

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2013

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD).No.2576 of 2010
and
M.P.No.1 of 2010

1. Rajasekaran Pillai
2. Ramamurthy Pillai
3. Dharbaraniyam Pillai
4. Ravichandran Pillai
5. Ashok Kumar Pillai.

... Petitioners

.. Vs ..

Kaliyaperumal

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.12.2009 passed by the learned Subordinate Judge, Chidambaram, in I.A.No.172 of 2009 in A.S.No.34 of 2008.

For Petitioners : Mr.A.Muthukumar

For Respondent : M/s. S.Ratnasabapathy

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ORDER

This Civil Revision Petition is directed against the order dated 31.12.2009 passed by the learned Subordinate Judge, Chidambaram, in I.A.No.172 of 2009 in A.S.No.34 of 2008.

2. The petitioners are claiming to be the legal heirs of Ramadoss Pillai, who was appellant in A.S.No.34 of 2008. The appeal was filed against the final decree passed by the learned District Munsif-cum-Judicial Magistrate, Parangipettai, in O.S.No.615 of 1977. The sole appellant died on 07.06.2009. Subsequently, the petitioners, who are sons and grandsons of the appellant filed an application in I.A.No.172 of 2009 to implead them as legal heirs of the appellant on the basis of a registered Will dated 06.07.1998. The respondent filed his counter contending that other legal heirs viz., wife and daughters were also available, the petitioners without adding them, filed the application, hence, it is not maintainable in law. The learned Sub Judge, Chidambaram, dismissed the application holding that the original Will was not produced and other legal heirs were not brought on record.

3. Mr.A.Muthukumar, learned counsel appearing for the petitioners submitted that the petitioners are claiming right over the property of the appellant Ramadoss Pillai on the basis of the registered Will dated 06.07.1998. Therefore, they need not take any steps to bring the other legal heirs of the deceased appellant. The learned counsel further submitted that they produced the registered Will along with application. But, the learned Judge, without

considering the same, dismissed the application holding that the original Will was not produced, which is factually incorrect. The learned counsel further submitted that even without the registration of Will, any legal heirs of the deceased appellant can come on record and only during enquiry, if the Court finds that other legal heirs were not impleaded, the Court can direct the appellant to bring them on record. As per the provision of Order 22 Rule 5 of the Civil Procedure Code, if any dispute with regard to the legal heirs of the deceased appellant, the Court can conduct enquiry and without doing so, the application cannot be rejected. The learned counsel for the petitioners relied on a decision of the Hon'ble Apex Court reported in **[1993] 2 Supreme Court Cases 620 [Gema Coutinho Rodrigues Vs. Bricio Francisco Pereira and others]**, in support of his contentions.

4. Per contra, Mr.S.Ratnasabapathy, learned counsel appearing for the respondent submitted that the learned Subordinate Judge had granted opportunity to lead evidence and prove the genuineness of the legal heirs, but the petitioners did not avail the opportunity, that they did not produce the original Will and also the petitioners did not take any steps to implead the other legal heirs. Therefore, the learned Judge had rightly dismissed the

application, which is in order.

5. As rightly contended by the learned counsel for the petitioners, the application to bring the legal heirs on record cannot be rejected merely on the ground that the original Will was not produced and the other legal heirs were not impleaded. In **[1993] 2 Supreme Court Cases 620 [Gema Coutinho Rodrigues (SMT) Vs. Bricio Francisco Pereira and others]**, one of the plaintiffs died and his daughter filed a petition to come on record. But the learned trial Judge dismissed the petition holding all his successors ought to have been made parties, but the Hon'ble Supreme Court set aside the order and held as follows:-

"5. Trial court should have directed the appellant to implead other heirs if any, of the deceased mother who was also a party to the suit by way of defendants. But the application for being brought on record by the appellant could not have been rejected. We, accordingly, set aside the order of the trial court dated March 19, 1979 as well as the order of the High Court dated January 11, 1983 and direct the trial court to bring the appellant on record as legal heir of the deceased plaintiffs and permit the appellant to implead any other heirs as co-defendants."

6. The judgment of the Hon'ble Apex Court squarely applies to

the case on hand. Hence, the order made in I.A.No.172 of 2009 in A.S.No.34 of 2008 is set aside.

In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2013

Index : Yes
Internet : Yes
jrl

To

The Subordinate Judge,
Chidambaram.

K.KALYANASUNDARAM, J.
Jrl

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