

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

Civil Revision Petition.(PD) No.710 of 2003
& C.M.P.No.4470 of 2003

1. T.P.Radhakrishnan, (Died)
S/o.T.Parthasarathy

2. T.P.Palani (Died),
S/o.T.Parthasarathy

3. T.P.Shanmughasundaram,
S/o.T.Parthasarathy

4. T.P.Chandrasekaran,
S/o.T.Parthasarathy

5. T.P.Sarasu,
D/o.T.Parthasarathy

6. T.P.Nagavalli,
D/o.T.Parthasarathy

7. T.P.Lakshmi,
D/o.T.Parthasarathy

R.Selvaraj (Died)
S/o.T.P.Radhakrishnan

8. S.Rathinamala
W/o.(Late) R.Selvaraj

9. S.Kathikeyan
S/o.(Late) R.Selvaraj

10. P.Hemavalli,
D/o.(Late) R.Selvaraj

11. S.Parameshwari
D/o.(Late) R.Selvaraj

12. R.Pushpavalli
D/o.T.P.Radhakrishnan

13. R.Baskar,
S/o.T.P.Radhakrishnan

Appellants 8 to 13 are brought on record as LR's of the deceased 1st Petitioner (Appellants 8 to 11 are the Legal Heirs of the Late R.Selvaraj (Pre-deceased) S/o.T.P.Radhakrishnan) vide order of Court dated 27.09.2018 made in CMP. No.16458 to 16460 of 2018 CRP.No.710/2003.

Gandhimathi (Wife) (Pre-Deceased)
W/o.T.P.Palani

M.Sundari (Died)
D/o.T.P.Palani

14. Mohan
H/O. (Late) M.Sundari

15. Santhana Lakshmi
D/o. (Late) M.Sundari

16. Ekambaram,
S/o. (Late) M.Sundari

17. M.Jayaraman
S/o. (Late) M.Sundari

T.P.Sampathi Kumar (Died)
S/o.T.P.Palani

18. S.Nirmala,
W/o. (Late) T.P.Sampath Kumar

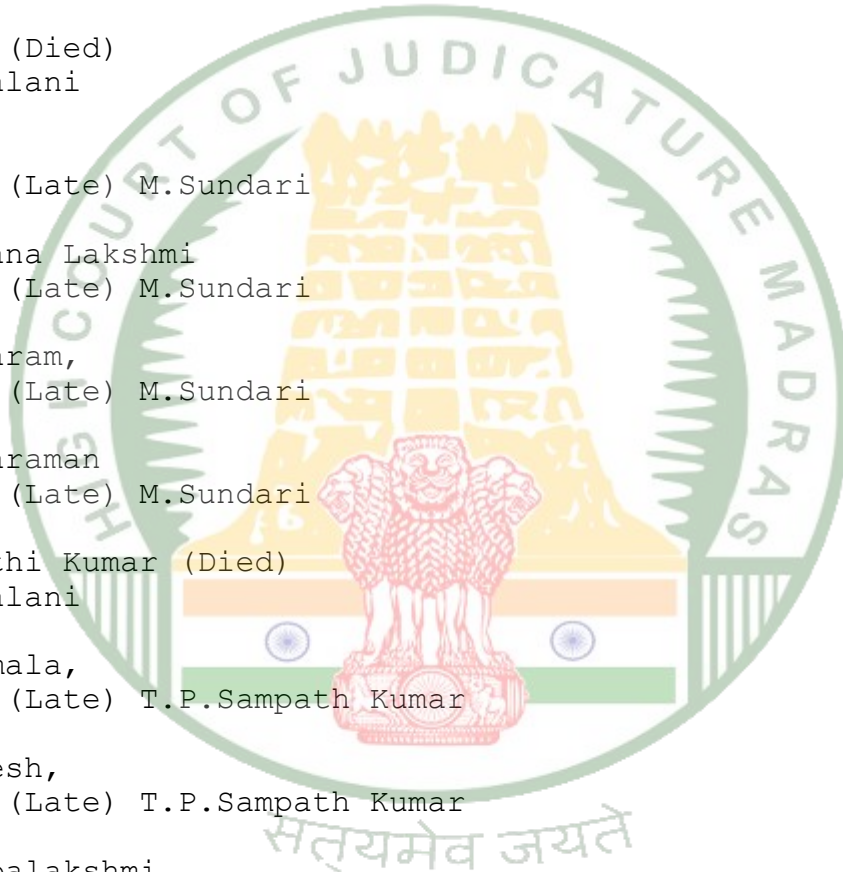
19. S.Ramesh,
S/o. (Late) T.P.Sampath Kumar

20. S.Deepalakshmi,
D/o. (Late) T.P.Sampath Kumar

21. S.Dinesh,
S/o. (Late) T.P.Sampath Kumar

22. R.Kanchana,
D/o.T.P.Palani

23. T.P.Balasubramani,
S/o.T.P.Palani



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24. K.Vijayalakshmi,
D/o.T.P.Palani

... Petitioners

Appellants 14 to 24 are brought on record as LRs of the deceased 2nd Petitioner (Appellants 14 to 17 are legal heirs of Late M.Sundari (Pre-deceased), D/o.T.P.Palani and Appellants 18 to 21 are legal heirs of Late T.P.Sampath Kumar (Predeceased) S/o. T.P.Palani) vide order of Court dated 27.09.2018 made in CMP.Nos.16463 to 16463 of 2018 made in CRP.No.710 of 2003.

