

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

**Civil Revision Petition (PD) Nos.4326 & 4327 of 2010 &
M.P.No.1 of 2010 in C.R.P.(PD) No.4326 of 2010**

K.Annapoorani

... Petitioner

Versus

1. Palanathal @ Mylathal
2. Saraswathi, W/o.late Thirumurthy @ Mysamy
3. Subbathal
4. Maragatham
5. Saraswathi, W/o.Palanisamy
- 6.M.Kulandhaivel
7. Minor K.Geetha
rep. by mother & Guardian
Rajammal
8. Sivagami
9. Sumathi
10. Jayalakshmi
11. Saraswathi, W/o.Ravichandran
12. Pushpavalli
13. Prema
14. Pushpalatha
15. Malathi
16. Rathinam
17. Murugesan
18. Minor M.Vishnu
19. Minor M.Sakthivel
20. Minor M.Ravi
Minor respondents 18, 19 & 20 rep. by
Father and guardian Murugesan
21. Palanisamy
(R1 to R6, R.8 to 15 & 17 to 21 given up)

... Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the orders dated 10.11.2010 passed in I.A.No.533 & 534 of 2010 in O.S.No.38 of 2003 on the file of the learned Subordinate Judge, Udumalpet.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.N.Thiagarajan - R16

No appearance- R7

R1 to R6, R.8 to 15 & 17 to 21
given up

COMMON ORDER

The fair and decretal orders dated 10.11.2010 and made in the applications in I.A.Nos.533 and 534 of 2010 in the suit in O.S.No.38 of 2003 are under challenge in these memorandums of civil revisions. The revision petitioner in both the revisions is the plaintiff whereas, the respondents are the defendants in the suit.

2. It is manifested from the records that the revision petitioner had filed a suit in O.S.No.38 of 2003 on the file of the learned Subordinate Judge, Udumalpet as against the respondents seeking the reliefs of

a) to declare the Will dated 18.08.1987 said to have been executed by late A.Nachimuthu Gounder is true, valid, genuine and binding

b) to declare the decree passed in the suit in O.S.No.69 of 1992 by the District Munsif, Udumalpet is null and void and not binding on the plaintiff

c) to grant consequential relief of permanent injunction as against the 16th respondent restraining him from in any way interfering with the revision petitioner's right, title, peaceful possession of the plaint II schedule property

d) to direct the division of plaint II schedule property into two equal shares by mets and bounds, according to good and bad soil by appointing an Advocate Commissioner.

3. The suit was resisted by the respondents/defendants by filing their written statement and after formulating necessary issues, trial was commenced. During the course of trial, the original Will which is said to have been executed by the revision petitioner's paternal grand father late Nachimuthu Gounder was marked as Ex.A.6. According to the revision petitioner, during the course of trial, the 16th respondent/defendant had made an attempt to create, forged thumb impression of the testator as well as execution of the above said Will and in this connection, the revision petitioner had filed an I.A.No. 381 fo 2008 to send for the thumb impression, register, contending the thumb impression of late Nachimuthu Gounder found place in the mortgage deed dated 05.09.1952 bearing document No.1989 of 1952 and the Will dated 10.08.1987 bearing

document No.129 of 1987 from the Office of the Sub Registrar, Udumalaipet and the said application was dismissed on 10.1.2008. Therefore, the revision petitioner had preferred a Civil Revision Petition in C.R.P.No.765 of 2009. While disposing this revision petition, this Court has observed in para 13 as under :

“There is no dispute about the execution of the mortgage deed by late Sri A.Nachimuthu Gounder on 05.09.1952. According to the revision petitioner, the thumb impression of the executor of the Will was available in the Sub Registrar Office and as the Sub Registrar Office was maintaining the thumb impression register. Therefore, it was with a view to compare the thumb impression as found in the mortgage deed dated 05.09.1952 and the Will dated 10.08.1987, she has taken steps to summon those two documents. The learned Trial Judge was more serious about technicality in doing substantial justice and that was the only reason for dismissing the subsequent application.”

This Court in para 15 has further observed that the learned trial Judge was not correct in rejecting the application on the ground of the dismissal of the earlier application. Therefore, the above said revision petition in C.R.P.No.765 of 2009 was allowed after setting aside the impugned order therein.

