

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1686 of 2017

and

C.M.P.No.7929 of 2017

M. Punitham

.. Petitioner

Vs.

T.M.Subramaniam (died)

1. Kalaiselvi
2. Amutha
3. Senthilkumar
4. T.M.Shanmugam,
5. Dr.Kavitha
6. S. Bakkiyalakshmi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 20.01.2017 made in I.A.No.430 of 2016 in O.S.No.159 of 2012 on the file of the Sub Court, Perundurai.

For Petitioner : Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 20.01.2017 made in I.A.No.430 of 2016 in O.S.No.159 of 2012 on the file of the Sub Court, Perundurai.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.159 of 2012. The petitioner filed the suit for declaration and injunction. The respondents 1 & 2 filed written statement on 03.01.2013. The respondents 4 & 5 filed written statement on 01.02.2013. The petitioner filed I.A.No.430 of 2016 for appointment of Advocate Commissioner to inspect the suit property.

3. According to the petitioner, she filed a suit for declaration and injunction. After filing of the suit, the respondents are trying to interfere with her possession and in view of the same, the physical features are to be noted down by appointing an advocate commissioner to decide the issue. The respondents filed counter affidavit and opposed the said application on the ground that there are three suit properties. The first property is landed property and other two are house properties. The 5th respondent is in possession and enjoyment of the house property and the respondents have produced all the documents to substantiate their case. The petitioner is trying to collect the evidence through Advocate Commissioner. The parties have to prove their case with regard to the title and possession.

4. The learned Judge, considering all the materials available on record, held that both the parties are claiming title based on the Will and they have to prove which Will is true and genuine one and mere possession will not prove the title or right and dismissed the application.

5. Against the order of dismissal passed in I.A.No.430 of 2016 dated 20.01.2017, the present civil revision petition is filed.

6. Heard the learned counsel for the petitioner and perused the materials placed on record.

7. The relief sought for in the suit is declaration and injunction restraining the 5th respondent, his men, agents etc., from interfering with the peaceful possession and enjoyment of the suit properties.

8. Further, according to the petitioner, the grand parents of her husband by Will bequeathed the property to her husband and her husband settled the property on her name and from that date onwards, she is in possession and enjoyment of the property. On the other hand, the respondents have stated that the properties

have been bequeathed by the registered Will executed by late Muthugounder and the Will in which the petitioner is claiming title is fabricated and forged one and they are claiming that they are in possession.

9. In view of the above rival contentions, the learned Judge considering all the materials available on record has rightly held that the parties must prove genuineness of the Will put forth by them and possession of the property will not create any title or right. For the reasons mentioned above, the learned Judge has rightly dismissed the application by giving cogent and valid reasons by exercising his power properly. There is no illegality or irregularity warranting interference by this Court with the order of the learned Sub Judge, Perundurai, dated 20.01.2017.

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

21.06.2017

Speaking Order/Non-speaking Order
Index :Yes/No
av / ssd

To

The learned Sub Court,
Perundurai.

V.M.VELUMANI, J.

av/ssd

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