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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2026

Pronounced on : 12.01.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

OSA.No. 61 of 2023

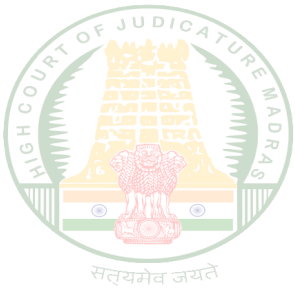
1. Mrs.Leela Kumari
W/o. Late Hansraj
2. H.Nirmal Chand,
S/o. (Late) I.Hansraj ... Appellants

Vs

1. T.S.Prakash Chand Gang ... 1st Respondent
2. P.Gyanchand ... 2nd Respondent

PRAYER: Appeal filed under Order XXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order and decree dated 10.03.2022 in application No. 885 of 2022 in O.P.No. 638 of 2008 on the file of this Hon'ble Court.

For Appellants : Mr. M.Sunil Kumar



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For 1st Respondent : No appearance

For 6th Respondent : Mr.P.Sunil
for Mr.P.John Bosco

JUDGMENT

The applicants in Application No. 885 of 2022 in O.P.No. 638 of 2008, aggrieved by the order dated 10.03.2022, by which order, a learned Single Judge of this Court had dismissed the said application have filed the present Appeal.

2. O.P.No. 638 of 2008 had been filed seeking probate of a Will dated 16.05.1990 said to have been executed by Meena Bai, who died on 17.12.1998. The petition had been filed by the first respondent T.S.Prakash Chand Gang. It is to be mentioned that K.C.Mank Chand the husband of Meena Bai predeceased her and died on 08.04.1989. They had no children. It was claimed that Meena Bai had adopted the second respondent P.Gyanchand by an adoption deed dated 26.09.1990 registered as Document No. 400 of 1990 on the file of the Sub Registrar, T.Nagar, Chennai. By order dated 10.02.2009, probate was granted of the Will dated 16.05.1990 in O.P.No. 638 of 2008.

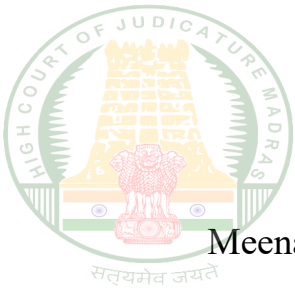
3. A.No. 885 of 2022 had been filed to revoke that order granting



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probate. By order dated 10.03.2022, the learned Single Judge had dismissed A.No. 885 of 2022. It had been stated that the first respondent had filed the application seeking probate on the ground that he was the executor and that the second respondent was the beneficiary and also the adopted son of the testatrix, Meena Bai. The legal heirship certificate had also been produced showing the second respondent as the legal heir. It was further held that the applicants, who are the widow and the son of the brother's son of K.C. Mank Chand, had no caveatable interest. It was also observed that whether the second respondent was the adopted son of Meena Bai or not was not the subject matter of the probate of the Will. It was also held that whether Meena Bai had handed over the property documents to the applicants was again not a subject matter of the probate proceedings. It was very clearly held that the probate proceedings were restricted only to examining the valid execution and attestation of the Will and cannot be converted to a suit for title. Holding as above, the application stood dismissed. Challenging the said order the present Appeal had been filed.

4. The learned counsel for the appellants argued that documents had been created that the second respondent was the adopted son of the testatrix



Meena Bai. He contended that the adoption had never taken place. He

WEB COPY further contended that the title documents of the property for which the Will had been executed were in the possession of the applicants. He further contended that the first applicant was the widow of the son of the brother of the husband of the testatrix and that therefore, she had a caveatable interest and should have been impleaded in the petition seeking grant of probate. The learned counsel contended that there are several litigations pending between the parties relating to the property and that over looking all these aspects, the application seeking to revoke the grant of probate had been wrongly dismissed by the learned Single Judge.

