



C.R.P.(MD)No.2639 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
11.04.2023	08.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.2639 of 2022

and

C.M.P.(MD)No.12894 of 2022

Maria Anthony Subash

... Petitioner

VS.

1.Rasammal

2.Vanamamalai

3.Ponpandi

4.Manthiram @ Santhi

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.08.2022, made in I.A.No.2 of 2021 in A.S.No.23 of 2017, on the file Sub-Court, Vallioor.

For Petitioner

: Mr.S.C.Herold Singh

For R1 to R3

: Mr.V.S.Risikesh

For R4

: Mr.J.Barathan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.08.2022, passed in I.A.No.2 of 2021 in A.S.No.23 of 2017, on the file of the Subordinate Court, Vallioor.



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2.By the impugned order, the learned Subordinate Judge, Vallioor, has dismissed the application filed by the petitioner under Order XXII Rule 4 read with Section 151 of C.P.C., to implead the petitioner as the legal representative of the deceased second respondent in the Appeal Suit. Relevant portion of the impugned order reads as under:-

"14.அவ்வாறான சூழ்நிலையில் இந்த உயில் சாசனத்தை நிரூபிக்க வேண்டிய கடமையும், பொறுப்பும் இந்த மனுதாரருக்கு ஏற்படுகிறது. உயில் ஆவணங்களை நிரூபிக்கும் நிலையில், தாவா சொத்தில் வாதிக் கேட்டுள்ள விளம்புகை பரிகாரம் ஆட்சேபிக்கப்பட்டுள்ளது. ஆகவே மனுதாரர் கோரியுள்ள உரிமை மூலத்தை இந்த மேல்முறையீட்டு வழக்கில் ஆஜராகி நிரூபிக்க இயலாது என்பதாலும், இந்த மனுதாரர் தாக்கல் செய்துள்ள உயில் ஆவணங்களை புரபேட் செய்ய வேண்டியுள்ளதால் நேரடியாக ஆவணங்களை ஏற்றுக் கொண்டு இந்த மனுதாரர் கேட்டுள்ள பரிகாரம் அவருக்கு வழங்க இயலாது என்பதால், இந்த மனுவை அனுமதிக்க எந்தவிதமான முகாந்திரம் இல்லை என்றே இந்நீதிமன்றம் தீர்மானிக்கிறது.

15. எனவே மனுதாரரைப் பொறுத்தவரை அசல் வழக்கில் வாதிக்கு வழங்கப்பட்டுள்ள விளம்புகை பரிகாரம் இந்த மனுதாரரால் ஆட்சேபிக்கப்படுவதால் விசாரணை நீதிமன்றத்தின் தீர்ப்பு மற்றும் தீர்ப்பாணையின் பேரில் இந்த மனுதாரருடைய உரிமை மறுக்கப்பட்டுள்ளதாலும் மனுதாரருக்கு இந்த மேல்முறையீட்டு வழக்கில் எந்த பரிகாரமும் கிடைக்கக்கூடியதல்ல. எனவே இந்த மனுவை அனுமதிக்க எந்தவிதமான முகாந்திரமும் இல்லை என்றே இந்நீதிமன்றம் முடிவு செய்கிறது.

16.முடிவாக, மனு தள்ளுபடி செய்யப்படுகிறது. செலவுத்தொகை இல்லை."

3.The petitioner is the stranger to the proceedings initiated by the fourth respondent herein [Mantiram @ Santhi], in O.S.No.527 of 2004 before the Additional District Munsif Court, Vallioor. The said suit was filed by Mantiram @ Santhi [the fourth respondent herein] against the respondents 1 to 3, the legal heirs of Late. Muthuramalingam namely, the wife and two children and against her father



'Subbiah Pillai'. Originally, the said suit was filed by the fourth respondent for declaration against the respondents 1 to 3 herein [Defendants 1 to 3 in the suit] and for permanent injunction to restrain them from effecting further alienations. No relief was sought against her father. Later, the plaint was amended for a declaration and recovery of possession.

