

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.P.No.630 of 2018

J.Deepak,
S/o.Jayakumar,
Old No.9, New No.13,
Sivagnanam Street,
T.Nagar, Chennai 600 017.

... Petitioner

-Vs-

J.Deepa,
D/o.Jayakumar,
Old No.9, New No.13,
Sivagnanam Street,
T.Nagar, Chennai 600 017

... Respondent

PRAYER : Petition filed under Section 218 and 278 of the India Succession Act, 1925 r/w Order XXV Rule 5 of the O.S.Rules to grant letters of administration to the properties and credits of the J.Jayalalitha deceased to have effect throughout the whole of the Union of India.

For Petitioner : Mr.S.L.Sudarsanam

For Respondent : Mr.Thondan Subramanian

For Caveators : Mr.N.S.Nandakumar

ORDER

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

**The departure of a leader, not only left a political vacuum,
but also questions either regarding legal heirs to inherit her estate
or political heir to continue her political legacy.**

2.Late Chief Minister Dr.J Jayalalithaa was given mandate to rule the State in four State assembly general elections. The electoral success not only speaks about her strong leadership, but also about her charisma which enchanted the people of Tamil Nadu. When such was her success on the political front, very unfortunately on the personal side, this Court has to deal with the issue of legal heirs who are entitled to inherit the estate left behind by the deceased Dr.J Jayalalithaa.

3.Late Chief Minister Dr.J Jayalalithaa was unmarried and had one brother by name J.Jayakumar, who predeceased her. In the absence of any direct legal heir, only the niece and nephew could be termed as legal heirs. Therefore, the petitioner and the respondent, who are the children of Jayakumar have approached this Court seeking Letters of Administration under Sections 218 and 278 of Indian Succession Act, 1925 in respect of the properties and credits of deceased J Jayalalithaa.

4.The petitioner states that he is the nephew of Dr.J Jayalalithaa and the respondent is her niece. In the petition, it is stated that J Jayalalithaa, daughter of Jayaram died intestate on 05.12.2016. Dr.J Jayalalithaa's father Jayaram died long back and her mother, Sandhya @ Vedha Jayaram died on 02.11.1971. Jayaram and Sandhya had two children, namely, J.Jayakumar and J Jayalalithaa. The said Jayakumar married one Vijayalakshmi and out of the said wedlock, the petitioner and the respondent were born. Jayakumar died on 13.10.1995 and his wife died on 24.01.2013. As J Jayalalithaa died unmarried, without any issues, the petitioner and the respondent, who are the children of her brother, fall under Entry IV of Class II Hindu Succession Act and they are entitled to inherit her estate. According to the petitioner, there is no other person, who is a close relative of the deceased, other than the petitioner and the respondent. It is also stated that in spite of diligent efforts, no Will of the deceased J. Jayalalithaa could be traced by the petitioner and the respondent.

5.After the demise of J Jayalalithaa on 05.12.2016, the petitioner approached the Tahsildar, Guindy Taluk on 16.08.2017 seeking legal heirship certificate of deceased J Jayalalithaa. By reply dated 22.09.2017, the Tahsildar informed the petitioner to approach the Civil Court for getting legal heirship certificate. Therefore, the petitioner, making his sister as the respondent, has approached this Court seeking Letters of Administration to administer the properties and credits of deceased

J Jayalalithaa.

6.The property, namely, the house at No.36, “Veda Nilayam”, Poes Garden, Chennai – 600 086 was possessed by late Chief Minister Dr.J Jayalalithaa as she had obtained a citation for Letters of Administration of the properties including the above mentioned property in O.P.No.164 of 1973 on 22.11.1973 as per Will dated 01.11.1971 executed by her mother Sandhya @ Vedha Jayaram. The petitioner would claim that he and the respondent, being children of the brother of the deceased and Class II legal heirs, are each entitled to half share in the estate of the deceased J Jayalalithaa. The amount of assets, which are likely to come into the hands of the petitioner and the respondent is about Rs.188,48,66,305.51. The petitioner also filed an affidavit of valuation of the assets and the list of movable and immovable properties of deceased Dr.J Jayalalithaa, including the investments in firms (capital shares) and motorvehicles owned by her. The respondent, who is the sister of the petitioner and niece of the deceased filed a consent affidavit for issuance of Letters of Administration in the name of the petitioner as well as in her name jointly.

7.A caveat has been filed by one Mr.K.Pugazhenthithi and Mr.P.Janakiraman. They stated that they initiated proceedings for grant of Letters of Administration in O.P.D.No.35654 of 2017 in their favour or the Administrator General of Tamil Nadu. The said O.P.D.No.35654/2017 was rejected by an order

dated 09.01.2018 and against the said order, O.S.A.No.445 of 2018 has been filed and the same is pending before this Court. Thus, the caveators opposed the grant of Letters of Administration in favour of the petitioner and the respondent and sought Letters of Administration in favour of Administrator General of Tamil Nadu.

8.Heard Mr.S.L.Sudarsanam, learned counsel for the petitioner, Mr.Thondan Subramanian, learned counsel for the respondent and Mr.N.S.Nandakumar, learned counsel for the caveators.

