

A.No.5746 of 2024 and
O.A.No.602 of 2024 in C.S.No.194 of 2024

A.No.5746 of 2024 and O.A.No.602 of 2024 in C.S.No.194 of 2024

Reserved on:14.11.2024

Pronounced on:19.11.2024

Dr.G.JAYACHANDRAN,J.

Bharat Ratna Dr.M.S.Subbulakshmi, W/o Late J.Sadasivam, a renowned Carnatic Singer passed away on 11th December, 2004. During her life time, she executed a Will dated 03.10.1997 appointing Shri S.Nagarajan, a Chartered Accountant by profession. T.S.Rangarajan and R.Sundar were the witnesses to the execution of the Will. At the instance of the executor Mr.S.Nagarajan, the Will of Late M.S.Subbulakshmi was probated in O.P.No.466 of 2005 vide, order of this Court dated 20.01.2006. In the said probate proceedings, Shir Thyagarajan @ Kannakutty, the adopted son of Subbulakshmi-Sadasivam and Smt.Radha Viswanathan and Smt.Vijaya Rajendran, who are the daughters of Sadasivam were respondents 1 to 3.

2. Mr.V.Shrinivasan/the plaintiff in C.S.No.194 of 2024 is the son of Smt.Radha Viswanathan. Aggrieved by the decision of the 2nd and 3rd

defendants to confer “Sangita Kalanidhi M.S.Subbulakshmi Award” to the 4th Defendant Mr.T.M.Krishna for the year 2024, a mirror award of “*Sangita Kalanidhi*” issued by Music Academy Annually, which carries a cash prize of Rs.1,00,000/-, the suit is filed for the following reliefs’:-

“(a)Granting a decree of perpetual injunction restraining the 1st and 2nd and 3rd defendants or those claiming under them from selecting and conferring the “*Sangita Kalanidhi M.S.Subbulakshmi Award*”.

(b)Granting a decree of perpetual injunction restraining the defendants 1-3, their men, agents, servants and subordinates from conferring the “*Sangita Kalanidhi M.S.Subbulakshmi Award*” on the 4th defendants at its 98th Annual Conference in December 2024 or on any date or occasion thereafter;

(c)To pay the costs of the suit.

(d)To grant such other reliefs and this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

3. For an interim relief, O.A.No.602 of 2024 filed seeking grant of ad-interim injunction restraining the 1st and 3rd defendant from conferring the '*Sangita Kalanidhi M.S.Subbulakshmi Award*' on the 4th defendant at its 98th Annual Conference in December, 2024 or on any other date or occasion thereafter pending disposal of the suit C.S.No. 194 of 2024.

4. The respondents/defendants were put to notice and they all have filed counter. Meanwhile, the first defendant/The Music Academy had filed Application No.5746 of 2024 to reject the plaint. The plaintiff had filed his counter in this application.

5. Mr.Sharath Chandran, Learned Counsel for the 1st respondent/plaintiff, Mr.T.Mohan, Senior Counsel for applicant/1st defendant, Mr.Shriram Panchu, Senior Counsel for 2nd respondent/2nd

defendant, Mr.A.K.Shriram, Senior Counsel for 3rd respondent/3rd defendant and Mr.Suhrith Parthasarathy, Learned Counsel for the 4th respondent/4th defendant placed their arguments before this Court and supporting documents.

6. The point for consideration in this case primarily is: whether late M.S.Subbulakshmi in the Will dated 03.10.1997 had forbidden institution of any 'Award' in her name. If yes, whether the plaintiff has locus to question the decision of the 2nd and 3rd respondents/defendants namely THG Publishing Private Limited and The Hindu to confer "*Sangita Kalanithi M.S.Subbulakshmi Award*". If yes, whether the 4th defendant namely, T.M.Krishna suffers any disqualification to receive the said award, in view of his opinion and writings expressed about M.S.Subbulakshmi, which according to the plaintiff disparaging, an attempt to trivialize the achievements of M.S.Subbulakshmi.