Vs.

Sri MuthuKumaraswamy
Devasthanam rep by its
Trustees:

1. Mr.P.Balasubramanian
2. Mr.G.Ekambaram
3. Mr.P.L.D.Elumalai
4. Mr.P.Balasundaram
5. Mr.Senthamilarasu
6. V.K.Anthoni
7. Vedarpari Maidan Siru Thozhil
Vyaparigal Sangam,
Rep. by its Secretary,
P.P.Veldurai

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying against the order of the Learned V Additional Judge, City Civil Court, Chennai, made in I.A.No.18118 of 2002 in O.S.No.6462 of 1996 dated 23.12.2002.

For Petitioner : Mr.N.Manokaran
for Mr.M.Ganesan

For R1 to R5 : Mr.P.K.Sivasubramanian

For R6 & R7 : Not ready in notice

O R D E R

The above Civil Revision Petition is filed by the defendants challenging the order passed by the V Additional City Civil Judge, Chennai allowing the application to reopen the

evidence of the plaintiff for the limited purpose of marking the certified copy of the Will dated 12.02.1986 duly probated in I.A.No.42 of 1886 a copy of which is already filed along with the plaint. The parties are referred to in the same array as in the suit.

2. The plaintiff is the Sri Muthukumaraswamy Devasthanam represented by its Trustees. The Devasthanam had filed the suit for following relief's:

i). For a declaration the house and ground known as Vedarpari Garden bearing old door No.38/39 later door No.63, present door Nos.255 to 277 Suryanarayana Chetty Street, Royapuram, Madras-13 bearing R.S.No.3616 measuring 29 grounds and 1570 sq.ft more particularly described in the schedule hereunder was absolutely dedicated to Sri Kandaswamy alias Sri Muthukumaraswamy the Presiding Diety of the Plaintiff Devasthanam for the performance of Vedarpari festival.

ii). For a permanent injunction restraining the defendants from demolishing the platform and Mandapam and dealing with the schedule mentioned property.

iii). Directing the defendants 1 to 7 to deliver possession of the schedule mentioned property.

iv). Directing the defendants 1 to 7 to render full and true accounts of the income from the schedule mentioned property.

3. It was the case of the plaintiff that despite the suit property being bequeathed in their favour by the testator, the defendants who are the descendants of the testator have started dealing with the property as if it was their own and alienating the same. Along with the plaint, a typed copy of the Will in question was also filed.

4. The defendants had not denied the execution of the Will dated 12.02.1986 but had however, questioned the bequest which the plaintiff/Devasthanam had put across. After closing of the evidence in the above suit, when the matter was posted for arguments, the plaintiff Devasthanam has come forward with the present application. In paragraph 3 of the affidavit filed in support of the said petition, the plaintiff had contended

that the custody of the original Will and probate order was with the defendants. He had further stated that it was only during the arguments that they had questioned the non-filing of the original Will though its existence was not denied by the revision petitioners, they had also contended that the present application has been filed since the revision petitioners have not come forward to file this document which is in their custody and therefore, they wanted to file a certified copy of the same which was filed with the HR&CE Department, in the earlier proceedings between the parties.

5. The defendants had vehemently opposed the said application by inter alia contending that the document which was now sought to be marked and for which purpose the petition for reopen was being filed, was only a certified copy of the Will obtained from the HR&CE Department and was not the certified copy of the original will. Therefore, in their opinion, the petition ought not to be allowed. Therefore, they would further contend that despite the fact that the petitioners had filed the suit as early as in the year 1996, they have deliberately not filed the documents during their evidence.

6. The learned V Additional City Civil Judge, Chennai had allowed the application only on the ground that the existence and execution of the Will have not denied the defendants. The learned Judge, has also observed in the absence of the original Will, the revision petitioner has filed the certified copy of the same.

7. Challenging this order, the present revision has been filed.

8. Heard Mr.N.Manokaran on behalf of Mr.M.Ganesan for the defendants/revision petitioners. He would contend that the application lacked bonafides and the purpose for which it has been filed is to mark a copy of the copy which according to him, cannot be permitted.

9. The leaned counsel for the petitioners would rely upon the following judgments in support of his arguments that the application cannot be allowed since the documents cannot be received in evidence.