5. We had granted sufficient and more opportunity to the learned counsels to advance arguments.

6. As a matter of fact, among other litigations pending between the parties, one was a suit for partition in C.S.No. 167 of 1997 instituted by H.Padamchand, who is also a close relative of the parties herein. The applicants herein had been impleaded as the second and fourth defendants. The first respondent had been impleaded as the sixth defendant. The second respondent had been impleaded as the eighth defendant. The second



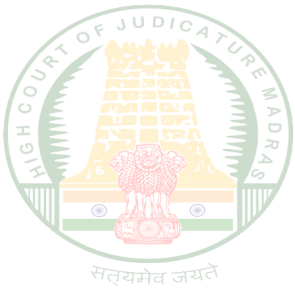
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defendant had not been impleaded as the son of the first respondent but rather as the adopted son of Meena Bai, who was impleaded as the seventh defendant. Very specifically, it had been pleaded in para 8 of the plaint that the eighth defendant P.Gyan Chand, who is the second respondent herein was the adopted son of Smt.Meena Bai, who was the seventh defendant in the said suit and who was the testatrix, who had executed the Will in favour of her adopted son P.Gyan Chand.

7. A written statement had been filed by the third, fourth and ninth defendants. The fourth defendant was H.Nirmalchand, who is the second appellant herein. In the written statement, the relationship of the parties as described in the plaint was stated to be “substantially correct”. This would evidently mean that both Hansraj, who had also filed written statement and the second appellant herein had admitted that the second respondent herein was the adopted son of the testatrix Meena Bai. They had not denied that fact.

8. Order 8 Rule 5 CPC is as follows:-

“Specific denial .



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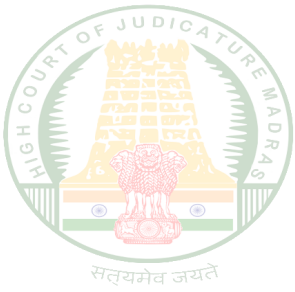
(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.”

9. Section 53 of the Bharatiya Sakshya Adhiniyam, 2023 is as follows:-

“53. Facts admitted need not be proved.

No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. ”

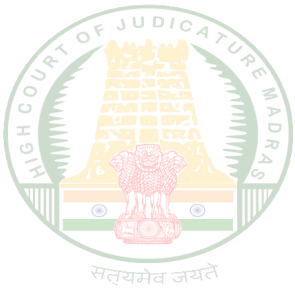


WEB COPY 10. Once there has not been a specific denial of the issue of adoption, the same cannot be raised again in subsequent proceedings. Further in a probate proceedings, the only issue is about the genuinness of the Will and the title of the property cannot be examined and and application for probate cannot be converted as a suit for title. Therefore there was no necessity for the Court to call into question the genuinity of the adoption, when it had not been specifically denied.

11. The appellants herein have admitted that the second respondent was the adopted son of the deceased testatrix Meena Bai. They have not filed any suit stating that the said adoption is fraudulent or that it had not been proved in manner known to law.

12. The original Will had been produced and in the order of grant of probate, it had been observed that the witness to the Will had also been examined and it had been proved in manner known to law. It was also a registered Will.

13. Section 263 of the Indian Succession Act, 1925 is as follows:-



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“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

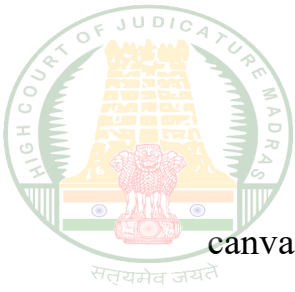
_____ (b)the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

_____ (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. ”

14. None of the grounds stated above stand attracted or can be



canvassed by the appellants.

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15. The learned counsel for the appellants insisted that the Court should examine the adoption deed. But however, having admitted the adoption and more particularly having not denied the adoption, it may not be appropriate for the Court to enter into any discussion on the same. In the earlier suit, wherein the husband of the first appellant was the first defendant and the first appellant was the second defendant and the second appellant was the fourth defendant, they had all admitted to the relationship that the second respondent was the adopted son of the deceased testatrix Meena Bai.

