

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) No.1347 of 2016
and CMP.Nos.7574 and 15047 of 2016

Sathyanarayanan

... Petitioner

Versus

1. Mohanarangam
2. Jegannathan
3. Komalavally
4. Pushpalatha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 29.03.2016 in I.A.No.140 of 2016 in O.S.No.57 of 2011 on the file of the III Additional District Judge, Puducherry.

For Petitioner	:	Mr.D.Ravichander
For R1 and R2	:	Mr.R.Thiagarajan
For R3 and R4	:	Mr.A.Devnarendhan

ORDER

The third respondent filed a suit against the petitioner and respondents 1, 2 and 4 before the learned III Additional District Judge, Puducherry in O.S.No.57 of 2011, claiming partition of the suit property into five equal shares and to allot one share to her with separate possession and enjoyment. The petitioner filed written statement and contested the suit.

2. The respondents 3 and 4 in the said suit filed an application in I.A.No.140 of 2016 to direct the petitioner, who was shown as first defendant

in the suit, to produce the original Will dated 07.12.1968 executed by Govindarassou @ Jegnnatha Mudaliar. The petitioner in his counter affidavit made it clear that he is not in possession of the original Will dated 07.12.1968. Even then, the learned Trial Judge directed him to produce the Will before the Court. The said order is under challenge in the Civil Revision Petition.

3. The learned counsel for the petitioner contended that the petitioner took a specific contention before the Trial Court that he is not in possession of the original Will. According to the learned counsel, in spite of the pleading that the petitioner is not in possession of the original Will, the Trial Court directed him to produce the Will.

4. The learned counsel for the respondents 1 and 2 contended that the petitioner is in possession of the original Will. According to the learned counsel, the third respondent executed a release deed in favour of the petitioner and fourth respondent, wherein, a reference was made about the Will dated 07.12.1968. The learned Counsel therefore contended that the parties are well aware of the Will dated 07.12.1968. The course of conduct adopted by the parties clearly shows that the original Will is in the possession of the petitioner. According to the learned Counsel, the Trial Court has rightly directed the petitioner to produce the Will.

5. The respondents 1 and 2 placed reliance on the Will dated 07.12.1968 and contended that Govindarassou @ Jegannatha Mudaliar executed a Will in favour of his male issues. The Will was transcribed before the Notary and it was registered as Document No.238/1991 on 09.09.1991.

6. The petitioner in his counter affidavit in I.A.No.140 of 2016 very clearly stated that he is not in possession of the original Will dated 07.12.1968. Since a categorical stand was taken by the petitioner that he is not in possession of the original Will, the Trial Judge was not correct in directing him to produce the Will.

7. The documents available in record indicate that the Will was executed before the Notary and it was subsequently registered before the Registration Department. There is a reference about the said Will in the document dated 15.07.2013. The said document clearly indicates that the settlement deed was registered on 15.07.2013 releasing share by the first defendant in favour of the plaintiff and the second defendant. There is a clear reference about the Will dated 07.12.1968 in the said document. The Will was registered before the Sub Registrar in Book No.3, Volume 57, pages 259 to 263 vide document No.238/1991. It was registered after adjudication. The respondents 1 and 2 are stated to be not in possession of the Will. Even according to the petitioner, he is not in possession of the Will. The petitioner is well aware of the existence of the Will and the same is

evident from the release deed dated 15.07.2013. It is open to the respondents 1 and 2 to lead secondary evidence as provided under Section 65 of the Indian Evidence Act, 1872.

8. The learned Judge was not correct in directing the petitioner herein to produce the registered Will. Since the respondents 1 and 2 are entitled to prove the Will by leading secondary evidence, such a course should be adopted in the subject case.

9. The respondents 1 and 2 are permitted to lead secondary evidence as provided under Section 65 of the Indian Evidence Act, 1872 by producing a certified copy of the Will.

10. The learned Judge is directed to consider the secondary evidence and decide the suit on merits and as per law.

11. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

14.11.2016

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To

The III Additional District Judge,
Puducherry.

K.K.SASIDHARAN, J.
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