

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4061 of 2015

and

M.P.No.1 of 2015

1.Nallammal
2.Mahalingam

.. Petitioners

Vs

Kaliappa Gounder

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.03.2015 made in I.A.No.51 of 2015 in O.S.No.71 of 2010 on the file of the Subordinate Court, Rasipuram.

For Petitioners : Mr.A.K.Kumaraswamy

ORDER

The Civil Revision Petition is filed against the order dated 05.03.2015 made in I.A.No.51 of 2015 in O.S.No.71 of 2010 on the file of the Subordinate Court, Rasipuram.

2.Learned counsel for the petitioners submitted that the petitioners as plaintiffs filed a suit in O.S.No.71 of 2010 for partition and separate possession

of the suit item-I of the properties into 3 shares and allot one share to the plaintiffs and partition of suit item-II of properties into 3 shares and allot 2 shares to the plaintiffs and pass a final decree stating that the properties belong to the father of the first plaintiff and the defendant, viz., Late V.M.Sengoda Gounder. He died intestate on 25.02.1989. The mother of the first plaintiff and the defendant, viz., Pavayee Ammal and she died intestate on 19.02.1998. The said Pavayee Ammal executed a will dated 04.04.1997 bequeathing her properties in favour of the plaintiffs and according to which the first plaintiff was entitled to a life estate and the second plaintiff who is the son of the first plaintiff, entitled to take it absolutely after the life time of the first plaintiff. Item No.1 of the suit properties belong to Late V.M.Sengoda Gounder, which is an ancestral property and out of the income derived she purchased item No.2 of the suit property. Hence the plaintiffs are entitled to 1/3 share in the property. Therefore they filed a suit for partition and separate possession.

3.The defendant filed a written statement stating that the alleged will said to have been executed by Pavayee Ammal is a forged one. He further submitted that the properties are the self acquired properties of the Late V.M.Sengoda Gounder and the plaintiffs have no share in the properties. During the pendency of the suit, the defendant filed an application in

I.A.No.51 of 2015 for reception of additional written statement and the said application was allowed. The learned counsel for the petitioners submitted that the suit is filed in the year 1998 in O.S.No.326 of 1998 and subsequently it was transferred and re-numbered as O.S.No.71 of 2010. He would also submit that only with a view to drag on the proceeding the defendant has filed an additional written statement when the matter was posted for examination of plaintiffs witness. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Considered the submission made by the learned counsel for the petitioners and perused the typed set of papers.

5.Considering the facts and circumstances of the case and on perusal of the typed of set of papers, the additional written statement is not mutually contradictory with the written statement already filed. A perusal of additional written statement shows that non-inclusion of the bank deposits in the name of the Late V.M.sengoda Gounder is fatal. The further defence taken is that the suit is not properly valued and the Court fee paid is also not correct. Furthermore, the suit is barred for mis-joinder of necessary parties. Hence, I am of the view that no mutual contradictory defence has been taken by the defendant. The Trial Court has considered all the aspects in proper

perspective and has rightly allowed the application. Hence, I do not find any reason to interfere with the finding of the Trial Court. Hence, the impugned order passed by the Trial Court is hereby confirmed and the Civil Revision Petition is hereby dismissed.

6.In the result, the Civil Revision Petition is dismissed. No costs.

7.At this juncture, the learned counsel for the petitioners sought for early disposal of the suit since the suit is of the year 1998. Considering the request made by the learned counsel for the petitioners, the Trial Court is directed to dispose of the suit in O.S.No.71 of 2010 within three months from the date of receipt of a copy of this order.

15.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Rasipuram.

R.MALA. J.,

cse

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