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A No. 1060 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2026
PRONOUNCED ON : 24.09.2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

**A No. 1060 of 2016
in
O.P. No. 583 of 2009**

M/s. Alliance Projects
Plot No.(A) Door No.36/1 Gandhi Mandapam
Salai Kotturpuram Chennai 85

..Applicant(s)

Vs

1. Mr P Ramamoorthy
2-C Pasuvanthanai Main Road Bharathi Nagar,
Kovilpatti Virudhunagar Dt
2. Mrs. N Prema W/o.Late P.Nayagam
3. Mrs Vijayalakshmi, W/o.Murugan,
D/o.Late P.Nayagam
4. Mrs Chitra,
W/o.Vijayakumar, D/o.Late P.Nayagam
5. Mr N Sathish, S/o.Late P.Nayagam,
2 to 5 are residing at 1/15 Middle St,
Near Saliar Elementary School,
Samusikapuram, Rajapalayam,
Virudhunagar Dt – 626 117.

..Respondent(s)

PRAYER: To Revoke the debate order dated 26/11/2010 granted in OP No.583/2009 by this court with regard to the property in S No.590 and 591 Korattur Village.



For Applicant(s): M/s.E.Hariharan

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For Respondent(s): Mr.A.Veerappa for R1.
Mr.K.Govi Ganesan for R2.
Mr.C.Anbarasu for R5.

ORDER

This application has been filed by M/s. Alliance Projects, a third party to the probate proceedings, seeking revocation of the probate granted by this Court on 26.11.2010 in O.P.No.583 of 2009 in respect of the Will dated 05.04.2006 executed by late P. Nayagam, insofar as the grant relates to the lands comprised in Survey No.590 measuring 37 cents and Survey No.591 measuring 58 cents, aggregating to 95 cents, situated at Korattur Village.

2. According to the applicant, on 23.04.2014, a notice was affixed at its construction site in Survey Nos.590 and 591, Korattur Village, informing about proceedings in O.S.No.45 of 2014 before the VI Additional District Judge, Madurai, wherein appointment of an Advocate Commissioner had been sought. It is stated that only upon enquiry thereafter did the applicant come to know of O.P.No.583 of 2009 and the probate granted therein.

3. The applicant states that O.S.No.45 of 2014 had been instituted by certain persons claiming to be trustees of Inpros Charitable Trust under Section 92(1) (h) of the Code of Civil Procedure for dealing with and selling several



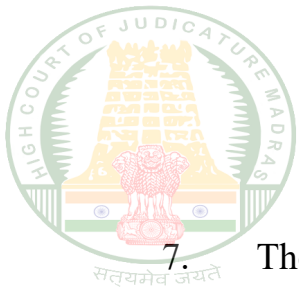
properties claimed to have devolved upon P. Nayagam. The properties shown therein included Survey Nos.590 and 591 of Korattur Village.

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4. According to the applicant, it had already purchased 37 cents in Survey No.590 and 58 cents in Survey No.591 under a sale deed dated 05.09.2005, registered on 06.09.2005 as Document No.3561 of 2005 in the office of the Sub Registrar, Villivakkam. It claims that ever since such purchase it has been in possession and enjoyment of the properties and has developed the same.

5. The further case of the applicant is that P. Nayagam was stated to have derived title through an earlier Will executed by Sadhu Kenghiah Swamigal, but, on examination of that source, there was no clarity as to how the disputed 95 cents had vested either in the Swamigal or in P. Nayagam. It is therefore alleged that the inclusion of the disputed lands in P. Nayagam's Will and in the affidavit of assets was erroneous or made with an ulterior motive.

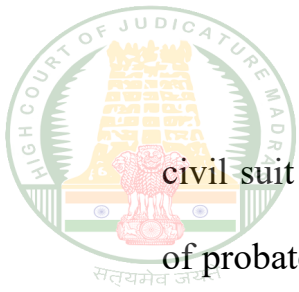
6. The applicant further states that no notice was served upon it in the probate proceedings and that neither Sadhu Kenghiah Swamigal nor P. Nayagam had valid title to the said lands. It therefore seeks revocation of the probate insofar as Survey Nos.590 and 591 are concerned.



