



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) Nos.282 and 283 of 2017 (PD)

and

C.M.P. (MD) No.1329 of 2017

1.Cholarajan

2.Kumararaja

... Petitioners / Petitioners/ Plaintiffs in
both the C.R.Ps.

Vs

1.A.C.Mathiarasu

2.A.C.Kalaiarasu

A.C.Chitrarasu (Died after suit)

A.C.Vallarasu (Died after suit)

3.A.C.Mutharasu

4.Syed Liyakath Ali

5.Valarmathi

6.Chinnaraj

7.Shanmugapriya

8.Kala

9.Anusuya

10.Aravindh

... Respondents /Respondents /Defendants
in both C.R.Ps.

PRAYER in both C.R.Ps: Civil Revision Petitions are filed, under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.863 & 864 of 2016 in O.S.No.355/2009, dated 01.11.2016 on the file of the Principal District Munsif Court, Kumbakonam and allow the same.

For Petitioner : Mr. V. Maragathavel
For Caveator/ : Mr. C. Susi Kumar
Respondent

COMMON ORDER

The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The petitioner has filed these Civil Revision Petitions to set aside the orders passed in I.A.Nos.863 & 864 of 2016 in O.S.No.355/2009, dated 01.11.2016 by the learned Principal District Munsif, Kumbakonam.



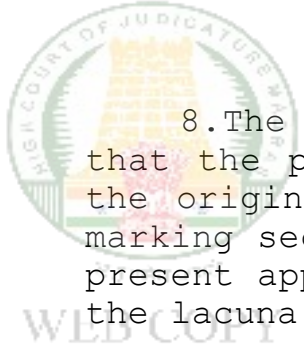
3.The petitioners are the plaintiffs. The respondents are the defendants. The petitioners filed suit in O.S.No.355 of 2009 for injunction against the respondents not to act against the Recitals of the Will, dated 11.11.1946. The respondents filed written statement. After framing issues, trial commenced. The petitioners and respondents let in evidence and closed their evidence. The petitioners filed two applications in I.A.Nos.863 and 864 of 2016 for re-open and recall P.W.1 to mark the certified copy of the Will, dated 11.11.1946. According to the petitioners, original Will is not available with them. In spite of their best efforts, they could not trace the said Will. The certified copy of the Will was not marked when P.W.1 was examined on the objection of the sixth respondent. The original Will was not available with the petitioners and therefore, they can mark certified copy of the Will as secondary evidence.

4.The respondent filed counter and opposed the said applications and submitted that the petitioners have not stated in the plaint that original Will is lost or misplaced. P.W.1 in his cross-examination has stated that he does not know whether the original Will is available or not. In the absence of specific pleadings with regard to the Will in the plaint, certified copy cannot be marked as no averments has been made in the pleadings or evidence with regard to non-availability of original Will. Only to drag on the proceedings, the petitioners have come out with the present applications and prayed for dismissal of the applications.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record dismissed the applications by two separate orders, dated 01.11.2016 held that the petitioners have not made out any case for marking certified copy of the Will as secondary evidence and petitions have been filed only to fill up the lacuna and to drag on the proceedings.

6.Against the said two separate orders, dated 01.11.2016 the petitioners have come out with the present two Civil Revision Petitions.

7.The learned counsel for the petitioners submitted that without giving an opportunity to let in further evidence to mark the vital documents, which was produced along with plaint is not correct. The petitioners are entitled to let in secondary evidence when primary evidence is not available. The reason given by the learned Judge that the petitioners are not pleaded that original Will was lost and in the circumstances, the secondary evidence cannot be let in, is erroneous. The petitioners are seeking to mark certified copy of the Will, dated 11.11.1946 to prove that certain conditions in the Will were violated.



8.The learned counsel for the Caveator/respondents submitted that the petitioners have not given any reason for not producing the original Will and they have not complied the ingredients for marking secondary evidence. The petitioners have come out with the present applications after completion of evidence, only to fill up the lacuna and to drag-on the proceedings.

7.I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the caveator and also perused the entire materials on record.

8.The petitioners filed suit for permanent injunction against the respondents to restrain them from acting contrary to the Will, dated 11.11.1946. Along with plaint, they filed certified copy of the said Will. When P.W.1 deposed, marking of certified copy of the Will was objected by the respondents and certified copy of the Will was not marked. The petitioners filed applications for re-open and recall at the stage of arguments. In the evidence also, the petitioners have not stated that Will dated 11.11.1946 is lost or misplaced. It is pertinent to note that P.W.1 in cross-examination stated that he does not know whether original Will is available or not. In the circumstances, the petitioners are not made out any case for marking certified copy of the Will after evidence of both sides are closed and when the suit was posted for arguments. Considered all these aspects by giving cogent and valid reason by exercising his power conferred on him judicially dismissed the applications. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

9.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kumbakonam.

+1 cc to MR.C.SUSIKUMAR, Advocate SR.No.8121

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