

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4160 of 2015 and M.P.No.1 of 2015

P.Gowrilingam

... Petitioner

vs.

P.Nesamani

...Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 11.08.2015 made in I.A. No.7156/2015 in O.S.No.2883 of 2012 on the file of XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Gunasekaran

For Respondents : Mr.D.Senthilkumar

ORDER

The arguments advanced on both sides are heard. The order of the court below and the materials produced in the form of typed set of papers are also perused.

2. The defendant in the original suit O.S.No.2883/2012 pending on the file of the XV Assistant Judge, City Civil Court, Chennai is the petitioner in the civil revision petition. The suit is one for partition filed by the respondent herein. The petitioner herein claims to have derived title to the suit property by

virtue of a Will dated 18.02.1988 allegedly executed by late Mrs. Annammal w/o. Shanmugam. The revision petitioner claims title to the property based on the said will allegedly executed by Annammal, who became the sole legal heir of Shanmugam on his death. The petitioner herein/defendant, who relies on the will dated 18.02.1988, is not having the will in his possession. Of course he has taken steps to summon the original will from one Vasudevan, who is said to be having the original with him. But the said Vasudevan denied having the original will with him. Under the said circumstances, the petitioner herein/defendant made an attempt to lead secondary evidence in proof of the will, by producing a xerox copy of the alleged will.

3. The said attempt to lead secondary evidence in proof of the will, was resisted by the respondent herein/plaintiff on the premise that even the original will could not be received in evidence, as it is a will, which requires mandatory probate under Section 213 of the Indian Succession Act, 1925, as it is one that falls under sub clauses (a) and (b) of Section 57 of the Indian Succession Act, 1925.

4. The learned trial Judge, after hearing both sides, dismissed the petition filed for the purpose of marking the said xerox copy of the will as a document on the side of the petitioner herein/defendant by order dated 11.08.2015. The said order is sought to be challenged in the present revision preferred under Section 115 of the Code of Civil Procedure, 1908.

5. First of all, the order sought to be challenged, is excluded from the purview of revisable orders by the proviso to sub section (1) to Section 115 of the Code of Civil Procedure, 1908. The proviso reads as follows:

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

The order, which is sought to be challenged in the revision, cannot be said to be one which would have resulted in the final disposal of the suit had it been decided in favour of the petitioner in the revision petition. Hence the revision filed under Section 115 of the Code of Civil Procedure, 1908 is bound to fail.

6. On merits also, the petitioner cannot succeed. Section 213 of the Indian Succession Act, 1925 makes it clear that no right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed. The said provision is made applicable to a will made by a Hindu if such Will falls within the classes specified in Clauses (a) and (b) of Section 57 of the Indian Succession Act, 1925. The classes of wills referred to in Section 213 are wills or codicils made by a Hindu on or after the first day of September, 1870 within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original jurisdiction of the High Courts of Judicature at Madras and Bombay and a will or codicil made outside the above territories and limits so far as it relates to immovable properties situate within those territories or limits.

7. It is the case of the petitioner that the Will was executed within

the ordinary original jurisdiction of the Madras High Court and that the property dealt with in the Will also situates within the local limits of ordinary original jurisdiction of the Madras High Court. Hence no right under the Will can be sought to be established without the Will being probated by a competent court or a letters of administration with the Will or a copy of the authenticated copy of the Will annexed to it has been obtained. In view of the same, the refusal by the trial court to admit the xerox copy of the Will as secondary evidence cannot be said to be erroneous and there is no scope for interfering with the order passed by the trial court.

In the result, the revision fails and the same is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

16.02.2016

Index : Yes
Internet : Yes
asr

To
The XV Assistant Judge, City Civil Court at Chennai

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.4160 of 2015

and

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