



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(PD) (MD) No.230 of 2015

and

M.P.(MD) No.1 of 2015

L.Bose ... Petitioner/4th Respondent/4th Defendant

-vs-

1.R.Ranmanathan ... Respondent/Petitioner/Plaintiff

2.R.Krishnasamy

3.S.Bose

4.Seethalakshmi ... Respondents / Respondents 1 to 3 /
Defendants 1 to 3

5.Nagendran ... Respondent / 5th Respondent / 5th Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 08.01.2015, passed by the Sub Court, Palani, in I.A.No.354 of 2014 in O.S.No.193 of 2005.

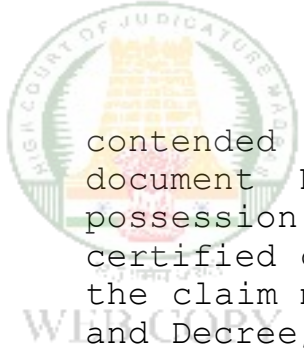
For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.M.P.Senthil for R1

O R D E R

The order, dated 08.01.2015, in I.A.No.354 of 2014 in O.S.No.193 of 2005, on the file of the learned Subordinate Judge, Palani, is under challenge in this civil revision petition primarily on the ground that the order would run counter to the direction given by the High Court in it's Order, dated 29.04.2013, in C.M.A.No.322 of 2012.

2. The first respondent filed a suit in O.S.No.193 of 2005, against the petitioner and respondents 2 to 5, before the learned Subordinate Judge, Palani, praying for a decree of partition and separate possession of his share. The first respondent made a claim on the basis of a Will stated to have been executed by his father Rajagopal Pillai. The petitioner contested the suit by filing written statement. The petitioner in his written statement



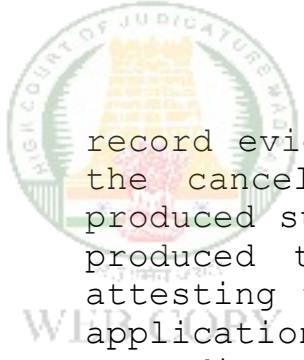
contended that the said Rajagopal Pillai cancelled the Will by document No.40 of 1990. Since the petitioner was not in possession of the original deed of cancellation, he marked a certified copy of the cancellation deed. The Trial Court rejected the claim made by the petitioner and decreed the suit, by Judgment and Decree, dated 16.02.2008.

3. The petitioner preferred first appeal in A.S.No.23 of 2008, before the learned Principal District Judge, Dindigul. Before the First Appellate Court, the petitioner produced two documents, viz., (1) original deed of cancellation and (2) copy of the plaint and written statement filed by the first respondent in the earlier suit. The learned First Appellate Judge allowed the appeal in A.S.No.23 of 2008, by Judgment and Decree, dated 29.11.2011 and set aside the Judgment and Decree, dated 16.02.2008 in O.S.No.193 of 2005 and remanded the matter for fresh consideration. The Decree, dated 29.11.2011, passed by the learned First Appellate Judge, was challenged by the first respondent in C.M.A.(MD) No.322 of 2012, before this Court. This Court was pleased to set aside the order of remand and directed the party to appear before the First Appellate Court on 24.06.2013 and on such appearance, the learned First Appellate Judge was directed to give notice to both the parties either to take evidence on the documents filed under Order 41 Rule 27 of the Code of Civil Procedure or to direct the learned Trial Judge to record such evidence and forward the same for the consideration of the learned First Appellate Judge.

4. The learned First Appellate Judge, pursuant to the directions issued by the High Court, directed the learned Trial Judge to record evidence on the documents filed under Order 41 Rule 27 C.P.C., and to forward the same for fresh consideration. The petitioner before the Trial Court filed additional proof affidavit and produced the cancellation deed in original. The said cancellation deed was marked as Ex.B3. The matter was posted for cross-examination of the attesting witnesses. The first respondent, in the meanwhile, filed an interlocutory application in I.A.No.354 of 2014 opposing the prayer to record the evidence of attesting witnesses. The Trial Court, by order dated 08.01.2015, recorded the first respondent's objection. Feeling aggrieved by the said order, dated 08.01.2015, the petitioner is before this Court.

5. Heard the learned counsel for the respective parties.

6. This Court in C.M.A.(MD) No.322 of 2012 issued a direction to the learned First Appellate Judge to permit the parties to take evidence or to send the matter to the Trial Court for recording evidence and forwarding the same for fresh consideration. The First Appellate Court referred the matter to the Trial Court to



record evidence. The petitioner has already produced the copy of the cancellation deed. It was only the original, which was produced subsequently and marked as Ex.B3. The petitioner, having produced the document in Ex.B3, was permitted to examine the attesting witnesses. The first respondent filed an interlocutory application in I.A.No.354 of 2014 to record his objection. According to him, the attempt is to fill up the lacuna. The order passed by the learned Trial Judge, dated 08.01.2015, does not contain any indication that the prayer to examine attesting witnesses was declined. The Trial Court simply recorded the objection made by the first respondent. Such being the position, the petitioner was not correct in contending that the Trial Court declined to permit him to examine the attesting witnesses.

7. The learned Subordinate Judge, Palani, is directed to permit the petitioner to examine the attesting witnesses. Such examination would be subject to the objection by the first respondent. The evidenciary value of the evidence let in by the petitioner by examining the attesting witnesses would be decided by the learned First Appellate Judge in the light of the objection made by the first respondent. Since the suit is of the year 1995, every effort should be taken by the learned Subordinate Judge, Palani, to record evidence early.

8. The learned First Appellate Judge is directed to dispose of the first appeal in A.S.No.23 of 2008 on merits as expeditiously as possible.

9. The civil revision petition is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O.,)

/True Copy/

Sub-Assistant Registrar

To:

1. The Principal District Judge, Dindigul.

2.The Subordinate Judge, Subordinate Court, Palani.

+1cc to Mr.T.Lenin Kumar, Advocate, in SR. No.17496.

+1cc to Mr.M.P.Senthil, Advocate, in SR. No.17057.