

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HONOURABLE **Mr.JUSTICE D. KRISHNAKUMAR**

CRP NPD.NO.4978/2014 & MP No.1/2014

Nepolian Bonaparte,
Repd. By his father &
Power Of Attorney Agent
Harikrishnan

..Petitioner

-Vs-

1.Valliammal
2.K.Pazhani
3.K.Venkatesan
4.K.Thandapani
5.Tmt.Kumudha
6.Prema

..Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to allow the above Civil Revision Petition by setting aside the fair order and decretal order of the execution Court dated 27.08.2014 made in E.A.No.34 of 2014 in E.P.No.13/2009 in O.S.No.872/1987 on the file of the District Munif Court, Chingleput.

For Petitioner : M/s.C.R.Rukmani
For R-1,5 & R-6 : Mr.J.Srinivasa Mohan
For R-2 to R-4 : No Appearance

ORDER

Heard M/s.C.R.Rukmani learned counsel appearing for the petitioner and Mr.J.Srinivasa Mohan, learned counsel appearing for the respondents 1, 5 and 6 and perused the materials available on record.

2. According to the petitioner, the respondents herein filed an application under Order 1 Rule 10 of Civil Procedure Code to implead themselves as a party in the execution proceedings. The petitioner herein filed the suit for declaration and recovery of possession in respect of B schedule property against the deceased Pachaiyammal. The learned District Munsif, Chengalpattu decreed the suit and the aforesaid deceased Pachaiyammal defendant filed an appeal against the said decree and judgment dt.30.04.1997 before the Principal Subordinate Judge, Chengalpattu. The said appeal was also dismissed on 30.11.2000. Subsequently, the aforesaid deceased Pachaiyammal defendant preferred a Second Appeal, and the same was also dismissed. Hence, the decree passed by the District Munsif becomes final. The petitioner has finally filed execution petition against the sole defendant Pachaiyammal. Pending the execution petition, the sole defendant died. Hence, the respondents filed the present application under Order 1 Rule 10 of Civil Procedure Code to implead them as respondents 2 to 7 in E.A.34/2014 in E.P.No.13/2009 in O.S.No.872/1987 stating that there the aforesaid Pachaiyammal has executed an unregistered Will dated 05.11.2013. The said application was allowed by the Court below against which the present Civil Revision Petition is filed by the petitioner/plaintiff.

3The learned counsel for the petitioner would submit that the decree has been obtained against the sole defendant/Pachaiyammal. The petitioner has disputed the Will. Therefore, the Court below ought to have dismissed the said application, at the time of hearing itself.

4.The learned counsel for the respondents would submit that the proposed respondents 2 to 7 filed an application to implead themselves as parties in the aforesaid Execution Petition. As per the Will, the sole defendant has executed the Will bequeathing the suit property in favour of the proposed respondents. The learned counsel for the respondents undertakes that the respondents are not disputing the decree passed by the District Munsic, challenging in the aforesaid suit and the said decree is binding on the proposed respondents. Therefore, no interference warrants in their order passed by the Court below, allowing the said application impleading the proposed parties as respondents since the Will has been executed by the sole defendant/deceased Pachaiyammal, in favour of the respondents.

5. Recording the undertaking given by the learned counsel for the respondents, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

20.04.2017

KP

Speaking Order/Non Speaking Order
Index:Yes/No
Internet:Yes/No

To
The District Munsif Court,
Chingleput.

D. KRISHNAKUMAR., J.

KP

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