

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

CRP (PD) No.3859 of 2013

and

M.P.No.1 of 2013

Baggiyammal
... Petitioner

VS

1.A.Kartheban
2.Indirani
3.Ponni
... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.07.2013 made in I.A.No.481 of 2013 in OS.No.377 of 2006, on the file of District Munsif, Polur.

For Petitioner : Mr.A.Juhilin Jinu
Jebarson

For Respondents : Mr.Rajan

ORDER

The plaintiff in O.S.No.377 of 2006 on the file of the learned District Munsif, Polur, Tiruvannamalai District, is the revision petitioner.

2. Based on a Will dated 11.07.1969, the plaintiff sought for declaration as to her title and also consequential injunction. The first defendant resisted the suit by filing a written statement. Issues were

framed. The suit was put on trial. Both sides let in their oral and documentary evidence. The matter was elaborately argued. The parties wanted time for reply arguments.

3. At this juncture, the plaintiff filed I.A.No.418 of 2013 to reopen the evidence to examine the attestors to the Will, earlier as she was not aware of their address, she could not examine them. Now she is having the address of the witnesses/attestors.

4. This was opposed to by the first defendant as a delaying tactics and inspite of several opportunity, the plaintiff had failed to grapple the opportunity.

5. The trial court accepted the view of the first defendant and dismissed the petition to reopen the evidence.

6. In the circumstances, the plaintiff has directed this revision.

7. The learned counsel for the revision petitioner would contend that it is the duty of the plaintiff to prove the Will. As per Section 68 of the Indian Evidence Act, atleast one of the attesting witness have to be examined, when especially the genuineness of the Will is questioned. Now he got the address of the attesting witness. Still the judgment is not pronounced. In the circumstances, an opportunity should not be denied to the plaintiff.

8. On the other hand, the learned counsel for the respondent/first defendant reiterated the very same contentions which were placed before the trial court. Actually the plaintiff wants to play delaying tactics. If the petition is allowed, the respondent will be put to

prejudice.

9. I have considered the rival submissions, perused the impugned order and the materials on record.

10. In this case, the sheet anchor of the plaintiff is Ex.A1-Will. If the Will is admitted by the opposite party, there is no difficulty. When the genuineness of the Will is questioned, it is the duty of the plaintiff to prove the due execution of the Will by examining atleast one of the attesting witnesses. This is a legal requirement.

11. Now in this case, the attesting witnesses are available. Before the completion of the trial, the plaintiff could not examine the witness. Only during the arguments stage, plaintiff got concrete information as to the address of the attesting witnesses. In the circumstances, an opportunity can be given to the plaintiff. Otherwise, it will cause prejudice to the plaintiff. Naturally respondent will not like this. As on date, since the attesting witness has not been examined, the respondent could easily argue that the Will is not proved in accordance with law. So he will not like to give up this defence but law is still there. Still the bus (judgment) has not gone. The trial court has not considered the matter in proper perspective. Plaintiff could have been given an opportunity.

12. Ordered as under:

i) This Revision succeeds.

ii) The order passed by the learned District Munsif, Polur in I.A.No.481/2013 in O.S.No.377/2006 is set aside .

iii) The said I.A. stand allowed.

iv) plaintiff shall be given an opportunity to adduce further evidence for the purpose mentioned in her affidavit.

v) Liberty shall also be given to the respondent to let in any further evidence consequent upon the plaintiff examining the attesting witness.

vi) No order as to costs.

vii) Consequently, connected miscellaneous petition is closed.

06.04.2017

gv
Speaking/Non-speaking order
Index:yes/no

To

1. The Principal District Judge,
Thiruvannamalai.
2. The District Munsif,
Polur,
Thiruvannamalai District.

Dr.P.DEVADASS,J.

gv

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