



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Eighteenth day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.185 of 2016
IN
SA(MD) No.316 of 2011

1 KARUNAGARAN NAIR
2 SREEKANTAN
3 SUKESHAN
4 MUKUTTA KUMAR
5 SUJTHA KUMARI

... PETITIONERS/PROPOSED
RESPONDENTS 18 TO 22

Vs

1 DASAYYAN NADAR
2 RAJAM
3 RAJESH
4 RAGHAVAN NAIR ALIAS REGHU (DIED)
5 KRISHNANKUTTY
6 LEKSHMANAN NADAR
7 SELVAMONI NADAR
8 THERASAMMA
9 RAJAMONI NADAR
10 CHANDRASEKHARAN NAIR
11 SELVARAJ
12 RASEENA
13 EASWARADHAS
14 SWAMYDHAS
15 SUNNARAN
16 KUMAR
17 SARASWATHI
18 SUGANTHI
19 SELVIN
20 RAJAN

... RESPONDENTS/APELLANTS

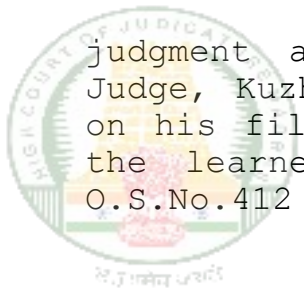
... RESPONDENTS/RESPONDENTS
(RESPONDENTS 18 TO 20 REMAINED EXPARTE IN THE LOWER APPELLATE
COURT AND NOTICE NEED NOT GO TO THEM IN THE S.A)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the certified copy of the Registered will dated 11/08/2012 executed by Raghavan Nair alias Reghu, the deceased 1st Respondent as additional evidence before this Honble Court and thus render justice.

Prayer in SA(MD). 316/ 2011 :

<https://hcservices.ecourts.gov.in/hcservices/>

The appellant above named begs to prefer this memorandum of grounds of Second Appeal before this Honourable Court against the



judgment and decree dated 12.1.2010 of the learned Subordinate Judge, Kuzhithurai and made in A.S.No.117 of 2006 and cross appeal on his file reversing the judgment and decree dated 18.08.2006 of the learned II Additional District Munsif, Kuzhithurai made in O.S.No.412 of 1998 on his file.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. K.SREEKUMARAN NAIR, Advocate for the petitioners and of MR.K.N.THAMBI, Advocate for R1 to R3 and MRS.J.ANANDHAVALLI, Advocate for R7 and MR.C.R.NIRMAL, Advocate for R4 and MR.B.CHRISTOPHER, Advocate for R10 to R13 the court made the following order:-

This petition has been taken out by five individuals. These five individuals now claim to be legal heirs / legatees of one Raghavan Nair alias Reghu, (respondent No.1 in the main second appeal and defendant No.12 in trial Court). The petitions were allowed today and therefore, the petitioners herein have become respondents 23 to 27 in the main second appeal (to be noted petitions say proposed respondents 18 to 22 but, respondents 18 to 22 are already on record in their capacity as legal heirs of deceased 10th respondent.)

2.Be that as it may, before I deal with this petition, it is necessary to give a brief background of the suit, out of which the second appeal arises.

3.It is also necessary to give the trajectory thus far in a nutshell.

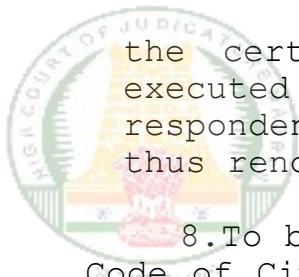
4.I am informed that the suit was originally filed in the trial Court with prayers for partition and demarcation. After full contest, the trial Court granted the prayer for demarcation alone. Both sides carried this matter in appeal. I am informed that there was an appeal and cross objection. First appellate Court vide common order in the appeal and cross objection set aside the order of the trial Court and granted the prayer for partition. In other words, preliminary decree of partition was passed. Against preliminary decree for partition, defendants 1 to 3 are in appeal before me as appellants 1 to 3 respectively.

5.The above being the backdrop, respondent 1 in the second appeal before me, who was defendant 12 in the trial Court died pending second appeal on 14.06.2013.

6.As alluded to supra, his legal heirs have been brought on record and they are the five petitioners in the instant CMP before me.

7.The prayer in this petition reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>
For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to receive



the certified copy of the Registered Will dated 11.08.2012 executed by Raghavan Nair alias Reghu, the deceased 1st respondent as additional evidence before this Hon'ble Court and thus render justice.'

8.To be noted, the petition has been filed under Section 151 of Code of Civil Procedure, 1908 (herein after referred to as 'C.P.C' for brevity), but when there is a specific provision in C.P.C, such petition cannot be entertained under Section 151 of CPC.

9.However, as there is no specific provision and as this Court otherwise has powers, to deal with this petition. I entertain this petition by treating the same as petition under order 42 rule 27 of CPC.

10.Prayer in the instant petition would reveal the petitioners seek to mark the certified copy of a registered Will dated 11.08.2012, as an additional document in this second appeal.

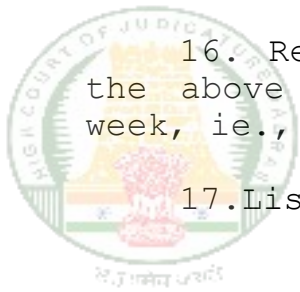
11.To be noted, it is the case of the petitioners that the aforesaid Will has been executed by the respondent No.1 in the main second appeal, ie., Raghavan Nair alias Reghu. In other words, according to the petitioners, respondent No.1 in the main second appeal Raghavan Nair alias Reghu, is the testator qua aforesaid Will. Petitioners seek to mark certified copy of the Will. A perusal of the certified copy of the Will reveals that the Will has been registered as document No.94 in the jurisdictional Sub Registrar Office, i.e., Kollangode, Sub Registrar Office.

12.Now when the parties are in second appeal, even if this Will is marked as an additional document, though obvious, parties cannot perambulate beyond the four corners of Section 100 of C.P.C. To be noted, the second appeal has not been admitted and only notice has been ordered on 24.06.2011. Records have been called for and the main second appeal is to be heard.

13. Under such circumstances, I am of the view that no prejudice or hardship would be caused, if the aforesaid certified copy of the registered Will is allowed to be marked as an Exhibit / additional document, subject to the condition that the petitioners herein should perambulate strictly within the four corners of Section 100 C.P.C, when the second appeal is heard qua Will too.

14.Respondent No.1 in the second appeal, who is said to be testator of the said Will, was defendant No.12 in the trial Court. Therefore, it would be appropriate to mark this Will in B-series.

15.I find from the judgment of the trial Court that with regard to B-Series, ie., defendants' side 146 Exhibits have been marked. Therefore, aforesaid certified copy of the registered Will, being Will dated 11.08.2012, shall be marked as Ex.B.147, subject to the aforesaid condition/ rider .



16. Registry is directed to do needful to assign Ex.B.147, to the above said document after following due procedure, within a week, ie., on or before 25.04.2018.

17. List the matter on 27.04.2018.

sd/-
18/04/2018

WEB COPY

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SUBORDINATE JUDGE,
KUZHITHURAI.
- 2 THE II ADDITIONAL DISTRICT MUNSIF,
KUZHITHURAI.

COPY TO
THE SECTION OFFICER, JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.J.ANANDHAVALLI Advocate SR.No.6529

ORDER
IN
CMP(MD) No.185 of 2016
IN
SA(MD) No.316 of 2011
Date :18/04/2018

MKV-CM-VR-RNB/26.4.2018/4P-5C