



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.M.A. (MD) No.34 of 2014

and

M.P. (MD) .No.1 of 2014

and

C.M.P. (MD) .No.10591 of 2017

Alagu Pillai

.. Petitioner / Respondent
Plaintiff

Vs.

T.V.C.Gandhi @ Periyapidaran

.. Respondent / Appellant
Defendant

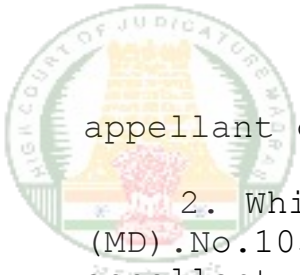
Civil Miscellaneous Appeal has been filed under Order 43 Rule 1 of the Civil Procedure Code, against the judgment and decree dated 25.09.2013, passed in A.S.No.199 of 2011 by the learned Subordinate Judge, Melur (Camp Court), Madurai District, remanding the judgment and decree dated 08.06.2011 passed in O.S.No.167 of 2007 by the learned District Munsif, Melur.

For appellant : Mr.PT.S.Narendravasan

For respondent : Mr.P.Jessi Jeeva Priya

JUDGMENT

The appellant / plaintiff had filed the suit in O.S.No.167 of 2007 for declaration of title and permanent injunction. The trial Court had decreed the suit as prayed for by judgment and decree dated 08.06.2011. Aggrieved by the said judgment, the respondent herein had preferred an appeal in A.S.No.199 of 2011. Before the first appellate Court, the respondent produced a Will, dated 09.03.1987 and wanted to mark the same stating that he claimed the right over the suit property, based on the said Will. The first appellate Court, after hearing both sides, has remanded the matter to the trial Court for fresh consideration. Aggrieved by that judgment, the appellant / plaintiff has filed this civil miscellaneous appeal. During the pendency of the appeal, the sole



appellant died.

2. While so, one Mr.Katturajan has filed a petition in C.M.P. (MD).No.10591 of 2017 stating that he is the grandson of the appellant / plaintiff and that the appellant / plaintiff, before his death, has executed a Will dated 28.10.2010, whereby and whereunder the suit properties and other properties settled in his favour and therefore, he has to be necessarily brought on record as the legal representative of the deceased sole appellant / plaintiff. According to the respondent / defendant, as the appellant / plaintiff succeeded the suit properties from her husband, she cannot execute a Will in favour of the proposed party and the proposed party cannot be stated as the legal heir of the appellant / plaintiff and he has to file a separate suit.

3. When the matter came up for hearing today, the learned counsel appearing for Mr.Katturajan - proposed party as well as the respondent submitted that the matter may be remitted back to the file of the trial Court for deciding the genuineness of both the Wills viz., the Will, dated 28.10.2010, alleged to have been executed by the deceased sole appellant in favour of Mr.Katturajan and the Will dated 09.03.1987, based on which the respondent claimed title. The learned counsel appearing for the respondent has no objection for remanding the matter.

4. In view of the above, this matter is remanded to the file of the trial Court, where Mr.Katturajan shall file an application seeking to implead him as a legal heir of the appellant / plaintiff and on such application, the trial Court shall allow the petition subject to genuineness of the Will, dated 28.10.2010 and other legal issues, and shall permit them to let in evidence and then, to decide the genuineness of the Will submitted by the proposed party and respondent, and dispose of the suit on merits and in accordance with law. The above exercise shall be completed within a period of six months from the date of receipt of copy of this judgment.

5. This civil miscellaneous appeal is accordingly disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Madurai District.



2.The District Munsif,
Melur.

Copy to:

The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.(2 COPIES)

+1cc to Mr.N.SUBRAMANIAN, Advocate, SR.No. 60942

+4cc to Mr.P.T.S.NARENDRAVASAN, Advocate, SR.No. 60918

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GCG

KK/SV/09.05.2018/SAR-1/3P-10C