



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P (MD) No.423 of 2016
and C.M.P (MD) No.1831 of 2016**

U.Deivaraj ..Petitioner/2nd Petitioner/8th defendant

Vs.

1.Padmavathi alias Poongothai
2.Jeya Devi
3.Krishnath
4.Subja Ananthi
5.Minor Varshini
6.Minor Harshitha

(Minor 5th and 6th respondents rep. By its
next friend and guardian 4th respondent)

7.Vijayalakshmi
8.Minor Meenakshi Sundaram
(Minor 8th respondent rep. By
his mother and next friend 7th respondent)

9.Mariammal ..Respondents 1 to 9/Respondents 1to 9/
Plaintiffs 1 to 3, Defendants 2 to 7

10.Vignesh .. 10th respondent/1st petitioner/1st defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order, dated 06.10.2015 made in I.A.No.906 of 2014 in O.S.No.276 of 2010 on the file of the Sub-Court, Tuticorin.

For Petitioners : Mr.Veera Kathiravan

ORDER

The petitioner is the 8th defendant in the suit in O.S.No.276 of 2010. The respondents 1 to 3 are the plaintiffs filed a suit for partition. The petitioner along with other defendants contesting the suit. The petitioner and 10th respondent filed I.A.No.906 of 2014 to re-open and examine one doctor, who treated their father and also the Sub Registrar of assurance to prove the falsity of the respondents with regard to Will dated 08.10.2002 alleged to have been executed. The respondents filed their counter stating that they are not disputing Ex.P5 and the fact that their father was taking treatment during that time. As far as examination of Doctor and Sub-Registrar is concerned, the petitioner has not cross-examined the respondents with regard to place of registration of Will. The petitioner filed



this application only to drag on the proceedings. The respondents submitted that it is the case of the petitioner that Will dated 08.10.2002, based on which, the respondents claiming the relief, was cancelled by Will dated 1.10.2006. Therefore, it is for the petitioner to prove the Will dated 01.10.2006 and not to disprove the Will dated 08.10.2002 through Doctor and Sub-Registrar.

2.The learned Judge considering the materials on record, dismissed the application. Against the said order of dismissal, dated 06.01.2015, made in I.A.No.906 of 2014 in O.S.No.276 of 2010, the present Civil Revision Petition is filed.

3.The learned counsel for the petitioner contended that only by examining the doctor, who treated their father, it can be established date of the Will and can prove the health condition of their father. The second Joint Sub-Registrar Office is situated only at Pudugramam not at Chidambara Nagar, Thoothukudi. Therefore, examination of Sub Registrar, is necessary. It is well settled as per the Order 18 Rule 17, the suit can be re-opened at any stage in the interest of justice.

4.I have heard Mr.Veera Kathiravan, learned counsel appearing for the petitioner and also perused the entire materials on record.

5.From the records, it is seen that the respondent do not dispute the medical certificate and the fact that their father was taking treatment during the relevant period. Further, the petitioners have not cross-examined the respondents witnesses with regard to place of Sub-Registrar Office where the Will was executed and registered. In addition to this, it is the case of the petitioner that the Will dated 08.10.2002, was cancelled by their father by subsequent Will, dated 01.10.2006. In view of these facts, it is for the petitioners to prove the Will, dated 01.10.2006. In the circumstances, there is no reason warranting interference in the order, dated 06.10.2015, passed by the learned Sub-Judge, Tuticorin, in I.A.No.906 of 2014 in O.S.No.276 of 2010, by this Court.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(R)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Tuticorin.

+1cc to Mr.Veera.Kathiravan, Advocate Sr.No.10568

akm/16.03.2016/2p-3c/MP/AN/SAR-I