16. The learned counsel for the respondent had placed reliance on the Judgment of the Hon'ble Supreme Court in ***Mrs.Lynette Fernandes Vs. Mrs.Gertie Mathias***, wherein the Hon'ble Supreme Court while examining Section 263 of the Indian Succession Act, 1925 relating to revocation of probate of a Will had read into the said provision, Article 137 of the Limitation Act and had held as follows:-

“11. To crown all the aforementioned, the appellant’s application for revocation of grant of probate was highly belated. The District Court as well as the High Court is correct in holding that the appellant’s application for revocation of

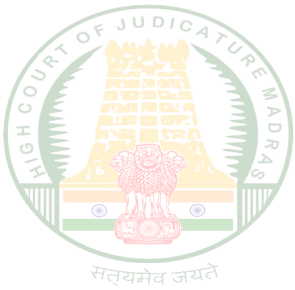


grant of probate is hopelessly barred by limitation. As there is no provision under the Limitation Act specifying the period of limitation for an application seeking revocation of grant of probate, Article 137 of Limitation Act will apply to the case in hand. Article 137 reads thus:-

<i>Article</i>	<i>Description of application</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
137.	<i>Any other application for which no period of limitation is provided elsewhere in this division</i>	<i>Three years</i>	<i>When the right to apply accrues</i>

*This Court in **Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma**, AIR 1997 SC 282 has held that any application under any Act, including a Writ Petition under any Special Act will fall under within Article 137 of the Limitation Act and have a limitation period of three years.*

“22. The changed definition of the words "applicant" and "application" contained in Section 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation



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Act. Article 137 stands in isolation from all other Articles in Part I of the third division. This Court in Nityanada Joshi's case (supra) has rightly thrown doubt on the two Judge Bench decision of this Court in Athani Municipal Council case (supra) where this Court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications." These petitions and applications can be under any special Act as in the present case.

*23. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case (supra) and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the CPC. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act." The aforementioned dictum is reiterated in the case of **Krishna Kumar Sharma v. Rajesh Kumar Sharma, (2009) 11 SCC 537**. The Indian Succession Act is a special law and the ratio of the above judgment is squarely applicable to the present case."*

17. The Hon'ble Supreme Court had also examined the arguments advanced that Article 137 would not apply but had held that the Judgments



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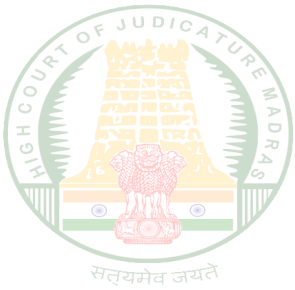
relied on in support of that proposition cannot be countenanced in view of subsequent Judgment of the Hon'ble Supreme Court in ***Kerala State Electricity Board, Trivandrum Vs. T.P.Kunhaliumma***, reported in ***AIR 1977 SC 282***, referred supra.

18. In the instant case, it is seen that the probate had been granted on 10.02.2009. The application seeking revocation of the same had been filed only in the year 2022 after nearly 13 years. There has been no explanation given for the delay. Quite apart from that no grounds have been established to hold that the appellants have a caveatable interest and should have been impleaded in the probate proceedings, particularly since they had admitted to the adoption of the second respondent by the testatrix.

19. Section 12 of the Hindu Adoption and Maintenance Act, 1956 is as follows:-

“12. Effects of adoption.—

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such



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date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.”

20. Thus owing to the adoption, the second respondent must be deemed to be the son of the testatrix Meena Bai. The appellants, as remote Class II legal heirs of the testatrix stood ousted and cannot claim to have a caveatable interest.

21. We find no reason to interfere with the order of the learned Single Judge. The Appeal stands dismissed with costs.

[C.V.K., J.]

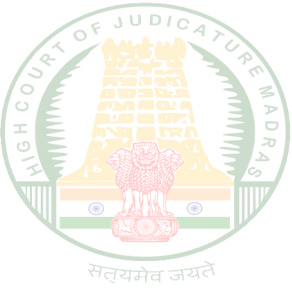
[K.B., J.]

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C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

vsg

Pre-Delivery Judgment made in

OSA.No. 61 of 2023

12.01.2026