7. According to the plaintiff, the recital of M.S.Subbulakshmi's Will without any ambiguity forbids conferring any Award in the name of

M.S.Subbulakshmi. If any memorial, Trust or Foundation of any kind instituted earlier, it cannot be continued any further. Having come to know about the wish and desire of M.S.Subbulakshmi, as a descendant of M.S.Subbulakshmi he has a legal right to ensure that her wish and desire adhered scrupulously.

8. According to the defendants, the plaintiff is one of the several beneficiaries named in the Will of M.S.Subbulakshmi. He knows about the content of the Will and never raised any objection for installation of the Statue of the M.S.Subbulakshmi at Tirupathi. He never objected to the issuance of Commemoration Stamp of M.S.Subbulakshmi by the Postal Department of India and he never objected to the Government of Tamilnadu conferring awards in the name of M.S.Subbulakshmi through Eyal, Esai, Nadaka Madram. The plaintiff himself had participated in the inauguration of Auditorium in the name of M.S.Subbulakshmi. Furthermore, the mirror Award of “Sangita Kalanidhi M.S.Subbulakshmi Award” which carries a cash prize of Rs.1,00,000/-, is given to the Awardee of “*Sangita Kalanidhi*” of the year selected by the Executive

Committee of the Music Academy, which is an independent body. This Award has been given by the third defendant since 2005. For all these years, the plaintiff had not objected to the conferment of this awards.

Only when the 4th defendant T.M.Krishna is selected by the Music Academy for the title “Sangita Kalanidhi”, he objects to the conferment of the *Sangita Kalanidhi M.S.Subbulakshmi Award*” by misinterpreting the recital of M.S.Subbulakshmi’s Will, which does not really prohibit or forbids the conferment of the Award in her name. Her desire and mandate under the Will, were not to form or create any Trust, Foundation or Memorial of any kind including erecting any statue or bust, or donations or contributions for any of the aforementioned purpose. Her true and real intention was to prevent collection of donation or contribution by misusing her name. She had qualified the restriction by saying that the prohibition is subject to the extend mentioned in her Will about the mementos, souvenirs etc., awarded to her. Whereas, the “*Sangita Kalanidhi M.S.Subbulakshmi Award*” is from the own fund of the 2nd and 3rd defendants and not by collecting donation or contribution from others. Hence, the prohibition will not apply to the award instituted

by the 3rd Respondent.

9. Mr.T.Mohan, Learned Senior Counsel appearing for the applicant/1st defendant, in support of the application to reject the plaint, submitted that, in her Will M.S.Subbulakshmi, had appointed Mr.S.Nagarajan as Executor to carry out her wishes and administer the property as mandated in the Will. Under Sections 211 and 216 of the Indian Succession Act, the Executor alone shall act as the representative of the Testator for all purpose. The plaintiff cannot represent the Estate of the deceased.

10. This Court in O.P.No.466 of 2005 had granted Probate in favour of the said Nagarajan vide order dated 20.01.2006. Under Section 216 of the Act, after grant of Probate, the Executor alone can act as the representative of the deceased and only he can sue or prosecute any suit, or otherwise act as representative of the deceased. The plaintiff, who is not the Executor under the Will cannot sue or prosecute a suit either individually or as the representative of the deceased. Furthermore, the

Learned Senior Counsel contended that the plaintiff, who is a stranger to the issue, namely the grant of the “*Sangita Kalanidhi M.S.Subbulakshmi Award*” by the 3rd defendant through the first defendant, is not a person interested in the matter. He being a stranger to the matter, cannot sustain a suit for injunction, in view of the bar under Section 41(j) of Specific Relief Act.

11. Per contra, Mr.Sarath Chandran, the Learned Counsel for the plaintiff, defends the locus of the plaintiff to maintain the suit by submitting that the law only affirms that the Executor is the legal representative of the deceased. It does not exclude the legatees from representing the Estate. The Executor does not have any personal interest over the property or the reputation of the deceased. Executor is akin to a Trustee in a representative capacity. If the executor fails to perform any duty cast upon him under the Will, the legatee is entitled to intervene to ensure the performance of that duty. Further, as a legatee in the Will, he is a party interested and have every right to protect the wishes of his grandmother M.S.Subbulakshmi.

