

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.09.2016**

CORAM:

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

C.R.P.(P.D.) No.2926 of 2016 and
CMP.No.14915 of 2016

L.Jayaraman Mudaliar

...Petitioner

versus

Krishnaveni (Deceased 1st Petitioner/1st plaintiff)

1. N.Parameswaran
2. V.Kothai Nayagi
3. P.Vinayagamurthi
4. P.Subramanian
5. Vijayalakshmi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 16.02.2016 made in I.A.No.237 of 2012 in O.S.No.137 of 2010 on the file of the Court of the Subordinate Judge, at Vaniyambadi.

For Petitioner : Mr.M.V.Krishnan

ORDER

The predecessor in interest of the respondents filed a suit for partition before the Sub Court, Vaniyambadi. Subsequent to the death of their predecessor in interest, the respondents filed an application for amendment of the plaint for the purpose of incorporating a plea with regard to fabrication of a will. The application was allowed by the learned Trial Judge notwithstanding the objection raised by the petitioners. Feeling aggrieved, the petitioners are before this Court.

2. The learned counsel for the petitioner contended that during the life time, the predecessor in interest of the respondents failed to incorporate a plea with regard to the genuineness and correctness of the Will in the plaint, originally filed and as such, it would not be legally permissible to permit the respondents to incorporate the amendment in the already filed plaint with regard to the will. According to the learned counsel this aspect was not considered by the learned Trial Judge, while allowing the application for amendment.

3. The plaint in OS. No.137 of 2010 was filed by the predecessor in interest of the respondents, before the Trial Court praying for a decree

of partition. It is a matter of record that the petitioner in the reply notice sent to the counsel for the plaintiff in OS. No.137 of 2010 specifically contended that there was a will dated 20.08.1980 bequeathing the property to them. It is also a matter of record that there was no specific denial of Will in the plaint filed by the predecessor interest of the respondents.

4. Subsequently the respondents have filed an application in IA No.237 of 2012. According to the respondents the petitioners fabricated a Will to make it appear as if the property was bequeathed in favour of the petitioners. The Will is admittedly un registered Will. Naturally the respondents have a right to challenge the genuineness and correctness of the Will.

5. Even otherwise it is for the petitioner to plead and prove that such a Will was executed on 20.08.1980. The petitioners are required to prove the Will in the manner provided under the Evidence Act. The learned Trial Judge was perfectly correct in permitting the respondents to amend the plaint. I do not find any reason to take a different view in the matter.

6. In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed. It is open to
the petitioner to file an additional written statement.

22.09.2016

Index:Yes/No
Internet:Yes/No
svki/jv

To

The Subordinate Judge,
Vaniyambadi.

K.K.SASIDHARAN, J.

(svki/jv)

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