

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4962 of 2011
& M.P.No.1 of 2011

S.Saravanakumar ... Petitioner

Vs.

1.A.Mohana
2.Minor A.Rooparekha
3.Minor A.Raksha

(Minors RR2 and 3 represented by
R1/mother and guardian)

4.Ponnammal
5.V.Thangaraj
6.V.Suganthi
7.R.Duraiswamy
8.K.Kanagaraj
9.R.Babu
10.S.Ramesh
11.V.Deepa Vigneshwari
12.B.Jayakumar
13.K.Rajagopalan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.08.2011 made in I.A.No.738 of 2010 in O.S.No.746 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioner : Mrs.P.Veena

For RR1, 4 to 13: No appearance

For R2 and R3 : Minors rep. by R1

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 12.08.2011 made in I.A.No.738 of 2010 in O.S.No.746 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

2. The petitioner is third party and respondents are the defendants in O.S.No.746 of 2010. One Dinakar filed the above suit for equitable mortgage. He died on 06.03.2009. The petitioner filed I.A.No.738 of 2010 under Section 5 of the Limitation Act to condone the delay of 36 days in filing the petition to implead the petitioner as legal heir of the said Dinakar.

3. According to the petitioner, the deceased Dinakar executed a Will dated 27.02.2009 in favour of the petitioner. As per the Will, the petitioner is the beneficiary to conduct the suit and receive the benefits as per the decree. Wife and son of the original plaintiff Dinakar handed over the Will to the petitioner only on 23.06.2009

and immediately, the petitioner filed the present application to condone the delay in filing the petition to implead him as the second plaintiff in the suit.

4. Respondents 9 to 11 filed counter affidavit denying the averments made in the affidavit and submitted that the petitioner has to prove the Will as per Section 68 of the Indian Evidence Act and the petitioner is not a legal heir of the original plaintiff. The said Dinakar left behind his wife and son as his legal heirs and the petitioner is not entitled to implead him without hearing the objection from the wife and son of the deceased Dinakaran. Wife and son of the deceased Dinakaran have not come forward to prosecute the suit filed by the deceased Dinakaran and the petitioner is trying to make illegal gain and unlawful enrichment.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioner failed to prove the Will as per Section 68 of the Indian Evidence Act, failed to file application for setting aside the abatement and has not given any reason for condonation of delay.

6. Against the order of dismissal dated 12.08.2011 made in I.A.No.738 of 2010, the present civil revision petition is filed by the petitioner.

7. Though notice has been served on the respondents and their names have been printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The contention of the learned counsel for the petitioner is that the petitioner ought to have given an opportunity to prove the Will and the learned Judge erred in dismissing the application and without giving any opportunity to the petitioner, held that the petitioner has not given valid reason for condoning the delay in filing the petition to implead him as second plaintiff. These contentions are untenable.

10. The respondents 9 to 11 in the counter affidavit filed by them have taken a specific stand that the Will has to be proved by

the petitioner and the wife & son of the deceased Dinakar must be heard before the petitioner is impleaded as second plaintiff.

11. In spite of such stand taken by the respondents 9 to 11, the petitioner has not let in any evidence to prove the Will as per Section 68 of the Indian Evidence Act and he has not examined the wife and son of the deceased Dinakar to prove the Will as well as the reason for the delay. Having failed to let in any evidence before the learned Judge, it is not open to the petitioner to contend that he was not given any opportunity to prove the Will.

12. In view of the above, the learned Judge has exercised his power conferred on him properly and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order of the learned Judge dated 12.08.2011 warranting interference by this Court.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.07.2017

Index : Yes/No
kj

V.M.VELUMANI, J.

kj

To

The Principal Subordinate Judge, Coimbatore.



C.R.P.(PD)No.4962 of 2011
& M.P.No.1 of 2011

20.07.2017

WEB COPY