12. The plaintiff has approached the Court seeking enforcement of the wish of the Testator. A duty and responsibility cast on the Court, which has granted probate. Once a violation of the wishes of the testator is brought to the notice of the Court, it is the duty of the Court to protect it.

13. Before proceeding further on the facts and law, it is profitable to look at the Will of Late M.S.Subbulakshmi to understand, what is forbidden in her Will. The passage relevant for the issue are:-

“Regarding the mementos, souvenirs and other Awards and Prizes etc., awarded to me, they may be taken possession of and cared for, by Sri.K.R.Athmanathan and handed over in his discretion to an institution or body for being kept in my memory.”

....

....

.....

It is my earnest desire and mandate that after my demise, no Trust, Foundation or Memorial of any kind including erecting of any statue or bust shall be formed or created or made in my name and memory or any fund or donations or contributions collected for any of the afore mentioned purposes using my name, except to

the extent of what I have stated above regarding the mementos, souvenirs etc., awarded to me since I consider these are not conducive to our culture.”

14. In the Will, the plaintiff is one of the beneficiary. The testator had mentioned the mother of this petitioner (Smt.Radha) as one of her daughter. The plaintiff claims that he came to know about the Will only recently and on knowing about the conferment of the “*Sangita Kalanithi M.S.Subbulakshmi Award*” for the year 2024 to the 4th defendant through news papers, he immediately caused notice through his counsel to the defendants. This explanation for the belated reaction for opposing the conferment of the ‘*Sangita Kalanidhi M.S.Subbulakshmi Award*’ by the 2nd and 3rd defendants for the year 2024 for the first time, when for the past 18 years, the same has been given to the nominee’s of the ‘Sangita Kalanidhi’ title, truly a very big pile to swallow. Nonetheless, that cannot be a ground to non-suit the plaintiff, if he can *prima-facie* show his right to institute the suit and cause of action for the suit.

15. The two fold argument put forth by the plaintiff is:- the wish of his grand-mother expressly forbidding establishment of an award in her name shall prevail at all time. The violation of her mandate by one or more persons or a Government institutions cannot obliterate her saintly wish. Acquiescence should be viewed from the conduct of the Testator and should not be viewed from the conduct of beneficiaries or any other persons. The failure of the executor to protect the wish and mandate of the Testator cannot be a reason to denude the right of the plaintiff filing the suit to protect the honour and desire of the Testator. The Executor appointed under the Will, on completion of the administration of the property, as per the Will had become "*functus officio*". Being a legatee his right to enforce the desire of the Testator and it cannot be denied either under Section 211 or under Section 216 of the Indian Succession Act.

16. For easy reference, the relevant provisions in the Indian Succession Act, 1975 are given below:-

“Section 211:Character and property of executor

or administrator as such:—

(1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

(2) When the deceased was a Hindu, Muhammadan, Budhist, Sikh, 1[Jaina or Parsi] or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

Section 216: Grantee of probate or administration alone to sue, etc., until same revoked.—After any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the State in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.”

17. The Learned Counsel for the plaintiff, to buttress his argument on the *locus standi* of the plaintiff to maintain the suit, rely on the

judgment of the Calcutta High Court (Division Bench), which says, the right of the beneficiary to represent the Testator is not taken away just because Probate or Letters of Administration is granted to the Executor by the Court. The moment administration is completed, the purpose of the Will have been fulfilled and the administrator would virtually become *functus officio*. In other words, the right of the beneficiary under the Will to represent the Estate and seek enforcement of Testator wish by virtue of Section 216 of the Indian Succession Act is not taken away on grant of Probate to the Executor under the Will. The responsibility of the Executor appointed in the Will is akin to the responsibility of a Trustee. The Executor is only a deemed representative, whereas the real representative of the estate is only the beneficiaries after the purpose of the grant is fulfilled. The effect of Section 216 of the Indian Succession Act is explained in ***Kulwanta Bewa –vs -- Karam chand Soni*** reported in ***(ILR (1939)1 Cal. 21 (DB))*** as below:-

