

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CIVIL) No.17303 OF 2022

A. WILSON PRINCE

...PETITIONER

VERSUS

THE NAZAR & ORS.

...RESPONDENTS

J U D G M E N T

PANKAJ MITHAL, J.

- 1.** This is a peculiar and an interesting case but with nothing to be adjudicated upon by us.
- 2.** One Rev. Salusbury Fynes Davenport, who possessed vast properties, died on 24.01.1972 at Udhagamandalam, Ooty. During his lifetime, he had executed a Will dated 19.07.1969

appointing respondent No.3 - M/s King and Partridge as the executor of the Will. A senior partner of the said firm, Mr. Chakravarthy Duraisamy, in furtherance of his responsibility as the executor in the Will, applied under Section 222(1) and 272 of the Indian Succession Act, 1925, for grant of probate in respect of the aforesaid Will.

- 3.** In the probate case No.15 of 1972, the court at Ooty granted probate vide order dated 29.07.1972 in favour of the executor. The executor filed an inventory with the court on 20.01.1973 which was recorded on 24.01.1973. Finally, the executor submitted final accounts in the matter on 09.07.1973 which were recorded on 17.07.1973.
- 4.** The matter with regard to the probate of the aforesaid Will dated 19.07.1969 of Rev. Salusbury Fynes Davenport came to at rest as above.
- 5.** Later on 30.01.2016, Smt. Mary Brigit (now deceased) applied for the copy of the probate of the aforesaid Will. She, as the copy was not supplied, preferred a Writ Petition No.11266 of 2018 praying for a direction in the nature of mandamus commanding the respondents to furnish the probate copy granted in O.P.

No.15 of 1972 on the file of respondent i.e. the Office of the District Judge, Ooty, and to pass such other or other orders that may be deemed fit and proper in the facts and circumstances of the case.

- 6.** In the aforesaid Writ Petition, a counter-affidavit was filed on behalf of the executor named in the Will M/s King and Partridge through P. Ranganatha Reddy, a senior partner in the said firm at the relevant time. He stated that he had joined the firm in January, 1992, as a consultant advocate and was inducted as a partner in 1999. The other partners of the firm have also joined after 1999. Since the petitioner through the medium of the Writ Petition seeks relief in respect of the documents of O.P. No.15 of 1972, she should approach the concerned court. The probate was obtained by the executor through (late) Mr. Chakravarthy Duraisamy, who at the relevant time, was the senior partner of the firm. The said partner retired in the year 1987 and died in the year 1988. He further stated that the petitioner and her daughters met him for the first time in 2013 and requested to return the copy of the Will and the papers relating to the case. Since, the matter was old and he was not

aware of it, he got a thorough search made of the old records but could not succeed to find a single paper relating to the above proceedings. Accordingly, he advised the petitioner and her daughters to obtain the original Will and the copy of the probate and other documents from the district court. He further stated that late Chakravarthy Duraisamy, then the senior partner in the firm, had faithfully discharged his obligation as per the Will by obtaining the order of probate and by submitting the accounts to the court.

- 7.** On behalf of the district court, a separate counter-affidavit was filed in the aforesaid writ petition and it was accepted that O.P. No.15 of 1972 was filed in the Sub Court of Udhagamandalam on 07.07.1972 by Mr. Chakravarthy Duraisamy, partner of M/s King and Partridge for issuance of probate in respect of Will dated 19.07.1969 executed by Rev. Salusbury Fynes Davenport. The probate petition was allowed and the probate was ordered to be issued on 29.07.1972. The Original Petition with connected records were destroyed after complying with the procedure prescribed under Destruction of Records Act, 1917, upon due notification in the Nilgiris District Gazette. The

available records and registers could not reveal if the Will was returned to the executor who applied for the probate or it was enclosed with the probate order. There is no reference of the destruction of the Will along with the case records. As per the practice prevalent in those days, the original Will used to be enclosed with the probate order hence there is a possibility that the original Will may have been returned to the executor along with the probate order for the purposes of execution.

- 8.** It may be noted that on the death of Smt. Mary Brigit, petitioners Nos.2-9, probably her sons and daughters were impleaded by the High Court as petitioners vide order dated 25.11.2021.
- 9.** On the strength of the above pleadings, the Division Bench of the High Court by the impugned order held that since the records pertaining to O.P. No.15 of 1972 were destroyed and were not available, no direction of the nature sought in the petition can be issued to furnish a copy of the Will to the petitioners.
- 10.** This Special Leave Petition is the outcome of the above refusal to supply the documents and the dismissal of the Writ Petition.

- 11.** It is pertinent to note that only one of the successors to Smt. Mary Brigit i.e. A.Wilson Prince alone had come up by way of this SLP. He is the only person seems to be aggrieved by the order of the High Court dismissing the Writ Petition and all others appear to have reconciled with the same.
- 12.** The contention of the petitioner is that in testamentary matters of this nature, the originals especially the Will are always kept in safe custody and cannot be destroyed by applying the Destruction of Records Act, 1917. It is an obligation on part of the respondents to furnish details and records in connection with the subject matter O.P. No.15 of 1972. The original Will could not have been destroyed by the respondents and the respondents are bound to supply the original or its copy.
- 13.** It was argued that if a vigilance inquiry is ordered in the matter, the truth would be out soon and in all probabilities the Will in question will surface out.
- 14.** The Office of the District Judge in reply accepting the facts relating to the O.P. No.15 of 1972 states that about 24 years ago in 1998, the staff of the district court had destroyed the case record of O.P. No.15 of 1972 following the procedure prescribed

under the Destruction of Records Act, 1917. This probably was done in ignorance of the civil rules of practice laid down under the heading of “III Preservation and Inspection of the Wills” and presently only the “Register of Original Petitions received” and the “Inventory Register” in relation to the above case are available in the court record room. It is difficult to ascertain if the original Will dated 19.07.1969 formed part of the records and was also destroyed. In fact, at that time, the original Will used to be enclosed with the probate order and in all probabilities may have been returned to the executor of the Will.

