

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.572 of 2015
& M.P.No.1 of 2015

- 1.B.Dhanalakshmi
- 2.S.Vijayalakshmi
- 3.J.Shailesh
- 4.J.Kaushika

.. Petitioners

Vs.

- 1.L.Ravichandran
- 2.The Senior Manager,
Karur Vysya Bank Limited,
Erode – 1.
- 3.V.Gunasekaran
- 4.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Erode – 9,
Erode Taluk.
- 5.The State of Tamil Nadu,
rep. By its District Collector,
Erode District,
Collector Office,
Perundurai Road,
Erode – 11.
- 6.The Tahsildar,
Perundurai Taluk,
Taluk Office,
Perundurai.
- 7.E.Padmavathy

.. Respondents

(R3 to R7 given up)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.10.2014 made in I.A.No.665 of 2014 in O.S.No.270 of 2013 on the file of the I Additional District Munsif Court, Erode.

For Petitioners : Mr.S.Kaithamalai Kumaran

For R1 : No appearance

For R2 : Mr.A.V.Radhakrishnan

For R3 to R7 : Given up

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 28.10.2014 made in I.A.No.665 of 2014 in O.S.No.270 of 2013 on the file of the I Additional District Munsif Court, Erode.

2.The petitioners are the plaintiffs 1, 3 to 5 and respondents 1 to 6 are the defendants and 7th respondent is the 2nd plaintiff in O.S.No.270 of 2013 on the file of the I Additional District Munsif Court, Erode. The petitioners along with 7th respondent filed the said suit against the respondents 1 to 6 for declaration that the petitioners, 7th respondent and 1st respondent are the legal heirs of the deceased Lakshmipathi; for permanent injunction restraining the

2nd respondent not to disburse the 2nd item of the suit property exclusively in favour of the 1st respondent and permanent injunction restraining the 4th respondent not to issue any document in favour of the 1st respondent exclusively in respect of the 1st item of the suit property. In the plaint, they have mentioned that the Will dated 05.07.2012 alleged to have been executed by the deceased Lakshmipathi is not executed by him while he was in sound disposing mind. The first respondent in his written statement has denied the same and contended that as per the said Will, he is entitled to all the movable and immovable properties of the deceased Lakshmipathi. In view of this rival contentions, the Trial Court framed 6 issues wherein the 5th issue read as "Whether the Will dated 05.07.2012 is true, valid in law?".

3. The petitioners and 7th respondent filed present application in I.A.No.665 of 2014 under Order XIV Rule 5(2) of the Code of Civil Procedure to strike out the 5th issue as it is not relevant to decide the issue in the suit. According to the petitioners and 7th respondent, by the said issue, the character of the suit will be changed. The respondents have to file a separate suit and prove that the said Will is genuine.

4.The first respondent filed counter affidavit and opposed the said application. According to the first respondent, as per the Will dated 05.07.2012, he is the only person entitled for the movable and immovable properties of the deceased Lakshmipathi and therefore, the 5th issue is relevant to decide the issue in the suit and prayed for dismissal of the application.

5.The learned Judge, considering the averments in the affidavit, counter affidavit and contentions in the plaint, wherein the petitioners and 7th respondent are disputing the genuineness of the Will and the first respondent's contention in the written statement that the said Will is genuine, dismissed the application, holding that the issue is necessary to decide the suit in view of the rival contentions raised in the plaint and written statement.

6.Against the said order of dismissal dated 28.10.2014 made in I.A.No.665 of 2014 in O.S.No.270 of 2013, the present Civil Revision Petition is filed by the petitioners.

7.Heard the learned counsel for the petitioners as well as the second respondent and perused the materials available on record.

8.The petitioners and 7th respondent have filed the suit for declaration and permanent injunction. In the plaint itself the petitioners and 7th respondent have disputed the genuineness of the Will dated 05.07.2012 alleged to have been executed by the deceased Lakshmipathi. The first respondent has denied the said contentions. In view of the rival contentions, whether the Will dated 05.07.2012 is genuine one or not has to be decided to come to the conclusion whether the petitioners and 7th respondent are entitled to the relief sought for by them in the suit and the same can be decided only by appreciating the evidence let in by the parties during trial. In view of this rival contention, the said issue has been framed. The learned Judge has considered all the above facts and dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 28.10.2014 made in I.A.No.665 of 2014 in O.S.No.270 of 2013.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

09.01.2018

Index :: Yes/No

V.M.VELUMANI,J.

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To

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