“As for s. 216, it enacts that after any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act

as representative of the deceased, until such probate or letters of administration has or have been recalled or revoked. In other words, it makes the executor or administrator the legal representative of the deceased. In fact the whole scheme of these and other provisions of the Act is only to provide for representation of the deceased's estate for purposes of administration, and is not intended to cut down the rights of the beneficiaries. To put the matter in another way, the position is that where a grant of administration is made, the grantee is constituted the person competent and entitled to represent the persons beneficially interested in the estate. This, it may be pointed out, is recognised in O. XXXI of the Code of Civil Procedure, in so far as it lays down that in all suits concerning property vested in an executor or administrator it will be sufficient ordinarily to make the executor or administrator party, but it also provides that the Court may, if it thinks fit, order the beneficiaries or any of them to be made parties. The rule in fact is to make the beneficiaries parties when the estate has been fully administered: see Clegg v. Rowland (1866) L.R. 3 Eq. 368.] .

We do not think, therefore, that merely because in this case Musammatt Kulwanta held letters of administration to the estate of Pergan Ram, that fact by itself had the effect of taking away the power of Ram

Chatti and Ram Das to deal with their beneficial interest in the estate.

*Even supposing that as a result of the grant of administration, the administratrix as the legal representative of the deceased was the only person competent to deal with the estate, it has still to be seen for how long this power of the administratrix would continue to the exclusion of the right of the beneficiaries. As already pointed out, all that s. 216 of the Succession Act provides is that until the grant is recalled or revoked, no other person will have the right to act as representative of the deceased, but the right to represent the estate for the purposes specified in that section is not the same as the right to deal with the beneficial interest in the estate. Even taking the section as it stands, it is doubtful whether this may be regarded as lending any countenance to the proposition—once an administrator, always an administrator. The moment administration is completed, the purpose of the grant will have been fulfilled, and the administrator, would virtually become *functus officio*. It seems only reasonable to hold that thereupon the grant would stand revoked in effect if not by a formal order of Court.”*

18. On examination of the recital in the Will of Late M.S.Subbulakshmi, we are able to clearly find, there is a specific prohibition for formation or creation of Trust, Foundation or Memorial in her name. Learned Senior Counsel Mr. Sriram Panchu, who represent the 2nd and 3rd defendants states that the cash prize of Rupees One Lakh, which is the mirror Award of Sangita Kalanidhi and it is not a Memorial. Any person, who is conferred with Sangita Kalanidhi title for that year, will by default get the ‘Sangita Kalanidhi M.S.Subbulakshmi Award’ which carry a prize of Rs.1,00,000/-. The award does not fall within the meaning of any of the three categories (Trust, Foundation or memorial) prohibited under the Will of M.S.Subbulakshmi. The Learned Senior Counsel referring the dictionary meaning of the word “Memorial” states that the word ‘Memorial’ means something that is built or done to remind people of an event or a person. The purse of Rs.1,00,000/- as prize is not a Memorial.

19. This contention does not appeal to the Court as correct understanding neither of the word Memorial nor the intention of the

Testator, who had expressly mentioned her mandate without any ambiguity. In the counter filed by the second defendant to whom Mr. Sriram Panchu, the Senior Counsel appears, it is stated that, “2nd respondent is the publisher of the English Daily, ‘The Hindu’ , which has been arrayed as the 3rd respondent. The affidavit is sworn on behalf of the 2nd and 3rd respondents. The 3rd respondent instituted the ‘*Sangita Kalanidhi M.S.Subbulakshmi Award*’ in the year 2005 to commemorate the Carnatic music doyen Late M.S.Subbulakshmi. The Award is instituted in honour of the legendary singer to inspire, cherish and continue the legacy of the legendary singer who is renowned the world over for her musical prowess”.

20. Thus, it is an admitted fact that the Award in the name of M.S.Subbulakshmi is to cherish her legacy and commemorate her. Therefore, it is nothing but ‘reminding people’ about ‘a person’ (i.e) in this case Late M.S.Subbulakshmi. Therefore, undoubtedly the Award in the name of M.S.Subbulakshmi squarely falls within the meaning of the

word 'Memorial'.