4.O.S.No.527 of 2004 was filed by the fourth respondent herein before the Additional District Munsif Court, Vallioor, on the premise that the fourth defendant Late.Subbiah Pillai had executed a Sale Deed, dated 12.07.1999, in favour of Muthuramalingam, registered as Document No.2047 of 2001, without the authority of the law.

5.The Trial Court decreed O.S.No.527 of 2004, by its judgment and decree on 14.09.2016. Aggrieved by the same, the legal heirs of the said Muthuramalingam namely, Rasammal and two minor children, who are now majors, filed A.S.No.23 of 2017, before the Sub-Court, Vallioor and the same is still pending before the Sub-Court, Vallioor. It is submitted that the fourth defendant in O.S.No.527 of 2004 Late.Subbiah Pillai [fourth respondent's father] had executed a registered Will dated 30.05.2014 registered as Document No.9 of 2014 in favour of the petitioner and thereafter another Will dated 31.07.2019 registered as Document No.85 of 2019, whereby the suit schedule property was bequeathed by Late.Subbiah Pillai in favour



of the petitioner herein.

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6.The fourth respondent's father Subbiah Pillai died on 11.08.2020. Therefore, the petitioner herein filed I.A.No.2 of 2021 in A.S.No.23 of 2017 to implead himself as a legal representative of Late.Subbiah Pillai. The first Appellate Court, namely, Sub-Court, Vallioor, rejected I.A.No.2 of 2021. It is submitted that the learned Sub Judge, Vallioor, had committed an error in rejecting I.A.No.2 of 2021, as the petitioner indeed is the legal representative of Late.Subbiah Pillai in the light of the definition "legal representative" in Section 2(11) of C.P.C., which reads as under:-

"11. "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where the party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

7.That apart, it is submitted that the Trial Court had committed an error in decreeing the suit in favour of the fourth respondent/plaintiff, by its judgment and decree, dated 14.09.2016, in as much as the fourth respondent executed a sale deed in favour of her father on 18.06.1985 and that subsequently, her father Late.Subbiah Pillai sold the property to one V.Vinayagam on 24.04.1987 and that Late.Subbiah Pillai once again purchased the property on 12.03.1999. It is, therefore, submitted that the fourth defendant/father of the fourth respondent was entitled to bequeath the property and has bequeathed the property on 30.05.2014 and by another Will, dated 31.07.2019 and that in view of the death of the said Subbiah Pillai on 11.08.2020,



the property would devolve on the petitioner as Legatee. It is, therefore, submitted that the first Appellate Court, namely, Sub-Court, Vallioor, has committed an error in rejecting the application for impleading the petitioner as a legal representative of the deceased fourth defendant in O.S.No.527 of 2004/fourth respondent in A.S.No.23 of 2017.

8. Defending the impugned order, the learned counsel for the fourth respondent submits that the dispute was between the plaintiff and the defendants in the suit in O.S.No.527 of 2004. The property in question belongs to the fourth respondent's paternal uncle [fourth defendant's elder brother] Narayanan and that by a registered settlement deed, the property was settled in favour of the fourth respondent/plaintiff and her younger sister Backiyalakshmi and the said Backiyalakshmi, in turn, had also executed a release deed, dated 20.09.1987, in favour of the fourth respondent herein/plaintiff. Thus, the decree came to be passed by the Trial Court on 14.09.2016 decreeing the suit, affirms that the so-called sale deed executed by the fourth respondent's father Late.Subbiah Pillai [fourth defendant] on 12.07.1999 was a genuine document, but without the authority.

9. In this connection, the learned counsel for the fourth respondent has drawn the attention of this Court to the following passages from the judgment and decree of the Trial Court in O.S.No.527 of 2004.