7. The first respondent, P. Ramamoorthy, who was the petitioner and executor in O.P.No.583 of 2009, filed a counter affidavit denying the allegations. According to him, the properties mentioned in the earlier Will originally belonged to Sadhu Gangaiah Swamigal, who bequeathed them to P. Nayagam under a registered Will dated 08.12.1993, registered as Document No.114 of 1993 in the office of the Joint Sub Registrar, George Town, Chennai. After the death of the Swamigal, P. Nayagam is stated to have been in possession and enjoyment of the scheduled properties as absolute owner.

8. The first respondent further states that P. Nayagam died on 20.10.2007 leaving behind the Will dated 05.04.2006, under which the first respondent was appointed executor. He thereafter instituted O.P.No.583 of 2009 and probate was granted on 26.11.2010 after compliance with the testamentary formalities. Respondents 2 to 5 are stated to be the legal heirs and beneficiaries of P. Nayagam.

9. It is specifically pleaded that the applicant is neither a blood relation of the testator nor a beneficiary under the Will and has no caveatable interest in the estate. According to the first respondent, the applicant is in substance disputing the right and title of Sadhu Gangaiah Swamigal and P. Nayagam to Survey Nos.590 and 591 and, even if its claim is correct, the appropriate remedy is a



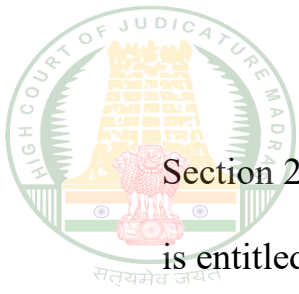
civil suit for declaration of title before the competent Court and not revocation of probate.

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10. The first respondent also states that O.S.No.45 of 2014 was subsequently dismissed as withdrawn/not pressed and relies upon the settled proposition that a Testamentary Court is concerned with the validity and due execution of the Will and not with adjudication of title to the properties mentioned therein. Further submits that upon considering the evidence of P.Ws.1 and 2 and Exs.P1 to P4, and recording that the legal heirs had been served and had not raised any objection, this Court by order dated 26.11.2010 allowed O.P.No.583 of 2009 and granted probate.

11. Learned counsel appearing for the applicant submitted that the application cannot be rejected merely because the applicant is neither an heir nor a beneficiary under the Will. According to him, the applicant's purchase of the disputed lands predates the Will dated 05.04.2006 and the inclusion of those very lands in a probated Will directly affects its interest.

12. Learned counsel relied upon **Elizabeth Antony v. Michel Charles John Chown Lengera**, (1990) 3 SCC 333, and **E. Sankaran v. Krishnaveni**, 2011 (5) CTC 117 : 2011 (7) MLJ 347, and submitted that absence of a caveatable interest does not, in every case, constitute an absolute bar to invocation of

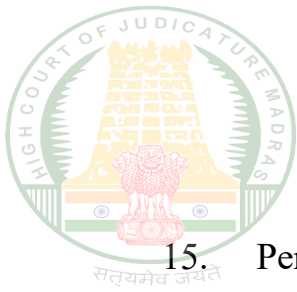


Section 263 of the Indian Succession Act and that a person affected by the grant is entitled to establish “just cause” for its revocation.

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13. Learned counsel for the applicant further relied upon the judgment of the Division Bench in O.S.A.No.287 of 2011, dated 18.10.2011, arising out of O.P.No.775 of 2008. It was submitted that O.P.No.775 of 2008 had been filed by the legal heirs of P. Nayagam, seeking Letters of Administration in respect of the Will dated 08.12.1993 said to have been executed by Sadhu Kenghiah Swamigal in favour of P. Nayagam. The said Original Petition was dismissed by this Court on 02.08.2010, prior to the grant of probate in O.P.No.583 of 2009 on 26.11.2010, and the subsequent appeal in O.S.A.No.287 of 2011 was also dismissed on 18.10.2011. Learned counsel therefore contended that the dismissal of O.P.No.775 of 2008, relating to the very Will relied upon as the source of P. Nayagam's title, was a material circumstance which ought to have been disclosed when probate was sought in O.P.No.583 of 2009, and that its non-disclosure amounted to concealment of a material fact within the meaning of Explanation (b) to Section 263 of the Indian Succession Act, 1925.

14. Learned counsel therefore submitted that the case is not one of title simpliciter, but also involves suppression of a circumstance concerning the very source through which P. Nayagam asserted ownership of the properties.