21. To emphasis the point of acquiescence in the said counter, at paragraphs 10 and 11, some of the Awards instituted in the name of M.S.Subbulakshmi and the statue erected for her in Tirupathi are mentioned. The details of Awards named after M.S.Subbulakshmi are :-

S. No.	Name of the Award	Conferred by
1.	Bharat Ratna Smt.M.S. Subbulakshmi National Award	The Bhramara Trust
2.	M.S. Subbulakshmi Sangeetha Pratibha Puraskar	M.S. Subbulakshmi Foundation and the Varkala based Sree Krishna Natya Sangeetha Academy
3.	M.S. Subbulakshmi Yuva Puraskar	Prasar Bharati & Spic Macay
4.	M.S. Subbulakshmi Puraskar	Visakha Music Academy
5.	M.S. Subbulakshmi Award	Narada Gana Sabha
6.	M.S. Subbulakshmi Fellowship	Shanmukhananda Sabha
7.	Dr.M.S.Subbulakshmi Centenary Awards	Shanmukhananda Sabha
8.	Bharata Ratna Dr.M.S.Subbulakshmi Sangeetha Pracharya Award	Shanmukhananda Sabha
9.	The Hindu & Saregama M.S.Subbulakshmi Award	The Hindu & Saregama
10.	M.S.Subbulakshmi Award	Tamil Nadu Government's

S. No.	Name of the Award	Conferred by
		Act and Culture Department
11.	MS Memorial Award	Department of Language and Culture at the Ghantasaia Government Music College
12.	MS Subbulakshmi Award of distinguished service	Sankara Nethralaya

“Similarly, there are auditoriums constructed in the name of Late M.S.Subbulakshmi at several constructed in the name of Late Ms.M.S.Subbulakshmi at several locations including the Asian College of Journalism, Chennai; Shanmukhanand Sabha, Mumbai and; the Velammal International School, Ponneri. Further, there are endowment concerts being held in memory of Late Ms.M.S.Subbulakshmi by Visakha Music Academy, Visakhapatnam and Powai Fine Arts, Mumbai. Similarly, statues of late Ms.M.S.Subbulakshmi have also been erected by Tumkur University, Tumkur; Shanmukhanand Sabha, Mumbai; Tirumala Urban Development Authority, Tirupati; Sri Rama Lalitha Kala Mandira, Bengaluru and; Sri Kanchi Mahaswami Vidya Mandir, Tambaram, Chennai. None of the above mentioned awards, fellowships, auditorius and statues erected in honour of Late Ms.M.S.Subbulakshmi

have been questioned by the applicant for apparent reasons. The claim of the applicant only exposes his utter lack of bona fides and the hollowness of his selective outrage.”

22. It is emphasized that the plaintiff who is aware of these awards had lost his locus standi to challenge the award, in view of his acquiescence.

23. ‘Acquiescence’ in legal parlance means a passive acceptance or implied consent to an action or situation. In this case, M.S.Subbulakshmi after executing the Will in the year 1997, till her death in the year 2004, she never allowed anyone to institute any Trust, Foundation or Memorial in her name. While she had not allowed anyone to do so, contrarily when the Government proposed to rename the Road in which her residence located as M.S.Subbulakshmi Road, she declined to give consent.

24. The principle of acquiescence can be applied only if M.S.Subbulakshmi after expressing her desire and mandate in her Will not to establish any Trust or Foundation or Memorial, but had allowed someone to institute or form or create a Trust, Foundation or Memorial in her name during her life time. If after her demise any act done disregard of her wish and desire, the passive acceptance or implicit consent, even if any, it cannot be construed as acquiescence.

25. The conduct of M.S.Subbulakshmi refuse to give consent for the Government proposal to rename the road in which her house situated as 'M.S.Subbulakshmi Road' is a proof that she meant what she had said in her Will and she disliked creating Memorial in her name. The said dislike is not illegal or against public policy or unenforceable. In such a factual circumstances, the wish of the death person cannot be violated and the violators cannot have the advantage of their own violation to plead acquiescence.

26. The counsel for the 4th defendant relying on the maxim, “ *actio personalis moritur cum persona* ’ attempt to impress upon this court, that, the plaintiff cannot sustain the suit for injunction since no cause of action survives, after the death of M.S.Subbulakshmi. Judgments cited as precedent to support the view that in a claim for tort, cause of action dies with the person. This Court outrightly negative this plea since, ‘Will’ is the instrument through which the death person speaks. ‘Will’ comes into force only after the death of the testator. The case in hand is predicated on the premise that the desire and mandate mentioned in the Will of M.S.Subbulakshmi, is violated by the defendants.

