

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.511 of 2014

and

M.P.No.1 of 2014

Krishnamoorthy

.. Petitioner

Vs

1.Subbarayan

2.Rajaram

3.Saraswathi

4.Lakshmi

5.Kanchana

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.12.2013 made in I.A.No.808 of 2013 in O.S.No.89 of 2008 on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.N.Suresh (For R1)

No appearance (For R2 to R5)

ORDER

The Civil Revision Petition is filed against the order dated 13.12.2013 made in I.A.No.808 of 2013 in O.S.No.89 of 2008 on the file of the Principal

District Munsif Court, Villupuram.

2.The petitioner as a plaintiff filed a suit in O.S.No.89 of 2008 for partition and separate possession of 1/6 share in the suit properties. The suit properties are self acquired properties of plaintiff's father Seenuvasa Reddiar. During his lifetime he executed a settlement deed in favour of 5th defendant with regard to item Nos.1 to 3 of the suit properties and in respect of other properties, he died intestate. Hence, all are entitled to 1/6 share in the suit properties. The first defendant filed a written statement and contested the suit by stating that the plaintiff's father has executed a settlement deed in favour of 5th defendant and in respect of remaining portion there was an oral partition during his lifetime. It is further stated that before the death of plaintiff's father, he executed a will while he was in a sound disposing state of mind and after his death, the will came into existence, wherein the plaintiff was allotted A Schedule Property. After framing of issues, both sides evidence was completed and when the matter was posted for arguments, the petitioner/plaintiff filed an application in I.A.No.808 of 2013 to re-open the case to examine some other witness. The Trial Court after hearing both sides, dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/plaintiff.

3.Learned counsel for the petitioner submitted that to prove the will, examination of witness is necessary and hence, he filed an application. But the Trial Court has not considered this aspect and dismissed the application stating that the name of the witness has not been mentioned. He further submitted that if the name of the witness has been mentioned, the respondents are influenced person and they will prevent the witness from appearing before the Court. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Resisting the same, the learned counsel for the respondents submitted that the petitioner/plaintiff has not mentioned the reason as to why he want to examine the witness. He further submitted that the will has been proved by way of examination of attestor and as per the Will, A schedule property has been allotted to the petitioner/plaintiff. So, in the application, the petitioner/plaintiff has not given any reason as to why witness has to be examined, when plaintiff was examined and whom to be examined. That factum was rightly considered by the Trial Court. To substantiate his argument, he relied upon the decision reported in **CDJ 2014 MHC 1783 (S.Ramasamy vs. Perumal and others)**, wherein it was held that not given any details as to why the relevant documents were not produced before the witnesses were examined, why the documents were not marked and through

them, the questions were not posed on the witnesses and petition to recall witness ought to have dismissed. Hence, he prayed for dismissal of the revision petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The point to be decided is whether the petitioner/plaintiff is entitled to re-open the case for examining other witnesses? It is pertinent to note that the suit is filed by the petitioner/plaintiff for partition and separate possession of 1/6 share in the suit properties against his brother and sister, but the nature of the properties is not disputed. During the lifetime of his father, there was an oral partition between the sons and he had executed a will in the sound disposing state of mind. The said will came into effect after his death. As per the will, A schedule property has been allotted to the plaintiff. On perusal of the affidavit filed along with the application, the petitioner/plaintiff has stated that the case has been posted for arguments and at the time of examination, he has not examined the witness which is important. Hence, he want to reopen the case. But he has not stated as to for what purpose he want to examine the witness. The Trial Court has considered the application on merits and came to the correct conclusion that the affidavit filed by the

petitioner is bereft of material particulars as to whom he is going to examine and for what purpose he is going to examine the witness and dismissed the same. It is the duty of the respondent/defendant to prove the will and dispel the suspicious circumstances in the will, only the beneficiary and legatee of the will alone has to prove that the will is free from all suspicion and it is not the duty of the plaintiff to prove that the will is forged. The Trial Court has rightly considered the decision reported in **2011 (1) SCC 275 (K.K.Velusamy vs. N.Palanisamy)** and to avoid unnecessary adjournment and pendency. Therefore, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, the impugned order passed by the Trial Court is hereby confirmed and consequently, the Civil Revision Petition is hereby dismissed.

7.In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

18.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Principal District Munsif Court, Villupuram.

R.MALA. J.,

cse

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