- Gayathri Vs. M.Girish reported in (2016) 14 SCC 142.
- Ram Rati Vs. Mange Ram (Died) Through Legal Representatives and others reported in (2016) 11 SCC 296
- Bagai Construction Through its proprietor Lalit Bagai Vs. Gupta Buildings Material Store reported in (2013) 14 SCC 1

- H.Siddiqui (Dead) by LRs. Vs.A.Ramalingam reported in (2011) 4 SCC 240
- J.Yashoda Vs.K.Shobha Rani reported in (2007) 5 SCC 730.

10. Mr.P.K.Sivasubramanian learned counsel appearing for the plaintiff would argue that the documents which they are seeking to mark is the certified copy and the same is obtained from the HR&CE Department where the Will was originally filed. He would further argue that the proceedings before the HR&CE Board had been instituted by the defendants and they are very much aware of the Will, as the same was marked as Ex.B.1 in the said proceedings. He would also argue that the petitioners are not taking advantage of the fact that the original Will is in their custody and they are very well aware that the same cannot be produced by the plaintiff.

11. Heard the parties and perused the records and the judgments.

12. The application in question is only an application to reopen the plaintiff side evidence to mark the documents. The reason that has been given in the affidavit filed in support of this petition is that they felt the need to file the document since the respondent who were in possession of the same was with holding the Will and was questioning the same. It is also seen that the plaint has been filed on the basis of the Will dated 12.02.1986 and the revision petitioner had not denied its execution or existence. The petition now before the Court is only the petition to reopen the evidence of the plaintiff and this Court has to only consider the merits of this petition.

13. In these given circumstances, I do not find any error in the order passed by the learned V Additional City Civil Judge, Chennai in allowing the application. However, marking of the documents shall be the subject to proof relevancy and its evidentiary value.

14.The learned V Additional City Civil Judge, Chennai is directed to consider the proof relevancy and evidentiary value at the time of marking the document that is sought to be marked as an Exhibit on the side of the plaintiff. The suit is of the year 1997 and therefore the learned V Additional City Civil, Judge, Chennai, is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order.

15. In the result, the Civil Revision Petition is Dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

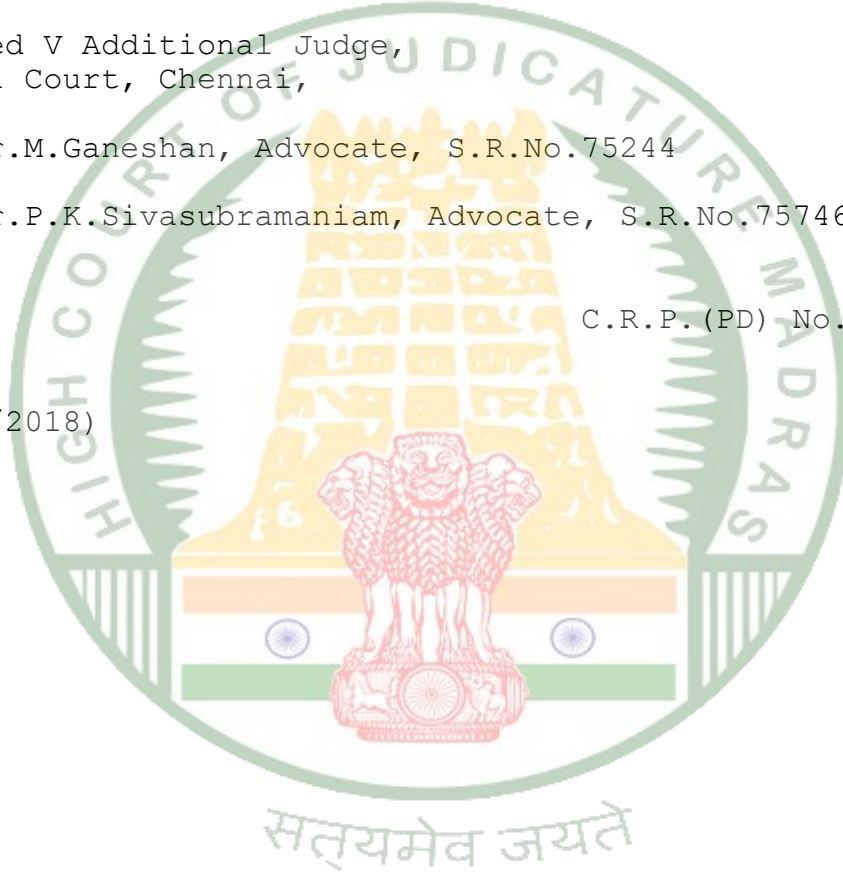
The Learned V Additional Judge,
City Civil Court, Chennai,

+1cc to Mr.M.Ganeshan, Advocate, S.R.No.75244

+1cc to Mr.P.K.Sivasubramaniam, Advocate, S.R.No.75746

C.R.P. (PD) No.710 of 2003

PP (CO)
GSP (26/12/2018)



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