

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1049 of 2016

&

C.M.P.No.5842 of 2016

V.Parthasarathy

... Petitioner

Vs

1.S.Suseela
2.S.Thilagavathy
3.S.Sumathy
4.S.Mohankumar
5.Tirupurasundari
6.N.Vinayakamoorthy
7.N.Kutty @ Murugavel
8.N.Neelavathi @ Maheswari
9.V.Subalakshmi
10.V.Lakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.02.2016 in I.A.No.138 of 2015 in O.S.No.5479 of 2012 on the file of XVIII Additional City Civil Court, Chennai.

For Petitioner : Mr.T.Padmanabhan

ORDER

The present revision has been filed under Article 227 of the Constitution of India questioning the legality of the order dated

18.02.2016 made in I.A.No.138 of 2015 in O.S.No.5479 of 2012 on the file of XVIII Additional Judge, City Civil Court, Chennai. The 6th defendant in the original suit is the petitioner in the present revision. The plaintiffs in the said suit are the respondents 1 to 4. The other defendants figure as respondents 5 to 11 in the Civil Revision Petition.

2. Respondents 1 to 4 herein filed the above said suit for partition claiming 1/5th share in the plaint 'A' schedule property and also 1/5th share in the plaint 'B' schedule property. In addition to the relief of partition, a relief of permanent injunction has also been sought for against the defendants from alienating and encumbering the plaintiffs' share in the suit properties. The suit claim is resisted by the sixth defendant on the basis of a Will allegedly executed by Vadivel Chettiar on 20.08.1997 and also an even dated settlement deed.

3. The revision petitioner/sixth defendant filed Application No.138 of 2015 under Order XVI Rule 6 CPC to summon the Sub-Registrar, Kodambakkam to give evidence in respect of the Will executed by Vadivel Chettiar and registered as Document No.118 of 1997 on the Office of Sub-Registrar, Kodambakkam. The said application was resisted as one filed for prolonging the case and it was unnecessary to summon the Sub-Registrar for the proof of the Will. The application came to be filed when the suit was in the part- heard

stage and DW1's evidence in cross-examination was not completed. The learned trial Judge made an observation that if at all the revision petitioner/sixth defendant wanted to prove the said will, he should lead evidence in respect of the execution and attestation of the Will and the mere fact that the Sub-Registrar registered the Will will not entitle the revision petitioner to summon the Sub-Registrar to depose regarding the execution of the Will. The proof of registration has nothing to do with the proof of execution of the Will. A will need not be registered. Hence, the conclusion of the trial Court that the application to summon the Sub-Registrar was unnecessarily made cannot be said to be either defective or erroneous.

4. This Court does not find any defect or infirmity in the impugned order of the trial Court warranting interference by this Court in exercise of its power of superintendence. The revision does not even merit admission and the same deserves to be dismissed at the threshold.

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

01.04.2016

Index: Yes/No

Internet: Yes/No

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To

The District Munsif

Tirupur

P.R.SHIVAKUMAR, J

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