

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(P.D.) No.2247 of 2016 and
CMP.No.11654 of 2016

1. Sarangapani
2. Muniammal
3. Arikovind
4. Pachaiammal
5. Elumalai
6. Guna
7. Akiladam

...Petitioners/Plaintiffs

versus

- 1.Sarathi
- 2.Rajakumar
3. Valli
4. Seenivasan
- 5.Ranganathan

...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, as against the order and decretal order dated 27.04.2016 passed in I.A.No.144 of 2016 in O.S.No.8 of 2010 by the District Munsif-cum-Judicial Magistrate, Vanur, Villupuram District.

For Petitioners : Mr.M.R.Jothimanian

For Respondents : Mr.A. Rajaganapathy

ORDER

The petitioners filed a suit for declaration and injunction. The suit was contested by the respondents by filing written statement. The petitioners after the closure of their evidence and before the date posted for arguments, filed a petition to re-open their side, for the purpose of examining the attesting witnesses. The application was dismissed. Challenging the same, the petitioners have filed this petition.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. There is no dispute that the petitioners have projected that there is Will in their favour. The Will was disputed by the respondents in the written statement. It is also a matter of record that while examining D.W.1, it was contended that there was no such Will as claimed by the petitioners. It was only thereafter, the petitioners filed an application in I.A.No.144 of 2016 to examine the attesting witnesses.

4. When there is a dispute as to whether the Will was executed, the petitioners were expected to prove the execution of Will. The petitioners are prepared to produce primary evidence before the Court. The learned Trial Judge was of the view that the petitioners ought to have examined the witnesses before the commencement of evidence on their side.

5. I am of the view that a reasonable opportunity could have been given to the petitioners.

6. In the result, the order dated 27.04.2016 passed in I.A.No.144 of 2016 in O.S.No.8 of 2010 is set aside. The learned Trial Judge is directed to post the matter for further evidence on the side of the petitioners on 04 October 2016. The petitioners are directed to produce the attesting witnesses for examination, on the fixed date of hearing. The respondents agreed to cross examine the witnesses on the very same day. In case the petitioners failed to produce the witnesses on the date of hearing as indicated above, the learned Trial Judge shall close their evidence.

K.K.SASIDHARAN,

J.

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7. The Civil Revision Petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2016

Index:Yes/No

Note : Issue Copy on 30.09.2016

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To

1. The District Munsif-cum-Judicial Magistrate, Vanur, Villupuram District.

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