

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD).No.1299 of 2011
& M.P.No.1 of 2011

- 1.V.Sekar
- 2.V.Ravi
- 3.V.Daksinamoorthy
- 4.Jaya
- 5.Vanaja
- 6.Rajeswari
- 7.Shanthi
- 8.D.Chettiappan
- 9.Rajammal
- 10.Kamalakannan
- 11.Parimala
- 12.Jayanthi
- 13.Kavitha
- 14.D.Mariappan

.. Petitioners

Vs.

- 1.P.Narasimman
- 2.P.Manoharan
- 3.P.Mohan
- 4.V.Vatsala
- 5.S.Balaraj
- 6.S.Govindaraj
- 7.Sarguna
- 8.Geetha
- 9.Sivakami
- 10.Pattabi
- 11.Chinnaraj
- 12.Janaki
- 13.Visalakshi

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.. Respondents

For Petitioners : Mr.V.Lakshiminarayan
For R1 to R13 & R15 : Mr.M.Saravanakumar
for Mr.I.Abrar Md Abdullah
For R14 & R16 : Mr.C.Murali

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 04.02.2011, made in I.A.No.69 of 2011 in O.S.No.185 of 2008 on the file of the Principal Subordinate Judge, Krishnagiri.

2. The petitioners are plaintiffs, respondents are defendants in O.S.No.185 of 2008 on the file of the Principal Subordinate Judge, Krishnagiri. The petitioners filed the said suit for declaration of title to the suit properties and for permanent injunction. The second respondent filed written statement on 19.04.2009, which was

adopted by the other respondents and are contesting the suit. Trial commenced. The petitioners let in evidence and closed their side. The respondents also let in evidence and when the suit was posted for evidence of 12th respondent, the respondents wanted to mark a Will dated 09.02.1976. The petitioner objected to the same on the ground that without obtaining a probate, a Will can not be marked. The respondents filed I.A.No.69 of 2011 under Order XIII Rule 10 C.P.C to decide about the admissibility of the Will dated 09.02.1976, executed by Thimmaraya Chettiyar and seeking permission to admit the same as evidence. According to the respondents, all the properties mentioned in the Will are situated outside Madras and probate of Will is not necessary, even though, will was executed and registered at Madras.

3. The learned Judge, considering the averments in the plaint and Judgement relied on by the learned counsel for respondents held that in respect of the properties situated outside the Madras, the Will need not be probated, even if Will is executed and registered at Madras. Stating so, the learned Judge allowed the application and permitted the respondents to mark the Will according to law.

4. Against the said order dated 04.02.2011, made in I.A.No.69 of 2011 in O.S.No.185 of 2008 , the present Civil Revision Petition is filed by the petitioners.

5. The learned counsel appearing for the petitioners submitted that as per Section 57(a) read with Section 213 of Indian Succession Act, grant of probate is necessary before the Court could receive the Will in evidence. As per Section 57(a), the probate of Will must be obtained if a Will is executed within the city of Madras or the property situated within the City of Madras. The finding of the learned Judge that probate is not necessary for the property situated outside the Madras, even though, the Will is executed and registered at Madras is legally incorrect. The learned Judge ought to have seen that the Will was not shown for 22 years after the death of the executor, Thimmaraya Chettiya, which creates a considerable suspicion. The learned Judge has allowed the application without giving an opportunity to the petitioners to file counter affidavit and this amounts to violation of Principles of natural justice.

6. The learned Counsel appearing for the respondents 1 to 13 & 15 and respondents 14 & 16 separately contended that for a property situated outside Madras, Probate of the Will is not necessary. Only when the properties are situated within the city of Madras, the Probate must be obtained. The learned Judge has properly considered and appreciated Section 57(a) read with Section 213 of the Indian Succession Act and allowed the application after giving valid reason and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioners, respondents 1 to 13 & 15 and learned counsel appearing for the respondents 14 & 16 and perused the materials available on record.

8. The point for consideration in the civil revision petition is whether Will executed within the original civil jurisdiction of this court in respect of the property outside its original jurisdiction is to be probated and without such probate is being granted, whether the court can receive the said Will in evidence.

9. To decide the above issue, Sections 57(a) and 213(1) are the relevant provisions. Section 57(a) and 57(b) and 213(1) reads as follows:

“57. Application of certain provisions of Part to a class of wills made by Hindus, etc. - The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply--

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits;”

“213. Right as executor or legatee when established.-(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of

an authenticated copy of the will annexed.”

The Section 57 has 3 Sub Sections and Sub Section 57(c) is not relevant to decide the issue in question. Sub Section 57(a) deals with Will executed within the ordinary original civil jurisdiction of this Court and Section 57(b) deals with Will executed within ordinary original Civil Court jurisdiction of this Court relating to the properties situated within the original jurisdiction of this Court. As per section 57(a) all the Wills executed within the ordinary original Civil Court jurisdiction of this Court must be probated even if the properties are situated outside the jurisdiction of this court.

10. As per section 213(1), the executor or legatee does not derive any right, unless the competent Court has granted probate of the Will or Letters of Administration with the Will annexed. A combined reading of Section 57(a) and Section 213(1) of Indian Succession Act clearly reveals that a Will executed within ordinary original civil jurisdiction of this Court, has to be probated. Unless the executor or legatee obtains probate or Letters of Administration with the Will annexed, he do not derive any title under the Will.

V.M.VELUMANI, J.

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11. The learned Judge has not properly considered and applied Section 57(a) and 213(1) of Indian Succession Act and erroneously allowed the application holding that the Will relating to immovable properties outside the ordinary original jurisdiction of this Court need not be probated. The learned Judge committed an irregularity and failed to exercise his power properly conferred on him.

12. In the result, the order passed in I.A.No.69 of 2011 is set aside. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2017

Index: Yes/No

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To
The Principal Subordinate Judge,
Krishnagiri.

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