9.The petitioner herein was examined as P.W.1 and the following documents were marked as Ex.P.1 to Ex.P.12.

"Ex.P1 (series 3 Nos) are the photocopies of the petition in O.P.No.164 of 1973, certificate of Letters of Administration dated 22.11.1973 and the Will dated 02.11.1971, executed by Srimathi Santhiya alias Veda Jeyaraman.

Ex.P2 is the photocopy of the death certificate of my father Mr.J.Jayakumar, who dies on 13.10.1995.

Ex.P3 is the photocopy of the Legal Heirship Certificate dated 07.02.1997 in respect of my deceased father J.Jayakumar.

Ex.P4 is the computer generated death certificate of my mother Mrs.Vijayalakshmi Jayakumar, who dies on 24.01.2013.

Ex.P5 is the photocopy of the Legal Hiers Certificate dated 05.09.2014 in respect of my deceased mother Mrs.J.Vijayalakshmi.

Ex.P6 is the photocopy of the affidavit dated 25.04.2016 filed by my deceased aunt Ms.J.Jayalalithaa along with her nomination papers, to contest from No.11, Dr.Radhakrishnan Nagar, Assembly Constituency in 2016 Tamil Nadu Legislative Assembly Elections.

Ex.P7 is the photocopy of the certified copy of the list of assets filed in Spl.C.C.No.7 of 1997, on the file of the Court of the City Civil and Sessions Judge, Bangalore (Marked after comparing and verifying with the original certified copy)

Ex.P8 is the computer generated death certificate of my aunt Ms.J.Jayalalithaa, who dies on 05.12.2016.

Ex.P9 is the photocopy of the letter dated 22.09.2017 issued to me by the Tahsildar, Guindy Taluk, Chennai – 32 (Marked after comparing and verifying with the original).

Ex.P10 is the affidavit of assets showing the net value of the assets as Rs.1,88,48,66,305.51/-

Ex.P11 is a copy of paper publication effected in one issue of Tamil daily "Dhina Mani" dated 03.11.2018.

Ex.P12 is a copy of paper publication effected in one issue of English daily "The New Indian Express" dated 13.11.2018."

10.The evidence of the petitioner as P.W.1 and the documents marked as Exs.P1 to P12 and the consent affidavit of the respondent would make it abundantly clear that the petitioner and the respondent are the son and daughter of late Jayakumar, the brother of the deceased. Ex.P.1 contains three documents viz.,

1. Copy of petition in O.P.No.164 of 1973 filed by Late J.Jayalalithaa.
2. Copy of certificate of Letters of Administration dated 22.11.1973.
3. Copy of the Will dated 01.11.1971 executed by Mrs.Santhiya @ Veda Jayaram.

A close perusal of the Will dated 01.11.1971 makes it clear that Mrs.Santhiya had two children and they were Miss.J Jayalalithaa and Mr.J.Jayakumar. In page 2 of the Will, Mrs.Santhiya had stated as follows:

"I have got one son by name Jayakumar and daughter Kumari Jayalalitha."

Mrs.Santhiya bequeathed the property at No.36, Poes Garden in the name of Late Chief Minister Dr.J Jayalalithaa absolutely and the property at No.8/1, Sivagnanam Road, T.Nagar to J.Jayakumar as life estate and absolutely in favour of his children.

11.Later J.Jayakumar married one Vijayalakshmi and the petitioner and the respondent were born to them as proved by Ex.P.3/Legal heirship certificate dated 07.02.1997 issued in respect of the deceased J.Jayakumar. Admittedly, late Chief Minister Dr.J Jayalalithaa was unmarried. In view of the above, petitioner and respondent, being the children of late Chief Minister Dr.J Jayalalithaa's brother

Mr.J.Jayakumar have become legal heirs of late Chief Minister Dr.J Jayalalithaa. Under Entry IV of Class II of Hindu Succession Act, the petitioner and the Respondent get the status of Class II heirs of late Chief Minister Dr.J Jayalalithaa in the absence of Class I legal heirs.

12.As far as the caveat filed by third parties is concerned, the learned Single Judge by an order dated 12.02.2019 rightly observed that the caveators cannot be said to be persons having any caveatable interest in the estate of the deceased Chief Minister. The learned Single Judge also held that the caveators may be her followers, but that cannot be a ground to oppose the grant of Letters of Administration to the petitioner and the respondent. The aforesaid observations were made by the learned Single Judge by an order dated 12.02.2019 while referring this O.P to be decided along with O.S.A.No.445 of 2018. This Court agrees with the conclusion reached by the learned Single Judge.

13.The Hon'ble Supreme Court in the case of ***Krishna Kumar Birla v. Rajendra Singh Lodha and others, reported in (2008) 4 Supreme Court Cases 300***, after considering the scope of "Caveatable Interest" held that unless the person approaching the Court shows some interest in the property of the Testator or the deceased in the case of Testamentary succession or in the case of intestate succession, the said person cannot file caveat either for letters of administration or probate.

Paragraph 86 of the said decision is usefully extracted hereunder:

86. The propositions of law which in our considered view may be applied in a case of this nature are:

(i) To sustain a caveat, a caveatable interest must be shown;

(ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.

