



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.264 of 2017 (PD)
and
C.M.P(MD)No.1247 of 2017

K.Sarathy

.. Petitioner/Petitioner/Plaintiff

Vs.

1.S.Kanagavalli

2.S.Kowsalya

..Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.165 of 2016 in O.S.No.16 of 2012, dated 10.11.2016 on the file of the Learned Additional Subordinate Judge, Kumbakonam.

For Petitioner : Mr.M.V.Santharaman

ORDER

This petition has been filed by the petitioner to set aside the fair and decreetal order in I.A.No.165 of 2016 in O.S.No.16 of 2012, dated 10.11.2016 passed by the Learned Additional Subordinate Judge, Kumbakonam.

2.The petitioner is the plaintiff. The respondents are the defendants. The petitioner filed a suit in O.S.No.16 of 2012 for declaration to declare that the Will dated 01.06.1998, bearing Document NO.58/1998, on the file of the Sub Registrar Office, Kumbakonam, is valid and it is the last Will of one Sheshadri and is binding on the first respondent and also for a consequential declaration that the document executed by the first respondent in favour of the second respondent, is invalid. The respondents filed separate written statements and they are contesting the suit. The petitioner filed I.A.No.165 of 2016 to send for the following documents from the Sub Registrar Office, Kumbakonam:-

(i)The Register containing the signature and thumb impressions of the Executor viz., Sheshatri and the witness, at the time of registration of the Will, dated 01.06.1998.

(ii)The Register containing the signature and thumb impression of Sheshatri at the time of executing the sale deed, dated 09.06.1999 as document No.179/1999.



According to the petitioner, the respondents have stated in their written statements that by Will, dated 04.01.2011, Sheshadri bequeathed the property to his wife. The respondents would be producing the said Will during trial. Hence, documents sought for are necessary to disprove the said Will.

3.The learned Judge dismissed the application on the ground that the petitioner has come out with the present application on apprehension and an order cannot be passed on presumption and assumption.

4.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

5.I have heard the learned counsel appearing for the petitioner and also perused all the materials on record.

6.From the materials on record, it is seen that the petitioner has filed suit for declaration to declare that the Will, dated 01.06.1998, bearing Document No.58/1998, on the file of the Sub Registrar Office, Kumbakonam, is valid and it is the last Will of Sheshadri and is binding on the first respondent and also a consequential declaration that document executed by the first respondent in favour of the second respondent is invalid. The respondents are resisting the claim of the petitioner based on a subsequent will, dated 04.01.2011. It is for both the parties to prove their case, by letting in oral and documentary evidence. In the circumstances, the learned Judge has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court.

7.It is open to the petitioner to renew the relief sought for in the present I.A.No.165 of 2016, if the respondents produce Will, dated 04.01.2011.

8.With the above observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To
The Additional Sub Court, Kumbakonam.
+1CC to M/S.T.R.Subramanian, Advocate, SR.No. 7131

C.R.P (MD) No.264 of 2017 (PD)
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