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"15. ... ஆவணம் பதிவு செய்த காலத்தில் சுப்பையா பிள்ளை கையெழுத்து மட்டும் போட்டிருக்கிறார். கைரேகை வைக்க மறுத்துவிட்டார்.... என்று சாட்சியம் அளித்துள்ளார். இந்நிலையில் சாட்சி சான்றாவணம் 3-யை ஆராய்ந்த போது பி.வா.சா.ஆ.1 கிரைய ஆவணம் எழுதிக் கொடுத்த சுப்பையா ரேகையிட மறுக்கிறார் என்ற குறிப்பு உள்ளது. எனவே பி.வா.சா.ஆ.1 கிரைய ஆவணம் செல்லத்தக்க ஆவணம் என்று இந்நீதிமன்றம் முடிவு செய்கிறது. ஆனால் பி.வா.சா.ஆ.1 கிரைய ஆவணமானது பி.வா.சா.ஆ.2 கிரைய ஆவணத்தை அடிப்படையாக கொண்டு எழுதப்பட்டுள்ளது என்று இந்நீதிமன்றத்தால் அறிய முடிகிறது. எனவே பி.வா.சா.ஆ.2 கிரைய ஆவணம் செல்லத்தக்க ஆவணமா என்று இந்த நீதிமன்றம் ஆராய்ந்த போது, பி.வா.சா.ஆ.2 கிரைய ஆவணமானது வாதியால் 4ம் பிரதிவாதிக்கு கேரள மாநிலத்தில் உள்ள பாரசாலையில் எழுதிக் கொடுக்கப்பட்டுள்ளது."

10.It is submitted that the Trial Court has concluded that the fourth respondent's father [fourth defendant] Late.Subbiah Pillai had indeed executed a sale deed in favour of the said Muthuramalingam on 12.07.1999. However, the Court has also concluded that the fourth respondent's father Late.Subbiah Pillai had no authority to execute the sale deed.

11.That apart, the sale deed was held to be void in the light of Section 28(b) of the Registration Act, 1908, which reads as follows:-

"28.Place for registering the documents relating to land.-

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void."

12.It is submitted that the persons, who were aggrieved by the decision of the Trial Court, dated 14.09.2016, were only the legal representatives of



Late.Muthuramalingam [respondents 1 to 3 herein]. It is submitted that the fourth respondent's father Late.Subbiah Pillai had not filed a further appeal against the judgment and decree, dated 14.09.2016. As a so-called legal representative of the fourth respondent's father, the petitioner cannot claim any right, which was not exercised by Late.Subbiah Pillai during his lifetime.

13.That apart, it is submitted that the Will, dated 30.05.2014, registered as Document No.9 of 2014, itself was inconceivable in the light of the earlier sale deed, dated 12.07.1999, from the deceased Subbiah Pillai's point of view as he had indeed executed the above said sale deed, which stands confirmed by the judgment and decree of the Trial Court. The subsequent Codicil, dated 31.07.2019, also cannot be countenanced and on the basis of the same, the petitioner cannot seek for impleading himself as a legal representative of the deceased Subbiah Pillai [fourth defendant/father of the fourth respondent herein].

14.In my view, the impugned order in I.A.No. 2 of 2021 in A.S.No.23 of 2017 does not call for any interference. It is a well reasoned order. In my view, the appellate court has rightly dismissed the above interlocutory application filed by the petitioner to implead himself as respondent in the above Appeal Suit.

15.The petitioner has to prove his rights over the property as a legal



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representative of late.Subbiah Pillai, father of the fourth respondent herein (O.S.No. 527 of 2004) in the manner known to law by proving that the will which is said to be executed by Late.Subbiah Pillai was genuine. It is only after establishing such a right, the petitioner can have a right of audience in the above Appeal suit filed by the respondents Nos 1-3 against respondent No 4.

16.As things stand today, even the Will that is said to have been executed on 30.05.2014 which followed by a Codicil dated 31.07.2019 cannot be acted upon, as the fourth defendant in the suit/second respondent in the above appeal, late Subbaih Pillai did not have a right to execute a Will. The petitioner has to file an independent suit to prove that the Will that was executed was valid. The petitioner will have to file an independent suit to declare the judgement and decree passed in O.S.No.527 of 2004 as null and void.

17.In view of the above, I do not find any reasons to interfere with the impugned order dated 08.08.2022, in I.A.No. 2 of 2021 in A.S.No.23 of 2017. Consequently, the present Civil Revision Petition is liable to be dismissed. Accordingly it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No

08.06.2023



Internet : Yes / No
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To

The Sub Judge,
Vallioor.



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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.2639 of 2022

DATED : 08.06.2023