(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.

14. Further, in paragraph 135 of the said decision, the Hon'ble Supreme Court held that if there are heirs intestate who are alive, entertaining of a caveat on the part of another family member or a reversioner or an agnate or cognate would never arise.

Paragraph 135 is extracted as follows:-

"135. It is too far fetched a submission that a person having a remote family connection or as an agnate is entitled to file a caveat. A reversioner or an agnate or a family member can maintain a caveat only when there is a possibility of his inheritance of the property in the event

the probate of a will is not granted. If there are heirs intestate who are alive, entertaining of a caveat on the part of another family member or a reversioner or an agnate or cognate would never arise."

When that is the position with regard to the other family members, the persons who have no connection with the deceased or her family cannot have any caveatable interest. Therefore, the caveat filed by the impleading petitioners was rightly rejected by the learned Single Judge.

15. In the instant case, the caveators have stated that they have the right to approach the Court as they are the office bearers of Amma Peravai. When Class-II legal heirs are available, no other person or body will have any right over the estate of the deceased. Therefore, the caveators cannot have any right to approach the Court. The Hon'ble Supreme Court in the aforesaid judgment has categorically held that a busy body or an interloper having no legitimate concern in the outcome of the probate proceedings would not be entitled to lodge a caveat and oppose the probate. Paragraph 109 of the judgment in ***Krishna Kumar Birla v. Rajendra Singh Lodha and others*** is usefully extracted hereunder:

"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 busybody 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 busybody 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.”

16.As late Chief Minister Dr.J Jayalalithaa died unmarried, without any issues and no other kith or kin is available other than the petitioner and the respondent, who are children of late Jayakumar, brother of the deceased, this Court is convinced that the petitioner and the respondent are nephew and niece and are Class II legal heirs. Hence, they are entitled to grant of Letters of Administration in respect of the estate and credits of the late Chief Minister Dr.J Jayalalithaa.

17.Ex.P.6/Affidavit filed by late Chief Minister Dr.J Jayalalithaa, as a candidate along with nomination papers before the Returning Officer for the election to Tamil Nadu Legislative Assembly in the year 2016, gives details of the properties. The petitioner has filed affidavit of valuation marked as Ex.P.10. The list of properties valued at Rs.188,48,66,305.51 given by the petitioner in the Affidavit of Assets is in consonance with the affidavit filed by the deceased to the returning officer marked as Ex.P6.

18. Though it is stated by Mr.N.S.Nandakumar, learned counsel for the caveator that the affidavit of assets filed by the petitioner does not give the details of all the properties, especially which have been the subject matter of disproportionate wealth case in Spl.C.C.No.208 of 2004, it is to be noted that the petitioner has filed the certified copy of the list of assets filed in Spl.C.C.No.7 of 1997 on the file of Special Court, Bangalore marked as Ex.P.7. The said Ex.P.7 gives the list of assets and therefore, the contention made by Mr.N.S.Nandakumar is liable to be rejected.

19. Therefore, those properties mentioned in Ex.P10/Affidavit of Valuation which would form part of the estate left behind by the late Chief Minister Dr.J Jayalalithaa have to go into the hands of the legal heirs of late Chief Minister Dr.J Jayalalithaa. Hence, the petitioner and the respondent are entitled to Letters of Administration in respect of the estate and credits of deceased J Jayalalithaa as mentioned in Ex.P10.

20. The petitioner and the respondent appeared before this Court and stated that they were born and brought up in Poes Garden house and they were denied entry into Poes Garden house by the security during the life time of their aunt. Even after her demise, they could not enter the property. To a query from this Court, both the petitioner and the respondent expressed their intention to create a trust making use of some of the properties which are to be decided by them later in the name of their late

aunt "Dr.J.Jayalalithaa" for public purposes to do service to the general public. To this effect, they also filed their respective individual affidavits.

21. In view of the abovestated position, this Court holds as follows:-

(1). The petitioner Mr.J.Deepak and the respondent Ms.J.Deepa are the class-II legal heirs of late Chief Minister Dr.J Jayalalithaa, being the son and the daughter of the late Chief Minister Dr.J Jayalalithaa's brother Late J.Jayakumar.

(2). The petitioner and the respondent are entitled to the Letters of Administration in respect of the estate held individually by late Chief Minister Dr.J Jayalalithaa or in the names of the firms or companies and the credits of the deceased J Jayalalithaa, as mentioned in the Affidavit of Valuation filed by the petitioner viz., Ex.P10.

(3). The petitioner and the Respondent shall allot a few properties, according to their discretion and create a registered Public Trust in the name of their late aunt "Dr.J.Jayalalithaa" for the purpose of doing public and social service as per their affidavits filed before this Court within a period of eight weeks from the date of receipt of a copy of this order.

22.In fine, the petition is allowed. No costs.

For reporting compliance with regard to creation of Trust, call the matter after eight weeks.

(N.K.K.,J) (A.Q.,J)

27.05.2020

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N.KIRUBAKARAN, J

and

ABDUL QUDDHOSE, J

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