4. Thereafter, on an application made by the revision petitioner/plaintiff in I.A.No.615 of 2009, a Commissioner was appointed to produce the said records for the purpose of comparison with the disputed thumb impression by the Forensic Sciences Department. The Commissioner, after having compared the documents by the expert had submitted a report on 12.07.2010. Then the suit was posted for continuation of trial on 04.10.2010. The revision petitioner/plaintiff in this circumstance, had taken out the above said applications in I.A.No.533 of 2010 to re-open the suit for examination of further witness on his side and he had also taken out yet another application in I.A.No.534 of 2010 to issue summons to the Sub Registrar, Udumalpet, directing him to produce and give evidence before the trial court with the certified copies of the mortgage dated 05.09.1952 bearing document No.1989 of 1952 and the Will dated 10.08.87, bearing the document No.129 of 1987 along with already produced thumb impression registers containing the thumb impression of late Nachimuthu Gounder. Both the petitions were resisted by the 16th respondent/defendant, wherein she has stated that the Sub Registrar functioning at the time of the execution of the alleged documents bearing Document Nos.1989 of 1952 and 129 of 1987 can utmost speak about the registration and not with regard to execution and attestation of the said documents.

5. After hearing both sides, the learned Subordinate Judge had proceeded to dismiss both the applications with a finding that already an application in I.A.No.381 of 2008, seeking the very same relief was dismissed and subsequently it was allowed by the High Court in revision. The petitions in I.A.No.533 of 2010 to reopen the suit and another petition in I.A.No.534 of 2010 to summon the Sub Registrar were filed only to procrastinate. The learned Subordinate Judge has also observed that the suit was filed in the year 2003 and it had been pending for the past seven years. The trial was commenced on 06.6.2007 and after giving adequate opportunities to both sides, the trial proceedings have been pending without any progress for the past three years. He has also observed that only for the purpose of delaying the proceedings, the revision petitioner has filed these petitions. Challenging the above said order, the present revision petitions are filed by the revision petitioner/plaintiff.

6. This Court has heard Mr.Hariharan, learned counsel for the petitioner and Mr.N.Thiagarajan, learned counsel for the contesting 16th respondent. The respondents 1 to 6, 8 to 15 and 17 to 21 were given up. Hence, they are called absent. The seventh respondent also is not present even after service of notice on her. Hence, she is also called absent.

7. As rightly observed by the learned Trial Judge, viz., the Subordinate Judge, Udumalpet, the suit itself was filed in the year 2003 and the written statement was also filed in the same year i.e., in the month of November. The entire case is revolving around the centre of the alleged Will dated 10.08.1987 said to have been executed by one Nachimuthu Gounder, who is none other than the paternal grandfather of the revision petitioner. The 16th respondent alone has been contesting the suit mainly on the ground that the said Will was not executed by the said Nachimuthu Gounder.

8. It is revealed from the records that after completion of the process of recording of evidence on behalf of both sides, the suit was posted on 06.09.2008 for advancing argument on either side. Only at this stage, an application in I.A.No.381 of 2008 under Order XVI Rule 1, 4(B) read with S.151 of the Code of Civil Procedure was filed by the respondent/plaintiff to issue summons for causing production of the thumb impression register. As per the revision petitioner/plaintiff, the mortgage deed dated 05.09.1952 bearing document No.1989 of 1952 on the file of the Sub Registrar, Udumalpet and the Will dated 10.08.1987 bearing document No.129 of 1987 on the file of the above said Sub Registrar have been executed by Nachimuthu Gounder. This petition was originally dismissed and subsequently, this Court while disposing the revision petition in C.R.P.No.765 of 2009, had allowed the same. In pursuant to the orders of this Court, a Commissioner was appointed and documents were also

sent to Forensic Sciences Department through the commissioner and a positive report was also received saying that the thumb impression find place in the documents received from the Sub Registrar's office, Udumalpet were tallied with the admitted signatures found place in the above said documents, viz., mortgage deed dated 05.09.1952 and Will dated 10.08.1987. Not being satisfied with this, the revision petitioner/plaintiff had taken out the above said applications viz., 533 and 534 of 2010 for reopening the suit and to issue summons to Sub Registrar, Udumalpet, directing him to produce the certified copies of the mortgage deed dated 05.09.1952 bearing document No.1989 of 1952 and Will dated 10.08.1987 bearing document No.129 of 1987.

9. Considering the pendency of the suit for a very long time and going on filing petition after petition unnecessarily by the revision petitioner/plaintiff, the trial Court had found that these two petitions were nothing but a futile exercise and only filed for the purpose of procrastinating the trial proceedings and therefore, proceeded to dismiss the said applications. On a cursory perusal of the impugned Orders along with the grounds of the revisions, this Court finds that the revision petitioners are devoid of any merit and therefore, they are deserved to be dismissed.

10. Accordingly, these revision petitions are dismissed and the impugned orders made in I.A.Nos.533 and 534 of 2010 are confirmed. However, there

shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

29.09.2016

Index:yes/no
Internet:yes

vrc

To

The District Munsif,
Udumalpet.

T.MATHIVANAN, J.,

vrc

C.R.P.(PD) No.4326 & 4327 of 2010

29.09.2016