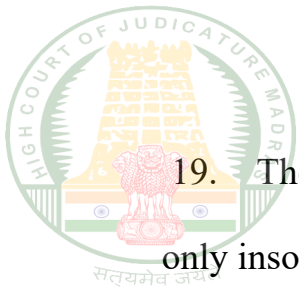


15. Per contra, learned counsel appearing for the contesting respondents submitted that neither the affidavit nor the documents produced by the applicant question P. Nayagam's signature, the execution or attestation of the Will dated 05.04.2006 or his testamentary capacity. According to learned counsel, the applicant's grievance remains essentially one of title.

16. Learned counsel relied upon **P.G. Gopal v. V. Manickavelu, 2003 (4) CTC 257 : (2003) 3 MLJ 696, and Velayudham v. S. Ponnambalam, 2008 SCC OnLine Mad 928 : 2008 (6) CTC 205**, and submitted that probate establishes the testamentary instrument and the representative character of the executor but does not adjudicate the testator's title to the property purportedly bequeathed.

17. It was further contended that failure to establish the earlier Will of Sadhu Gangaiah Swamigal, even if accepted, affects only the alleged source of P. Nayagam's title and does not render P. Nayagam's subsequent Will dated 05.04.2006 invalid.

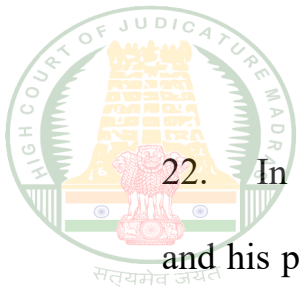
18. The point that arises for consideration is Whether the applicant has established 'just cause' for revocation of the grant of probate dated 26.11.2010 in O.P.No.583 of 2009?



19. The applicant seeks revocation of the grant of probate dated 26.11.2010 only insofar as it relates to the properties comprised in Survey Nos.590 and 591 of Korattur Village. The principal contention is that neither the testator nor his predecessor-in-title had title to those properties and, therefore, the testator could not have bequeathed them under the Will.

20. The scope of testamentary jurisdiction is limited. In probate proceedings, the Court is concerned with whether the document propounded is the deceased's last will, whether the testator possessed testamentary capacity, and whether the Will was duly executed and attested in accordance with law. The probate Court neither adjudicates the testator's title to the properties mentioned in the Will nor determines the validity or effectiveness of a bequest in relation to any particular property.

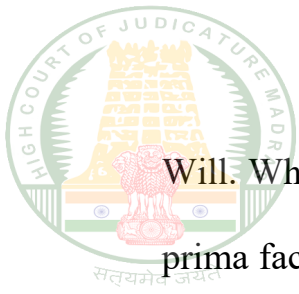
21. Consequently, once the Will is proved and probate is granted, the grant cannot ordinarily be dissected and revoked merely in respect of one or more properties described in the Will on the ground that the testator had no title to them. A dispute regarding the testator's ownership of a property, or the validity of the bequest in relation to that property, is a dispute concerning title and must be adjudicated by the competent civil Court.



22. In the present case, the applicant directly disputes the title of the testator and his predecessor-in-title to the properties comprised in Survey Nos. 590 and 591 of Korattur Village. This Court cannot determine such a dispute in the exercise of its testamentary jurisdiction. The applicant cannot, therefore, obtain revocation of the grant under Section 263 of the Indian Succession Act, 1925, merely by asserting that the testator had no title to bequeath those properties.

23. Learned counsel for the applicant relied on **Elizabeth Antony v. Michel Charles John**, AIR 1990 SC 1576, and **E. Sankaran v. Krishnaveni**, 2011 (5) CTC 117, to contend that even a person with no caveatable interest in the deceased's estate may maintain an application for revocation of probate or Letters of Administration. There can be no dispute that fraud vitiates every solemn act and that an allegation that a grant was obtained by fraud, suppression of material facts, or misrepresentation may be brought to the notice of the testamentary Court. Nevertheless, a person invoking Section 263 must establish 'just cause' within the meaning of that provision.

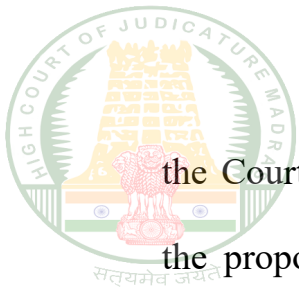
24. A distinction must be drawn between a petition alleging that the grant was obtained fraudulently by making a false suggestion or concealing a material fact, a petition founded on the omission to issue a citation to a person with a caveatable interest, and a claim of independent title to a property included in the



Will. Where revocation is sought for non-service of citation, the applicant must prima facie establish a caveatable interest in the deceased's estate and show that they were entitled to be cited before the grant. A stranger to the estate who sets up an independent title adverse to that of the testator cannot seek revocation merely on the ground that the testator had no title to bequeath a particular property.