27. The plaintiff, who is one of the beneficiary and person interested in due execution of the desire of M.S.Subbulakshmi, is before this Court seeking a restrain order against the alleged violation of the desire expressed by M.S.Subbulakshmi in her Will. During her life time, M.S.Subbulakshmi never allowed any breach or violation of her mandate. Like the responsibility vest on the Court in respect of Minors and persons of unsound mind, the Court which has granted probate has

an in build duty and responsibility to ensure the due execution of the wish and desire of the dead person, who had recorded her/his desire in the Will, which is probated. That is precisely the reason, why the Court is entrusted with the power to revoke the probate granted, at any time later.

28. In view of the said discussion this Court force to say, it is preposterous to plead the cause of action to sue dies with the person namely M.S.Subbulakshmi. If the argument of the Learned Counsel for the 4th defendant accepted that the maxim “*actio personalis moritur cum persona*’ is applied to the matter related to enforcement of the terms of the Will, then the very purpose and meaning of executing a testament will get defeated.

29. Next, to test whether the relief of injunction to the plaintiff can be granted, it is necessary to look at Section 41 of the Specific Relief Act which lists the circumstances, when injunction can be refused by the Court. They are:-

Section 41: Injunction when refused.—

An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

30. The counsels appearing on behalf of the defendants submit that the plaintiff has no personal interest in the matter. Contrarily, the plaintiff based on the recital in the Will and the relationship between him and the Testator, had demonstrated that he is a person interested in the matter and not a stranger unconnected with M.S.Subbulakshmi or her last Will.

31. In nutshell, the line of defence of the respective defendants in short are:-

(i) First Defendant- Music Academy

The Executive Committee of the Academy decides the recipient of the “Sangita Kalanidhi” title every year. For the year 2024, the fourth defendant Mr. T.M.Krishna been selected for the said title by the Executive Committee at its meeting dated 17.03.2024 for being one of the foremost Carnatic musicians. The plaintiff a stranger can have no interest in the matter. As far as the mirror award of “ Sangita Kalanidhi M.S.Subbulakshmi Award” by the 2nd and 3rd Defendant, this defendant

has no role.

(ii) Second and Third respondents/defendants:- THG Publishing Pvt Ltd and The Hindu:-

The award by name “*Sangita Kalanidhi M.S.Subbulakshmi Award*” carries a cash prize of Rs.1,00,000/-. It is paid from the own fund of the third Defendant. No donation or contribution is collected from third parties for the said purpose. In the selection process of conferring the title “Sangita Kalanidhi”, these defendants have no role. It is the prerogative of the Music Academy, which is governed by its own Bye-laws. “*Sangita Kalanidhi M.S.Subbulakshmi Award*” is the mirror award given annually to the person who is conferred with the “Sangita Kalanidhi” title by the First Defendant-Music Academy. This award been given since 2005 for the past 18 years. The plaintiff first time questions the naming of the Award as “Sangita Kalanidhi M.S.Subbulakshmi Award” predicating on an mis-interpretation of the Late M.S.Subbulakshmi’s Will dated 03.10.1997. There are several awards that are being conferred in the memory of Late M.S.Subbulakshmi for several years. Neither the Executor nor the Legal Representative of the

testator has challenged the conferment of any such awards till date. Suddenly by mis-interpreting the will wants to stall the conferment of the award in the name of M.S.Subbulakshmi which cannot sustain.

(iii) 4th Defendant – T.M.Krishna

Listing out his merits and achievements as a music vocalist, cultural critic, researcher and writer, this defendant claims that though no relief is sought against him directly, but to dispel the imaginary and false picture of the facts depicted about him by the plaintiff is need to be countered.

32. Cited his encomium given to Late M.S.Subbulakshmi in his writings and interviews, this defendant claims that the plaintiff had not only taken his articles out of context and selectively interpreted the opinion rendered by him about Late M.S.Subbulakshmi, but has presented a wholly distorted and false picture about him.