15. The learned Registrar General of the High Court of Madras apprises the court that the records pertaining to O.P. No.15 of 1972 were never transferred to the High Court by the erstwhile Sub Court, Udthagamandalam.

16. In the facts and circumstances narrated above, it is amply clear that :

- i. Rev. Salusbury Fynes Davenport, during his lifetime, had executed a Will dated 19.07.1969;
- ii. He had named M/s King and Partridge as the executor;

- iii. He died on 24.01.1972 at Udhagamandalam;
- iv. The senior partner of the firm at that time, late Chakravarthy Duraisamy applied for the probate of the Will and probate O.P. No.15 of 1972 came to be registered;
- v. Probate was granted on 29.07.1972;
- vi. Smt. Mary Brigit, claiming to be the beneficiary under the Will in 2016, applied for the copy of the probate and then in 2018 filed a writ petition for a direction to supply the copy of the Will and the probate;
- vii. The Respondents allege that it is an old matter and the record of O.P. No.15 of 1972 has been destroyed in accordance with law some time in the year 1998;
- viii. The record was never transmitted to the High Court;
- ix. It is not clear if actually the original Will formed part of the record and has also been destroyed but as per practice, the original Will might have been returned with the probate to the executor; and

- x. The office of the executor, after thorough search, is unable to trace out any document in connection with the above case.

17. Accepting that it may be correct that the original Will in such cases has to be preserved and kept in safe custody or at times may be returned to the executor but the fact remains that if an original Will so produced for the purposes of probate is not traceable after such a long distance of time, what is the way out?

18. There is no dispute to the fact that the probate was granted on 29.07.1972 by the erstwhile Sub Court, Udhagamandalam, in connection with the Will dated 19.07.1969 in favour of one of the partners of M/s King and Partridge as the executor. The senior partner of the said firm, in order to discharge his responsibilities as the executor, not only applied for the probate and obtained it but also filed the inventory in respect of the estate/assets of the deceased as well the final accounts before the court on 20.01.1973 and 09.07.1973 respectively as required under Section 317 of the Indian Succession Act, 1925; meaning thereby that the

executor settled and disposed of the estate/assets of the deceased as per the Will amongst the beneficiaries in the year 1973 itself leaving nothing to be done thereafter. There was never any grudge from any corner that the assets of the deceased were not properly distributed in consonance with the Will.

- 19.** In the writ petition filed by Smt. Mary Brigit she claimed that under the Will, life estate was given to one Mr. J L Gabriel and that since the beneficiary was a minor, the vesting of property was postponed till the attainment of majority. According to the writ petitioner, the life estate holder Gabriel passed away on 22.02.1992 to leave the entrustment to be open in favour of the writ petitioner's father.
- 20.** In fact, it is claimed by the writ petitioner in paragraph 3 of the writ petition that she got the particulars about the filing of the probate proceedings, only from Lloyds Bank, which has main establishment at England. The writ petitioner claims to have come across the involvement of Lloyds Bank only from the diary maintained by her late father. The relevant averments in the writ petition read as follows:-

“From the diary of our late Father we have come across the involvement of M/s Lloyds Bank local branch which has main establishment at England. On approach to the said Bank we were provided with the particulars about the filing of the Probate proceedings before the 1st Respondent on 24.01.1972 and the same was ordered by granting Probate on 29.07.1972 in O.P.No.15 of 1972.”

21. The averments made in the writ petition make it clear that the writ petitioner did not have any knowledge about the contents of the Will and the bequest made under the Will. Therefore, this appears to be a case where the writ petitioner is on a treasure hunt, if not a wild goose chase, in the hope that there exists a treasure and that if found, it will be hers. The Court cannot go to the aid of such a person.
22. It is true that the original Will submitted for probate could not have been destroyed. In the normal circumstances, with the probate embossed on the Will, the original should have been handed over to the Executor. Today it is not possible at this distance of time to find out **(i)** whether it was actually destroyed; or **(ii)** whether it was handed over to the Executor; or **(iii)** whether the Executor having received it, lost it. The possibility of the Executor handing over the original Will to the legatee cannot also be ruled out.

23. We do not know how the writ petitioner, who has not seen the copy of the Will, claims to be a beneficiary (or the heir of the beneficiary). We could have thought of providing some relief that is possible within the framework of law to the petitioner, if the petitioner has at least seen the copy of the Will and is aware of the contents. On a guesswork made by the writ petitioner, this Court cannot order an investigation into what happened to the Will. Therefore, we think that the High Court was right in expressing its inability to grant any relief to the writ petitioner. Hence, the Special Leave Petition is dismissed. No costs.

..... J.
(V. RAMASUBRAMANIAN)

..... J.
(PANKAJ MITHAL)

**New Delhi;
May 15, 2023.**