

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2601 of 2016 and
CMP.No.13407 of 2016

P.Lingasamy

...Petitioner

versus

1.B.Premavathy

2.L.Premavathy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif Court at Kangayam, dated 04.07.2016 in I.A.No.611 of 2015 in O.S.No.367 of 2008.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.S.Saravanan for R1
No appearance for R2

ORDER

The first respondent filed a suit in O.S.No.367 of 2008 for partition. The suit was contested by the petitioner by filing written statement. The Trial Court framed issues. Thereafter, the first respondent filed an interlocutory application in I.A.No.611 of 2015 to direct the petitioner herein to begin his evidence at the first instance. The application was opposed by the petitioner.

2. The learned Trial Judge allowed the application on the ground that the petitioner in his written statement pleaded that there is a Will executed in his favour and as such, he is entitled to the property. The Trial Court was of the view that on account of the Will, the petitioner has to commence the evidence at the first instance.

3. The written statement filed by the petitioner in his capacity as first defendant in O.S.No.367 of 2008 indicates that the suit was resisted on multiple grounds. The Will dated 05.09.1989 was also taken as a ground to demonstrate that the first respondent is not having any share in the property.

4. The learned Trial Judge was of the view that since the petitioner placed reliance on the Will, it is for him to prove his case.

5. While considering an application under Order 18 Rule 1 of CPC, the Court has to consider the plaint and the written statement in its entirety. It is not as if the petitioner placed reliance on the Will alone to non-suit the first respondent. Since several defences were taken by the petitioner in his written statement in O.S.No.367 of 2008, the Trial Court was not correct in directing him to lead evidence at the first instance. I

am therefore of the view that the impugned order is liable to be set aside.

6. The order dated 4 July 2016 in I.A.No.611 of 2015 is set aside.

The first respondent is directed to begin the evidence.

7. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

09.11.2016

Index : Yes/No
svki

To

The District Munsif Court, Kangayam

K.K.SASIDHARAN, J.
(svki)

C.R.P.(P.D.) No.2601 of 2016

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