25. The decisions relied upon by the applicant are distinguishable on their facts. In Elizabeth Antony, the original testatrix, Mary Aline Browne, died on 12.03.1972, leaving a Will executed in 1962. Her daughter, Zoe Enid Browne, subsequently died on 08.10.1977, leaving a Will dated 23.06.1975, which bequeathed the property in favour of the applicant. Although the applicant was not a relative of the original testatrix, she claimed through the testatrix's daughter, who had an interest in the estate. The applicant was therefore not a stranger to the estate, and the probate proceedings instituted without notice affected the derivative interest she claimed.

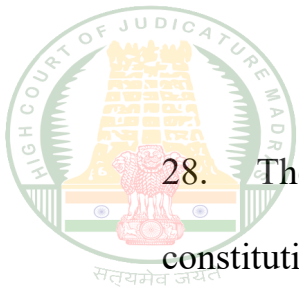
26. In **E. Sankaran v. Krishnaveni**, the applicant brought to the Court's attention that probate had allegedly been obtained without disclosing the testator's brother and sister, who were persons interested in the estate and entitled to citation. In the context of the alleged suppression of material facts,



the Court considered the application for revocation. Neither decision supports the proposition that a person claiming an independent and adverse title to a property included in a Will may invoke Section 263 solely to challenge the testator's title to that property.

26. The Hon'ble Supreme Court in **Krishna Kumar Birla v. Rajendra Singh Lodha and Others, (2008) 4 SCC 300: 2008 (3) CTC 43 (SC)**, reiterated that a probate Court exercises limited jurisdiction and is not concerned with questions of title. The Court further held that a person seeking to sustain a caveat must establish a caveatable interest in the deceased's estate. A person who sets up a title adverse to that of the testator and contends that the property did not form part of the testator's estate does not claim through the testator; such a person must establish the independent title asserted by him before the competent civil Court.

27. In the present case, the applicant does not claim any interest in the deceased's estate by succession or otherwise. On the contrary, he asserts an independent title to the properties comprised in Survey Nos. 590 and 591 and disputes the title of the testator and his predecessor-in-title. The claim is adverse to the deceased's estate and does not constitute a caveatable interest capable of adjudication in testamentary proceedings.



28. The applicant's case also does not fall within any of the circumstances constituting 'just cause' under the Explanation to Section 263 or the illustrations appended thereto. The applicant has neither specifically pleaded nor established that the grant of probate was obtained fraudulently by making a false suggestion or by concealing from the Court any fact material to the grant.

29. Significantly, the applicant does not seek revocation of the grant in its entirety. He seeks revocation only insofar as the grant relates to the properties comprised in Survey Nos. 590 and 591. If the Will or the grant itself had been vitiated by fraud, the applicant has not explained how the alleged fraud could be isolated to those two properties while leaving the grant relating to the remaining properties undisturbed.

30. The restricted relief sought makes it clear that the real object of the petition is to establish the applicant's independent title to Survey Nos. 590 and 591 by invoking this Court's testamentary jurisdiction. The testator's title to those properties, and consequently the validity of the bequest relating to them, fall within the jurisdiction of the competent civil Court. They cannot be adjudicated in proceedings under Section 263, nor can the grant be partially revoked merely in respect of those properties.



31. Accordingly, this Court finds that the applicant has failed to establish any 'just cause' within the meaning of Section 263 of the Indian Succession Act, 1925, for revoking the grant of probate dated 26.11.2010 in O.P.No.583 of 2009. The issue is answered against the applicant.

32. The application for revocation of probate is dismissed. It is made clear that this order shall not prejudice the applicant's right, if any, to establish his independent title to the properties comprised in Survey Nos. 590 and 591 of Korattur Village before the competent civil Court in accordance with law. No order as to costs. Consequently, the connected applications, if any, are closed.

24-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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Order QR

DR.A.D.MARIA CLETE, J.

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**PRE-DELIVERY ORDER MADE IN
A No. 1060 of 2016
in
O.P. No. 583 of 2009**

24-09-2026