

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.1579 and 1580 of 2016
and
C.M.P.No.8522 of 2016

1.Angayarkanni
2.Praveen
3.Pradeep
4.Rajanan

... Petitioners in both the
above CRPs

vs.

R.Ramesh

... Respondent in both the
above CRPs.

Civil Revision Petition No.1579 of 2016 filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.3.2016 in I.A.No.1568 of 2015 in O.S.No.173 of 2009 on the file of the District Munsif Court, Sankari.

Civil Revision Petition No.1580 of 2016 filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.3.2016 in I.A.No.1569 of 2015 in O.S.No.173 of 2009 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.D.Shivakumaran

For Respondent : Mr.N.Manoharan

ORDER

The respondent filed a suit for declaration against the petitioners before the learned District Munsif, Sankari, in O.S.No.173 of 2009. The respondent placed reliance on a Will dated 6.6.2002 in support of his claim.

2. The petitioners filed a Written Statement and disputed the genuineness of the Will. The petitioners have placed reliance on an earlier Will dated 15.3.1999.

3. Subsequently, the petitioners filed two Interlocutory Applications in I.A.Nos.1568 and 1569 of 2015, primarily, for the purpose of comparison of signature in the Will dated 6.6.2002. The applications to send the Will for expert's opinion along with a prayer for appointment of advocate commissioner were dismissed by the Trial Court.

4. The learned counsel for the petitioners submitted that the petitioners made an attempt to prove that no such Will was

executed on 6.6.2002. The petitioners being the beneficiaries of the Will dated 15.3.1999 are entitled to plead and prove that no such Will was executed on 6.6.2002. This aspect was not considered by the learned trial Judge and as such, the order under challenge requires interference by this Court.

5. I have also heard the learned counsel for the respondent.

6. The suit in O.S.No.173 of 2009 was instituted by the respondent. The respondent placed reliance on a Will dated 6.6.2002 to make a claim with respect to the property. It is true that the petitioners disputed the genuineness of the Will.

7. The burden of proof in a case of this nature is on the respondent to plead and prove that such a Will was executed on 6.6.2002. The respondent has to prove the Will in the light of provisions of the Indian Evidence Act. There is no question of defendants adducing evidence to prove the negative. When there is a statutory requirement to prove the Will by adducing evidence, there is no point in taking the burden by defendants. Therefore, I am

therefore of the view that the learned trial Judge was perfectly correct in dismissing the Applications.

8. In the result, the Civil Revision Petitions are dismissed.
No costs. Connected Miscellaneous Petition is closed.

9. This Order would not preclude the learned trial Judge from sending the Will for expert's opinion, in case, the Court is of the view that such a course is necessary for effective adjudication of the matter.

23.09.2016

Index : yes / no

Internet :yes / no

asvm

To

The District Munsif Court, Sankari.

K.K.SASIDHARAN, J.

(asvm)

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