



C.R.P(MD).No.2041 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.2041 of 2021

and

CMP(MD)No.10925 of 2021

Anjalai

... Petitioner/Petitioner/Plaintiff

Vs.

1.Murugan

2.Selvam

... Respondents/Respondents/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.336 of 2021 in O.S.No.54 of 2018 dated 09.11.2021 on the file of District Munsif cum Judicial Magistrate Court, Alankudi.

For petitioner : Mr.S.C.Herold Singh

For Respondent No.1 : Mr.Sekar
for M/S.P.Ganapathi Subramanian

For R2 : No Appearance

ORDER

This petition has been filed to set aside the order passed in I.A.No.336 of 2021 in O.S.No.54 of 2018 dated 09.11.2021 on the file of District Munsif cum Judicial Magistrate Court, Alankudi.



2.The petitioner is the plaintiff in O.S.No.54 of 2018 before the District Munsif cum judicial Magistrate Court, Alankudi. The suit has been filed for a declaration that the petitioner is the owner of the property by virtue of a oral partition deed (Muchalika-Pagappattial) dated 28.06.1979 between the petitioner's father and his siblings and that the petitioner's father had executed a Will dated 23.10.1987, which was also registered before the jurisdictional Sub Register Office.

3.The learned counsel for the petitioner/plaintiff fairly submits that the application was filed before the commencement of trial while recording the evidence of defendants. It is submitted that the petitioner has specifically pleaded in para 2 of the plaint that the execution of Will by the petitioner's father in favour of her on 23.10.1987. It is submitted that the aforesaid Will was not available at the time of filing of the suit before the District cum Judicial Magistrate Court, Alankudi. It is submitted that after the examination of plaintiff's evidence, the Will was traced out and therefore, an application in I.A.No.336 of 2021 was filed, wherein it has been clearly stated that the Will was mixed up with the other documents and the same was traced out. It is submitted that the Trial Court has committed a grave error in dismissing the application by coming to the conclusion that the petitioner may not be



C.R.P(MD).No.2041 of 2021

entitled to claim rights over the property on the strength of the aforesaid Will as the petitioner has to establish his right over the property on the strength of the aforesaid Muchalika/Pagappattial dated 28.06.1979. It is submitted that no prejudice will be caused to the respondent in allowing the petition and accordingly, the present Civil Revision Petition is liable to be allowed.

4.On behalf of the respondent, the learned counsel for the respondent would submit that the order passed by the Trial Court is well reasoned and requires no interference. It is submitted that the petitioner cannot claim any right over the property on the strength of the Will dated 23.10.1987 and she has to establish the right on the strength of oral partition deed (Muchalika-Pagappattial) dated 28.06.1979. That apart, the Will has to be proved in the manner known to law.

5.Considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6.The petitioner was entitled to introduce the Will as an exhibit. As a matter of fact, the petitioner has also pointed out the averments in O.S.No. 163 of 2015. The relevant portion of the averment reads as under:-



C.R.P(MD).No.2041 of 2021

WEB COPY

2.மின்னிட்டு ரெங்கையன் பாச்சுண்டார் தாவாச் சொத்து உட்பட அவருடைய சொத்துக்களை வாதிக்க 23.10.1987-ம் தேதியில் பதிவான ஓர் உயில் சாசனம் எழுதி அச்சொத்துக்களை வாதிக்கு மாத்தியப்படுத்தினார். ஆவர் கடந்த 20 வருடங்களுக்கு முன்பு இறந்து விட்டார். அதுமுதல் அந்த உயில் அமுலுக்கு வந்து வாதி தாவாச் சொத்தின் பிரத்யேக (கீழே சொல்லப்படும் விளக்கத்திற்கு உட்பட்டு) உரிமையாளராகி இச்சொத்துக்களின் அனுபவம் எடுத்து நாளது தேதி முதல் அவைகளை தனித்த அனுபவம் செய்து வருகிறார். இச்சொத்துக்களுக்கான வருவாய் ஆவணங்கள் வாதி பெயருக்கு முறையாக மாற்றப்பட்டு விட்டன. அதை என்மிக்கும் முகமாக வாதி பெயரினை பட்டா பாஸ் புத்தகம், இச்சொத்திற்கான வரி செலுத்திய ரசீதுகள் சிலவற்றையும் வழக்கோடு தாக்கல் செய்கிறார்.

7.However, the aforesaid Will could not be introduced as it was mixed up with other documents at the time of filing of the suit and therefore, could not be marked during recording of the plaintiff evidence. After conclusion of the plaintiff's evidence, the petitioner was able to trace out the same and thus, filed an application to reopen the evidence in I.A.No.336 of 2021. The conclusion order was passed by the Trial Court stating that the said Will will have no significance and the petitioner has to prove the case on the strength of the aforesaid oral partition deed dated 28.06.1979 may be partially true. The aforesaid observation is on merits of the case which is to be decided in O.S.No.54 of 2018.

8.In my view, the Court ought to have allowed the petitioner to mark the aforesaid Will as an exhibit on behalf of the plaintiff. The respondent can



C.R.P(MD).No.2041 of 2021

cross-examine the petitioner. It is needless to say, the respondent have all rights to raise their contentions at the time of trial. Accordingly, the impugned order passed by the District Munsif cum Judicial Magistrate Court, Alankudi, in I.A.No.336 of 2021 in O.S.No.54 of 2018, dated 09.11.2021, is set aside and the I.A.No.336 of 2021 dated 09.11.2021 deserves to be allowed. The District Munsif cum Judicial Magistrate Court, Alankudi, shall endeavour to dispose the suit in O.S.No.54 of 2018 as expeditiously as possible preferably within a period of 12 months from the date of receipt of a copy of this order.

9. With the above observation, this Civil Revision Petition is allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

30.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

1. The District Munsif cum Judicial Magistrate Court,
Alankudi.
2. The Record Keeper,
V.R. Section,



C.R.P(MD).No.2041 of 2021

Madurai Bench of Madras High Court,
Madurai.

WEB COPY

C.SARAVANAN,J.

dss

C.R.P(MD).No.2041 of 2021
and
CMP(MD)No.10925 of 2021

30.03.2023