. Raja Nadar to the respondent, in and by a sale deed dated 19.6.1964 registered as document No. 1550 of 1964 on the file of the Sub Registrar Office, Pallavaram. It is the case of the respondent that the deceased K. Shanmugam purchased the lands at Plot Nos. 144, 145, 146, 147 and 148 in Srinivasa Nagar Layout bearing Survey No. 89/3, Part, and 90/2 part of Moolakothalam Varisi, No. 26/15 and No. 26/12, Paimash No. 1298 measuring to an extent of 5 grounds or 12,000 sq. ft. bequeathed the same in favour of the respondent under a will dated 28.3.1987. But, according to the applicants, the said plots were purchased by one Mukherjee and not by K. Shanmugam. According to them, after purchase, the said Mukherjee sold all the five plots on 3.11.1980 by four registered sale deeds to different persons. Plot Nos. 145 and 146 were sold by the said Mukherjee in favour of one Vijayarangan through a sale deed dated 3.11.1980 registered as document No. 4604 of 1980 before the Joint Sub Registrar-II, North Madras. From the said Vijayarangan, the applicant R. Karunanidhi has purchased Plot No. 145. Similarly, Plot No. 147 was sold to one Ramamurthy by way of sale deed dated 3.11.1980 bearing document No. 4607 of 1980 on the file of the Joint Sub Registrar-II, North Madras. The said Ramamurthy sold the property to one Selvam by a registered sale deed dated 26.10.1988 as document No. 3910 of 1988. The said Selvam is the blood brother of the applicant J. Gomathi and he settled the property in her favour by a registered settlement deed dated 15.4.2013. Similarly, the other three plots were also sold by the said Mukherjee to one Nagappan, Vijayarangan and G. Pappu. When the respondent came to know about the same, he has filed a suit in O.S. No. 121 of 2013 as against the applicants herein and also other purchasers for a declaration to declare the sale deed executed in their favour as null and void. In the said situation, the respondent herein has filed O.P. No. 198 of 2013 for issuance of Letters of Administration in respect of the will dated 28.3.1987 executed by K. Shanmugam. In the said OP, the present applications have been filed by one J. Gomathi and R. Karunanidhi, who are defendants in the suit filed by the respondent in O.S. No. 121 of 2013 which is pending before the Sub Court, Tambaram, to implead them as party respondents in the said OP.

7. It is the main contention of the applicants that the respondent, by the strength of a fake will and fake documents, is trying to create a right over the property. Since the applicants are having caveatable interest in the property, they are necessary parties to the OP proceedings.

8. Per contra, it is the submission of the learned counsel appearing for the respondent that only the persons who claims through or under the will are necessary parties to be impleaded in the OP proceedings. Here, since the applicants are questioning the title of the testator itself, they have to seek remedy only before the competent civil Court and they are not necessary parties to this OP proceedings.

9. Keeping the said submissions made on either side, I find that the applicants are claiming right only based on the sale deeds dated 3.11.1980 said to have been executed by one Mukherjee in their favour. According to the respondent, the deceased K. Shanmugam purchased all the five plots from one Rajapandian Nadar and A.S.L. Raja Nadar in the year 1964 under a registered sale deed dated 19.6.1964 bearing document No. 1550 of 1964 in the office of the Sub Registrar, Pallavaram, whereas according to the applicants, one Mukherjee purchased the said plots by a registered sale deed dated 19.6.1964 registered as document No. 1550 of 1964 in the office of the Sub Registrar, Pallavaram. Thus, the date of the sale deeds and the document numbers and registration office are one and the same. Therefore, both of them placed reliance on the different sale deeds registered in the same Sub Registrar Office, claiming title over the said properties. In this regard, already a civil suit is pending before the Sub Court, Tambaram, where the genuineness of the said sale deeds has to be decided. So far as the present proceedings are concerned viz., in the matter of grant of Letters of Administration, only the genuineness of the will said to have been executed by the deceased has to be decided. Unless the applicants claim their right through the will, they are not necessary parties in the OP proceedings. In the probate proceedings, the caveator will not be entitled to raise title in himself to the whole or any part of the estate of the deceased. In a probate proceeding, the caveator, who claims right through the sale deed, cannot raise dispute with regard to the title of the property. Because the probate proceedings cannot be permitted to be converted into title suit. In this regard, a reference could be placed in the judgment reported in [Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others](#), wherein, in paras 107 to 111, it has been held as follows:-

107. Directly or indirectly the appellants and in particular KKB is questioning the title or disposing power of the testator, which is impermissible in a probate proceeding. Appellants, in fact, have been prevaricating their stand from proceeding to proceeding. They have been raising various contentions which are wholly impermissible in law.

108. Be that as it may, even the decisions relied upon by Mr. Jethmalani were rendered in the factual situation obtaining therein.

109. It is in that backdrop the question which is required to be posed is: Did the Calcutta High Court or the other High Court opine that even a busy body or an interloper having no legitimate concern in the outcome of the probate proceedings would be entitled to lodge a caveat and oppose the probate? The answer thereto, in our opinion, must be rendered in the negative. If anybody and everybody including a busy body or an interloper is found to be entitled to enter a caveat and oppose, grant of a probate, then Sections 283(1)(c) and 284 of the 1925 Act would have been differently worded. Such an interpretation would lead to an anomalous situation. It is, therefore, not possible for us to accede to the submission of the learned counsel that caveatable interest should be construed very widely.

110. A caveatable interest is not synonymous with the word "contention". A "contention" can be raised only by a person who has a caveatable interest. The dictionary meaning of "contention", therefore, in the aforementioned context cannot have any application in a proceeding under the 1925 Act.

111. While interpreting the provisions of a statute, we must also bear in mind the admitted legal position that a probate proceeding should not be permitted to be converted into a title suit. It should not be permitted to become an unchartered field to be trespassed into by persons even if he is not affected by testamentary disposition.

A reading of the dictum laid down in the above judgment would show that the question of deciding the title of the testator is impermissible in the probate proceedings. In the instant case, the applicants are having an interest adverse to the right of the testator. Under such circumstances, they have to agitate their rights only in the civil proceedings. Only when the proposed parties to be impleaded claim their right under the will, the impleading applications can be considered. Since in the OP proceedings, this Court has to see only as to whether the will is genuine or not, irrespective of issuance of Letters of Administration, the applicants can always question the title before the competent civil Court and the issuance of letters of administration will not affect the right of the applicants to question the title of the property before the competent civil Court. When that being the position, I am of the opinion that the applicants are not necessary parties to this OP proceedings.

10. Learned counsel appearing for the applicants relied on the judgment passed in A. Nos. 2105 and 2106 of 2012 in O.P. No. 503 of 2011 dated 23.8.2012, wherein it has been held that if a person has even a slightest interest in the testator's estate, he is entitled to file a petition for revocation of the probate. But, in the instant case, the applicants are disputing the right of the testator himself. Therefore, the said judgment relied upon by the learned counsel appearing for the applicants cannot be made applicable to the facts of the present case.

11. For the reasons stated above, I am of the opinion that the applicants are not entitled to the relief sought for in the applications. In fine, both the applications are

dismissed.