

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.853 of 2016

&

C.M.P.No.4755 of 2016

Mr.S.Swaminathan

... Petitioner

vs.

1.Mr.S.Dhanushkodi
2.The Sub-Registrar
Royapuram
Chennai – 600 001

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order regarding marking of two unprobated registered wills dated 01.03.2016 made in O.S.No.3643 of 2015 on the file of the 15th Assistant City Civil Judge, Chennai.

For Petitioner : Mr.S.Rajesh

ORDER

The plaintiff in the original suit O.S.No.3643 of 2015 pending on the file of XV Assistant Judge, City Civil Court, Chennai is the petitioner in the present revision preferred under Article 227 of the Constitution of India. The matter stands listed today for admission.

2. The arguments advanced by Mr.S.Rajesh, learned counsel for the petitioner are heard. Certified copy of the impugned order of the learned trial Judge dated 01.03.2016 and copies of the other documents produced in the form of typed-set of papers are also perused.

3. The above said suit came to be filed for a declaration that a registered partition deed dated 09.06.1998 bearing Document No.1441 of 1998 in the Register of the Sub-Registrar, Royapuram, Chennai is null and void and a permanent injunction against the first respondent/first defendant from selling, encumbering or mortgaging any part of the said property to third parties. The suit is being contested by the first respondent/first defendant. The plaintiff, who is the petitioner herein, submitted his proof affidavit to be recorded as his evidence in chief examination. The proof affidavit contains a schedule containing 16 documents to be marked as exhibits on his side. It included a certified copy of a registered Will dated 09.06.1971 bearing Document No.24 of 1971 and a certified copy of the another registered Will dated 28.02.1973 bearing Document No.23 of 1973. It also included originals of some other documents, mere copies of some other documents and a xerox copy of the Aadhar Card of the

petitioner/plaintiff. The first respondent/defendant did not take any objection regarding the marking of the documents provided in the list excepting the Document Nos.2 and 3, which are certified copies of the Registered Wills referred to above.

4. The learned trial Judge, sustained the objection raised by the first defendant and did not allow the petitioner/plaintiff to mark those two documents as exhibits as they were Wills executed within the original jurisdiction of the Madras High Court and neither probate of the Will nor Letters of Administration with the Will or copy of the Will annexed came to be obtained.

5. The learned counsel for the petitioner/plaintiff invited a specific order from the trial Court for its refusal to permit him to mark the above said documents as exhibits on the side of the petitioner herein/plaintiff. Thus, the learned trial Judge passed a detailed order giving reasons for not admitting those two documents as documentary evidence holding that those two documents were not admissible as it would be against Section 213 of the Indian Succession Act for want of probate or Letters of Administration. It is as against the said order of the learned trial Judge, the petitioner herein has approached this Court

invoking the Power of Superintendence of this Court under Article 227 of the Constitution of India.

6. Learned counsel for the petitioner, while advancing arguments for admission, submits that what Section 213 of the Indian Succession Act prohibits is the establishment of the right of the party as executor or legatee unless a Court of competent jurisdiction has granted probate or Letters of Administration, where such Probate or Letters of Administration is mandatory as per the said provision. Admittedly, two Wills sought to be relied on by the petitioner/plaintiff were executed within the original jurisdiction of Madras High Court and they dealt with the properties situated within the ordinary original jurisdiction of the Madras High Court. Hence, both sub-clause (a) and sub-clause (b) of Section 57 of the Indian Succession Act get attracted making it mandatory that Letters of Administration or Probate ought to have been obtained for the establishment of any right under the said Wills.

7. In this context, the counsel for the petitioner/plaintiff, before the trial Court, seems to have relied on the following two judgments of the Hon'ble Supreme Court 1) ***Smt.J.Yeshoda V. Smt.K.Shobha***

Rani [AIR 2007 SC 1721(1)] and 2) ***N.Srihari (D) by Lrs and Ors. Vs. N.Prakash and Ors [AIR 2008 SC 1548]***. The learned trial Judge, after considering the said judgments, had made a categorical observation that both the judgments were not applicable to the facts of the case. The very same judgments are cited before this Court and on perusing those judgments, this Court finds no ground for differing from the view expressed by the trial Court. So far as Smt. J.Yeshoda's case is concerned, it does not deal with unprobated will or a Will with regard to which Letters of Administration has not been obtained for establishment of any right as an executor or legatee under the Will. It simply dealt with the circumstances under which secondary evidence can be led. In fact, the Supreme Court in the said case dealt with the ambit of Section 63 and 65(a) of the Indian Evidence Act, which has got nothing to do with either Section 57(a) and (b) of the Indian Succession Act or Section 213 of the Indian Succession Act. Similar is the case dealt with in N.Srihari's case cited second supra. In the said case, a party relying on a Will was not able to produce the original Will and secondary evidence was adduced to prove the Will and its contents. Whether secondary evidence of a Will relied on by a party could be allowed or not was the question considered by the Supreme Court in the said case. Hence, this Court

does not find anything wrong in the observation made by the learned trial Judge. Both the judgments do not deal with the issue involved in this case, which is “whether a Will can be relied on for establishing a right as a legatee or executor when the same is unprobated and no Letters of Administration has been obtained?”.

8. Learned counsel for the petitioner also relies on an unreported judgment of a learned Judge of this Court in Application No.2171 of 2011 in C.S.No.925 of 2010. The learned Judge of this Court faced with resistance to an application for impleading a person who claims to be a legatee under an unprobated Will to be brought on record as a legal representative of a person who was a party and died during the pendency of the suit. In that case, what the learned Judge chose to do was to hold that it was only a right to represent the estate of the deceased which had to be decided in such LR application and for that purpose, without deciding whether any right can be established by virtue of the Will or not, the person claiming to be the legatee had to be permitted to be impleaded as a party to the suit. No right in respect of the property was decided in the LR application. That was the reason why the said order came to be passed as an interlocutory order in an application filed in a civil suit on the original side of the High Court. It

goes without saying that the question regarding inheritance to the property of the alleged testator was not at all touched by the order and hence, the said order also cannot render any help to the stand taken by the revision petitioner/plaintiff.

9. Learned counsel for the petitioner makes a meek attempt to contend that the two Wills in question were sought to be marked as exhibits not for the establishment of any right under the Will as a legatee, but to show that the other document executed in favour of the first defendant is fraudulent and that hence, the first defendant did not have a valid title to the suit property. The said argument is equivalent to stating that 'x' is not the wife of 'y' by producing a Certificate of Marriage between 'y' and 'z'. What is sought to be established is the marital status between 'y' and 'z' and thereby negating the marital status claimed between 'x' and 'y'. In the case on hand also, what the petitioner tries to do is that the properties were dealt with in those two Wills and hence the other document viz., partition deed under which the first defendant got the properties shall be null and void. It is nothing but an attempt to prove his right allegedly derived under the Will. The learned trial Judge rightly held that the documents could not be admitted in evidence and marked as exhibits, since Probate or

Letters of Administration is mandatory and the wills have not been probated and no Letters of Administration with the Will or copy of the Will annexed came to be obtained.

10. This Court does not find any substance in the challenge made to the impugned order of the trial Court, warranting interference by this Court in exercise of its power of superintendence over the Courts below under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission. On the other hand, it deserves to be dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

21.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

XV Assistant Judge
City Civil Court
Chennai

P.R.SHIVAKUMAR.J.,

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