



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2312 of 2016 (PD)

and

C.M.P. (MD) No.10651 of 2016

1.Omana, W/o.Kumarasamy Pillai
2.Ambika, D/o.Kumarasamy Pillai
3.Neelakantapillai, S/o.Kumarasamy Pillai
.. Petitioners/Respondents 1 to 3/
Defendants 1 to 3

Vs.

1.Thanumoorthy, S/o.Madenpillai
2.Leela Bai, W/o.Krishnakumar .. Respondents/Petitioners/
Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.04.2016, passed in I.A.No.151 of 2015 in O.S.No.71 of 2013, by the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel.

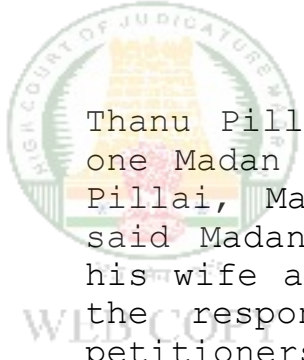
For Petitioners : Mr.C.Kishore

For Respondents : Mr.Ananth C.Rajesh

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 15.04.2016, passed in I.A.No.151 of 2015 in O.S.No.71 of 2013, by the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel.

2.The petitioners are the defendants and the respondents are the plaintiffs in the suit in O.S.No.71 of 2013 on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Eraniel. The respondents filed the suit against the petitioners for permanent injunction restraining the petitioners and their men or agents from interfering with their peaceful possession and enjoyment of the plaint schedule property. According to the respondents, the suit properties belonged to one Thanu Pillai, who got title as per the judgment and decree made in O.S.No.41 of 1976, on the file of Subordinate Court, Padmanabhapuram. The said



Thanu Pillai, by a registered Will, bequeathed the properties to one Madan Pillai, who is his sister's son. After death of Thanu Pillai, Madan Pillai became owner of the suit properties. The said Madan Pillai executed a Will bequeathing the properties to his wife and children. After death of Madan Pillai and his wife, the respondents became owners of the suit properties. The petitioners interfered with the possession of the respondents. In the circumstances, the respondents have filed the suit for injunction.

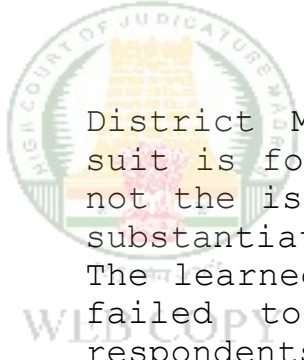
3.The petitioners filed written statement on 10.02.2014 and are contesting the suit. In the suit, the trial has commenced and both the parties let in evidence and closed their evidence and arguments were heard. When the suit was posted for judgment, the respondents have filed three applications in I.A.Nos.103, 104 and 105 of 2015 to re-open the suit; to recall P.W.1 and to receive documents, respectively. All the three applications were allowed. P.W.1 was further examined and cross-examined and marked documents. The suit was posted for arguments. At that time, the respondents filed I.A.No.151 of 2015, to re-open the suit for further evidence. According to the respondents, it is necessary to re-open and examine the attesting witness to the Will to prove the same.

4.The petitioners filed counter affidavit opposing the said application on the ground that the respondents were given sufficient opportunity to adduce evidence and on earlier occasion, the applications filed by the respondents were allowed permitting them for further chief-examination and cross-examination and to mark documents. The respondents have filed the present application only to drag on the proceedings. The respondents have not given any valid reason and have filed the application at a belated stage.

5.The learned Principal District Munsif-cum-Judicial Magistrate, Eraniel, after considering the averments made in the affidavit, counter affidavit and also considering the materials available on record, allowed the application in order to give an opportunity to the respondents and awarded a cost of Rs.1,000/- to compensate the petitioners.

6.Against the said order dated 15.04.2016, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel for the petitioners contended that the learned Principal District Munsif-cum-Judicial Magistrate has not passed a speaking order and failed to see that after the commencement of trial only when the party proves that despite due diligence materials could not be produced, then, the suit can be re-opened to re-call witness or let in further evidence. The suit cannot be re-opened to fill in lacuna. The learned Principal



District Munsif-cum-Judicial Magistrate failed to see that the suit is for a bare injunction and title of the suit properties is not the issue in the suit. The Will sought to be proved will not substantiate the claim of the respondents for a bare injunction. The learned Principal District Munsif-cum-Judicial Magistrate also failed to see that already the applications filed by the respondents to re-open the suit, to recall P.W.1 and also to mark documents, were allowed and the suit was posted for judgment and hence, prayed for setting aside the order dated 15.04.2016, passed in I.A.No.151 of 2015.

8.Per contra, the learned counsel for the respondents contended that after re-opening, further evidence was let in and additional documents were marked. In the circumstances, it is necessary to examine the attesting witness of the Will, which was marked as additional document. The learned Principal District Munsif-cum-Judicial Magistrate has considered all the materials and allowed the application on payment of cost of Rs.1,000/- and prayed for dismissal of the Civil Revision Petition.

9.I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

10.The respondents have filed the suit for bare injunction. The respondents claim title to the suit properties based on the Will executed by Madan Pillai. The respondents have not filed suit for declaration of title. The parties have let in evidence and advanced arguments and the suit was posted for judgment. At that stage, the respondents filed three applications for re-opening the suit, recalling P.W.1 and for marking additional documents. All the three applications were allowed; P.W.1 was recalled; further evidence was let in and additional documents were marked. At that stage, the respondents did not seek permission to examine further witnesses. For the second time, the respondents filed application to re-open the case and to examine further witnesses when the suit was posted for judgment. The respondents have not given any reason for not examining the attesting witness earlier. The learned Principal District Munsif-cum-Judicial Magistrate has not considered the materials on record, especially, the relief sought for by the respondents in proper perspective and erroneously allowed the application. The reason given by the learned Principal District Munsif-cum-Judicial Magistrate for allowing the application that opportunity is to be given to the respondents, is not valid. The learned Principal District Munsif-cum-Judicial Magistrate has committed irregularity by allowing the application.

<https://hcservices.courts.gov.in/hcservices/> result, the fair and decretal order dated 15.04.2016, passed in I.A.No.151 of 2015 in O.S.No.71 of 2013, by the learned Principal District Munsif-cum-Judicial Magistrate,



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Eraniel, is set aside and the Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petition is
closed.

sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif-cum-Judicial Magistrate,
Eraniel.

+1cc to M/s.Ananth C.Rajesh, Advocate SR.No.11232

+1cc to M/s.C.Kishore, Advocate Sr.No.11309

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