

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.2717 of 2016
and C.M.P.No.14029 of 2016

Jayalakshmi
Debtor

.. Petitioner/Judgment

Vs.

1.Mrs.Radha
2.Jayaraman

.. 1st Respondent/Decree Holder
.. 2nd Respondent/Judgment Debtor

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the order and decree in E.A.No.233 of 2013 in E.P.No.46 of 2013 in O.S.No.2463 of 1993 on 08.06.2016 passed by the Principal District Munsif Court, Alandur.

For Petitioner : Mr.T.K.Rajasekaran

ORDER

Civil Revision Petition is filed against the order and decree in E.A.No.233 of 2013 in E.P.No.46 of 2013 in O.S.No.2463 of 1993 on 08.06.2016 passed by the Principal District Munsif Court, Alandur.

2. One Govindammal, who is none other than the mother of the respondent herein namely, Radha has filed a suit in O.S.No.2463 of 1993 for partition and separate possession of 1/4th share in the suit property against three persons. The petitioner herein is arrayed as third defendant in the suit. After contesting the suit, preliminary decree has been passed and final decree has also been passed, against which, A.S.No.62 of 1995 has been filed before the Sub-Court, Poonamallee. The said appeal was dismissed with modification and aggrieved over the same, the petitioner herein has preferred a second appeal in S.A.No.415 of 2002 before this Court, which was dismissed for non prosecution. Thereafter, Govindammal/decreed holder died. Her daughter Radha/first respondent herein, who is alleged to be the legatee under the Will, which is said to have executed on 18.12.2001, has filed E.P.No.46 of 2013. At that time, the petitioner has come forward with an application in E.A.No.233 of 2013 under Section 47 read with 151 of CPC stating that the decree is non executable and the same was dismissed by the Executing Court, against which, the present revision is filed.

3. Learned counsel for the petitioner would submit that the Will is alleged to be executed on 18.12.2001. During pendency of the appeal and the second appeal, execution of the Will has not been

mentioned by Govindammal/plaintiff. He would further submit that the Will has not been proved in accordance with law. The first respondent alone is not a legal heir of Govindammal and she is having other children. But that factum was not considered by the Executing Court. Hence, he prays for setting aside the order.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.The first respondent herein has filed E.P.No.46 of 2013 as a legatee under the Will. It is true, the Will is an unregistered Will. On perusal of the order, it reveals that the beneficiary as well as the attester of the Will have been examined as R.W.1 and R.W.2 and it has been proved in accordance with law. As per the Will, other legal heirs of the deceased Govindammal are given some amount on selling the property. It is pertinent to note that other legal heirs of the deceased Govindammal have not disputed the Will. Furthermore, the deceased Govindammal is the only person hardly contested the suit. The petitioner herein is not a competent person to question the Will alleged to be executed by the said Govindammal. The legal heirs of Govindammal alone are having right to dispute the genuineness of the Will. As already discussed above, the legal heirs of deceased

Govindammal have not disputed the Will. In such circumstances, I am of the view that the Executing Court after considering the oral evidence of R.W.1 & R.W.2 and documents marked by the first respondent herein, came to the correct conclusion that the Will has been proved in accordance with law. On the basis of the Will, the first respondent as a beneficiary, is entitled to file execution petition for delivery, since she has stepped into the shoes of the decree holder. That aspect was correctly considered by the Executing Court. So I do not find any illegality or irregularity in the fair and decreetal order passed by the trial Court and it is hereby confirmed. As the petitioner with a malafide intention, not to give the share to the first respondent herein, has filed series of applications to drag on the proceedings, the Civil Revision Petition is dismissed with costs.

6.In the result, the Civil Revision Petition is dismissed with costs. The petitioner is directed to pay the costs of Rs.1,000/- (Rupees One thousand only) to the first respondent herein. Consequently, connected Miscellaneous Petition is closed.

14.12.2016

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Index:Yes/No

To

1.The Principal District Munsif Court, Alandur.

2.The Record Keeper
V.R.Section, High Court, Chennai.

R.MALA,J.

kj

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