33. As a whole, this defendant who claims himself as a critic from inside, justifies what he had said or wrote about M.S.Subbulakshmi as

his opinion about her and that cannot be a matter for the plaintiff to seek a restraint order against the first and third defendants conferring on him the award namely, “ *M.S.Subbulakshmi Sangita Kalanidhi Award*”.

34. According to him he never denigrated M.S.Subbulakshmi as averred by the plaintiff. To the contrary, he had only expressed his profound respect for her and her achievements as a cultural trailblazer and pioneer.

35. Here are some of the his opinion about M.S.Subbulakshmi, which according to the plaintiff are vile, vituperative and scandalous remarks :-

*“From the article, “ **Let’s Not Succumb to Misremembering M.S.Subbulakshmi**” authored by T.M.Krishna (4th Defendant) in “ The Wire” dated 16.09.2016.*

“M.S.was no goddess or saint. She was a spectacular, multi-faceted musician, a person of goodness-complex, strong, clever and intelligent. A woman who was in tune with all that

was happening around her, including the gossip! She was used like a toy to satisfy the agendas (however noble they might have been) of her husband. Yet, she was no victim. There is much to really celebrate, critique and understand, not just about her but also history, society and, more significantly, ourselves.”

....

“The truth is that we have never thought of her music as being worth any serious investigation. As we would say in Tamil, “solrathukku yenna irukku” (What is there to say). We treat her like a saintly Barbie doll, yet we have duped the outside world into thinking that we revere her.”

*In his Article, “ **The myths and misconceptions around MS.Subbulakshmi, India’s most acclaimed musician**” – Caravan magazine dated 01/10/2015.*

With the prelude of an opinion by an un-named sharp-tongued young aspiring musician, that MS Subbulakshmi is the greatest hoax of the twentieth century, her music was otherwise intrinsically hallow, and lacked stuff, the 4th defendant had proceeded further to say, “ the only praise that a hardcore section of the Carnatic universe bestows upon MS with honesty is that she had the most beautiful voice, and immaculate presentation skills. But let me make this clear: musicians don’t consider that a compliment”.

In this Article, as a basic fact, Mr.T.M.Krishna reminds the readers, the cast and birth mark of MS Subbulakshmi as below:-

“ Subbulakshmi was born in Madurai in 1916 to a senior

Devadasi, known and respected in the town as a veena player. In keeping with Devadasi practice, Subbulakshmi retained her mother's name, Madurai Shanmugavadivu, which formed her famous initials. Shanmugavadivu was an unwed single mother, the father of her daughter having retreated into the mists of anonymity. According to MS, he was Subramania Iyer, a Madurai based Brahmin lawyer”.

.....

.....

“ Her earlier recordings create the impression of a very contemporary young musician, liberal and feminist, who didn't care a damn for what people thought. This attitude is well in keeping with the devadasi tradition of music.”

36. He further adds that MS's music was strikingly different even from that of the dominant Devadasi musical tradition in Madras and attributes musical reasons (?) for the difference of texture, by referring TJS George a biographer of M.S.Subbulakshmi, who had speculated that the father of M.S.Subbulakshmi may have been the star musician Madurai Pushpavanam, a contemporary of Shanmugavadivu (the mother of M.S.Subbulakshmi).

37. For conferring “Sangita Kalanidhi” title to the 4th defendant by the first defendant none of the above comments about M.S.Subbulakshmi by T.M.Krishna matters. His opinion about M.S.Subbulakshmi whether good, bad or ugly will not disqualify him from getting the Title “Sangita Kalanidhi”. Conferring this title is the prerogative of the Executive Committee of the Music Academy the first defendant. The suitability has to be decided by them and not by the plaintiff/petitioner. Receive the title is again the option of the fourth defendant.

38. The third defendant ‘The Hindu’ if wants to honour the “Sangita Kalanidhi” of the year with cash prize, same cannot be restrained for the reason that T..M.Krishna had in the past made certain unpleasant remarks about M.S.Subbulakshmi’s musical skill , her birth, caste and paternity or about the functioning of Music Academy.

