

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.130 of 2016

& C.M.P.No.683 of 2016

1.Thirumani

2.Raja

3.Selvamani

... Petitioners

VS.

1.Sakthi

2.Sudha

...Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 28.07.2015 made in I.A.No.317 of 2014 in O.S.No.134 of 2011 on the file of the learned Principal Subordinate Judge, Villupuram.

For Petitioners : Mr.C.Munusamy

For Respondents : Mr.L.S.M.Hasan Fizal

ORDER

The arguments advanced by Mr.C.Munusamy, learned counsel for the petitioners and Mr.L.S.Hasan Fizal, learned counsel for the respondents are heard. The material papers available on record are also perused.

2.The defendants in O.S.No.134 of 2011 on the file of the Principal Subordinate Court, Villupuram are the petitioners in the present revision. Admittedly, the suit properties were purchased by two brothers, by names Raghupathy and Thanikachalam under a Sale Deed dated 21.02.1979. The first respondent/first plaintiff is none other than the widow of the above said Thanikachalam. The second respondent/second plaintiff is the daughter of the said Thanikachalam. They filed the suit as legal heirs of Thanikachalam, claiming their half share in the suit property. The suit is contested by the petitioners herein. The said suit was filed by the respondents herein against the petitioners herein and three more persons. The petitioners herein, who figured as defendants 1 to 3 are contesting the suit on the basis of the written statement filed by the first petitioner herein/first defendant, which has been adopted by the petitioners 2 & 3 herein/defendants 2 and 3.

3.In their written statement, they contended that the above said Thanikachalam did not die intestate and he left a Will dated 08.05.1989 bequeathing his half share of the suit property in favour

of Raja, the second petitioner herein, thereby disinheriting the respondents herein/plaintiffs, who are none other than the widow and the daughter of the Thanikachalam. Thereafter, the petitioners herein filed an application in I.A.No.317 of 2014 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement regarding the date of alleged last Will of Thanikachalam propounded by them.

4.It is their contention that while preparing the written statement by inadvertance the date of Will propounded by them came to be typed as 08.05.1989 instead of 13.05.1989. The said application was resisted by the respondents herein/plaintiffs contending that the plea of a typographical error having crept in was nothing but a reason invented by the petitioners herein for seeking the amendment.

5.After hearing, the learned trial Judge, dismissed the said application as belated and also not bona-fide as the said application came to be filed after the completion of examination of witnesses on the side of the respondents herein/plaintiffs. As against the said order of the trial Court dated 28.07.2015, the present revision has

been filed by the petitioners herein.

6.The petition for amendment came to be filed at a belated stage, namely, after the completion of examination of the witnesses on the side of the respondents herein/plaintiffs. Till such time, the Will propounded by the petitioners herein/defendants was not produced before the trial Court. It seems, the same was kept as a secret weapon to be used at the belated stage. The contention of the petitioners is that a typographical error had crept in and hence, the petitioners should be allowed to correct the said typographical error regarding the date of the Will propounded by them.

7.At no place in the written statement, the alleged Will left by Thanikachalam was stated to have been executed on 13.05.1989. In para 5 of the written statement, at the first instance, the date of the Will was stated as 08.05.1989 and in two other places, repeatedly the date of Will has been typed as 08.05.1989 and in one place in para 7 of the written statement, the date of Will sought to be relied on by the petitioners has been noted as 08.05.1989 and so the date 05.08.1989. The date 08.05.1989 mentioned in the written statement cannot be admitted to be a result of a

typographical error. The contention of the petitioners is that the date 08.05.1989 was a typographical error and the said date came to be typed wrongly instead of 13.05.1989 cannot be countenanced.

8. Order 8 Rule 1(A) of Code of Civil Procedure mandates the defendants to file a list of documents relied on by the defendants and to produce the documents in his possession or power along with the written statement. In case, such documents are not in his possession or within his power, he is supposed to state in the list in whose possession or power the documents are. Curiously, in this case, not even a list of documents came to be annexed to the written statement. At least the defect could have been rectified by producing the list before the trial started with the leave of the Court to receive the documents, with an order of the Court condoning the delay for producing the documents. Unfortunately for the petitioners, it was not done.

9. The petitioners waited till the completion of evidence on the side of the respondents/plaintiffs and only thereafter, the petitioners came forward with an application for amendment. Even along with the application, no list of documents was produced. The petitioners

have also failed to produce either the Will or the copy of the will along with the petition for amendment. If all these aspects are taken into consideration, it will lead to a conclusion that the Will was not available with the petitioners at the time of preparing the written statement and the same is sought to be pressed into service by way of amendment. The petition, besides being belated, is not bona-fide as rightly held by the learned trial Judge. This Court does not find any infirmity or illegality, much less any defect in the order passed by the trial Court in dismissing the application for amendment putting forth a new case regarding the date on which Thanikachalam executed a Will in respect of his property, disinheriting his own wife and daughter giving his property to one of the sons of his brother. There is no merits in the revision and the same deserves dismissal.

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

11.03.2016

Index: Yes

Internet: yes
DP

To

The Principal Sub Court,
Villupuram.

P.R.SHIVAKUMAR.J.,

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