

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.1055 of 2006

Jayarama Gounder

... Petitioner/Defendant

Vs.

Jagadeesan

...Respondent/2nd Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and decreetal order in C.M.A.No.10 of 2002 on the file of the Additional District and Sessions Judge, (Fast Track Court No.II), Tindivanam, dated 10.12.2002.

For Petitioner : Mrs.V.Srimathi

For Respondent : Mr.A.K.Kumarasamy

O R D E R

This Civil Revision Petition is directed against the order dated 10.12.2002, made in C.M.A.No.10 of 2002 on the file the learned Additional District and Sessions Judge, Tindivanam which reversed the order of the learned Principal District Munsiff Court, Tindivanam in E.A.No.27 of 1994 in O.S.No.1361 of 1974 dated 28.04.1997.

2.The revision petitioner is the judgment debtor in O.S.No.1361 of 1974 which was filed by the respondent's father. Since the respondent's father Duraisamy Reddiyar died, in order to execute the decree obtained by his father, he filed E.A.No.27 of 1994 under section 50 of CPC to permit him to continue the case on behalf of the decree holder. The respondent herein also filed Ex-P2 Will dated 10.09.1993 said to have executed by his deceased father Duraisamy Reddiyar in his favour. On the strength of the said Will the respondent herein filed the above application seeking to implead him as legal representative of his deceased father to proceed with the decree obtained by his father.

3.The said application was resisted by the revision petitioner on the ground that there are other legal heirs for

the deceased Duraisamy Reddiyar and without arraying them as legal representative of the deceased Duraisamy Reddiyar, the respondent herein wanted to bring him as if he is the only legal heir to his deceased father. Hence, he prayed to dismiss the above application.

4.The learned Trial Judge has accepted the case of the revision petitioner, holding that when there are other legal heirs are alive to the deceased 1st plaintiff Duraisamy Reddiyar, the present application by the respondent herein is not maintainable, hence dismissed the same by order dated 28.04.1997.

5.Aggrieved over the same the respondent herein filed appeal before the learned Sub Court , Tindivanam and the same was allowed by order dated 10.12.2002. Now the challenge is made to the above said order by the revision petitioner/defendant.

6.I heard Mrs.V.Srimathi, learned counsel for the petitioner and Mr.A.K.Kumarasamy, learned counsel for the respondent and the materials available on record are perused.

7.It is seen from the records that the respondent's father Duraisamy Reddiyar filed suit against the revision petitioner and obtained decree. After getting decree it seems that he died and therefore the respondent herein claims to be the legal heir of the 1st Plaintiff Duraisamy Reddiyar on the basis of the Will said to have executed by his father, wanted to implead him as 2nd plaintiff and sought permission to proceed with the decree against the revision petitioner under section 50 of CPC. It is also the contention of the learned counsel for the respondent that his father executed a Will in his favour which was marked as Ex-P2 and on the strength of the said will he wanted to continue the further proceedings.

8.On the other hand it is contented by the learned counsel for the revision petitioner that the respondent has to prove the Will, without proving the same he alone cannot be permission to continue the proceedings when other legal heirs are alive. Therefore it is contented that the learned trial Judge has rightly dismissed the impleading application filed by respondent herein holding that respondent herein failed to prove Ex-P2 Will. Further other legal heirs are available to the deceased Duraisamy. But they were not added as parties to the proceedings.

9.It is the further contention of the learned counsel for the revision petitioner that the lower Appellate Court is

erroneously allowed the application on the basis of Ex-A3 certified copy of S.O.P.No.1 of 2000, holding that since the respondent herein is the legal heir of the deceased Duraisamy and therefore he obtained succession certificate.

10.This Court has carefully considered the rival submission made on either side. Between the same parties of this Civil Revision Petition on an identical issue has arisen before this Court in C.R.P(NPD)No.1450 of 2003 in respect of some other suit and in the said Civil Revision Petition whether Civil Revision Petition is maintainable or Civil Miscellaneous Appeal is maintainable was the argument put forth between the parties and this Court held that the Civil Revision Petition only maintainable. Therefore, this Court need not go into the maintainability issue. Now coming to the present case on hand it is found that the lower Appellate Court has allowed the appeal only on the basis of Ex-B3, the succession certificate.

11.In the considered opinion of this Court the above said approach of the Lower Appellate Court is not proper. The respondent herein will have to prove the Will said to have executed by his deceased father and without proving the same he cannot be alone allowed to continue the suit as 2nd plaintiff. However, all those issues could have been agitated before the trial Court and this Court cannot conduct roaming enquiry into the above said issue.

12.In the result:

- a) this Civil Revision petition is allowed by setting aside the order in CMA.No.10 of 2002 dated 10.12.2002, on the file of the learned Additional District and Sessions judge (Fast Track Court No.II, Tindivanam and the order in E.A.No.27 of 1994 in O.S.No.1361 of 1974, dated 10.12.2002, on the file of the learned District Munsif Court, Tindivanam is restored;
- b) The respondent/appellant is hereby given liberty to agitate the order in E.A.No27 of 1994 in O.S.No.1361 of 1974 in the manner known to law. No costs.

vs

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
(Fast Track Court No.II), Tindivanam.

2.The Prinicipal District Munsif,
Tindivanam.

3. The Section Officer,
V.R.Section,
Madras High court.

+1cc to Mr.A.K.Kumarasamy, Advocate, S.R.No.26098

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.25613

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KK(CO)

KAK(21/12/2018)



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