39. But then, when it comes to the conferment of an Award in the name of M.S.Subbulakshmi, which she did not like and expressly

recorded her desire and mandate that there shall not be any Award instituted in her name, the defendants 2 and 3 cannot institute an Award by her name against her explicit wish. The Court is bound to apply the Armchair Rule while interpreting the Will. The violation of the death person wish cannot be entertained or allowed by the Court that too under the guise of commemorating her or honouring her. It is again reiterated that, the principle of acquiescence is to be viewed from the conduct of the testator and not from the conduct of beneficiary.

40. It is not the case of the defendants that M.S.Subbulakshmi herself during her life time did not enforce her desire or mandate but allowed to institute Memorials and Awards in her name. Contrarily, the case of the defendants is that, the plaintiff allowed the institution of awards in the name of M.S.Subbulakshmi for several years on several occasions, hence he cannot challenge the conferment of “*Sangita Kalanidhi M.S.Subbulakshmi Award*” on the 4th defendant.

41. As long as the desire and mandate of the Testator is not against

public policy and legally enforceable, there cannot be any excuse for enforcing the mandate of the Testator. The Court cannot neglect its responsibility to ensure the enforcement of the desire and mandate of the death person. Sitting in the armchair of the Testator, the terms of the Will has to be understood. The wish or choice of the beneficiaries or others is always subservient to the wish of the Testator.

42. Some or even many may think that to cherish the memory of Late M.S.Subbulakshmi, Awards and Memorials must be formed and Statue must be erected befitting her contribution to the Carnatic Music. Even if the entire world wish to do so, the wish and mandate of M.S.Subbulakshmi should prevail over it since the testator has right to issue such prohibitory mandate and such mandate binds all. The best way to honour a departed soul is to honour and respect her wish and not disrespecting it. In fact, if any person who really have any reverence and regard to M.S.Subbulakshmi, after knowing about her desire and mandate should not continue to give Award in her name. Similarly, if any one truly and honestly respects the sentiment and wish of the departed

soul, should not receive Award instituted against her desire and mandate.

43. As a result, this court applying the ‘Armchair Rule’ holds that:-

(a) The plaintiff being the beneficiary under the Will has interest in the matter and locus to maintain the suit. The Cause of Action for the suit is clearly made out by the plaintiff.

(b) The use of the name M.S.Subbulakshmi in the mirror Award instituted by the 3rd respondent is contrary to the desire and mandate of the testator.

44. For the relief of interim injunction, the petitioner/plaintiff had made out a *prima facie* case. The balance of convenience is in favour of the petitioner/plaintiff. If the award in the name of M.S.Subbulakshmi is given away, pending disposal of the suit, the petitioner/plaintiff will be put to irreparable loss and sufferings. Hence, till the disposal of the suit, the first and the third respondents are restrained from conferring the “*Sangita Kalanidhi M.S.Subbulakshmi Award*” to the fourth respondent or any other person.

45. It is made clear, this order shall not restrain or forebear the first respondent conferring the ‘Sangita Kalanidhi’ title - for the year 2024 on T.M.Krishna or the third respondent distributing the mirror Award carrying cash prize of Rs.1,00,000/- to T.M.Krishna, without using the name “M.S.Subbulakshmi” in any form. In other words, the decision of the First Respondent to confer the ‘Sangita Kalanidhi’ title on T.M.Krishna or giving cash prize of Rs,1,00,000/- to T.M.Krishna recognizing his achievement in the field of Carnatic Music, are not restrained.

46. Accordingly, *Application No.5746 of 2024 stands dismissed.*
O.A.No.602 of 2024 for injunction is allowed as per the above terms.
No order as to costs.

19.11.2024

Index:yes
Internet:yes

A.No.5746 of 2024 and
O.A.No.602 of 2024 in C.S.No.194 of 2024

Speaking order/non speaking order
Neutral Citation:yes/no
ari

DR.G.JAYACHANDRAN,J.

ari

delivery Common Order made in
A.No.5746 of 2024 and
O.A.No.602 of 2024
in
C.S.No.194 of 2024

A.No.5746 of 2024 and
O.A.No.602 of 2024 in C.S.No.194 of 2024

19.11.2024