



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.2042 of 2017

and

CMP(MD)No.10180 of 2017

1)Glory
2)Ajith
3)Ajitha

...Petitioners 1 to 3/Petitioners 1 to 3/
Defendants No.12 to 14

4)Chandrika
5)Sudhir
6)Sunil
7)Sumith
8)Sujith

... Petitioners 4 to 8/Respondents 8 to 12/
Defendants 7 to 11

vs.

1)Gopalan
2)Revi
3)Kamalam
4)Bindhu
5)Sariha
6)Anilkumar

... 1st Respondent/1st Respondent/ Plaintiff

... Respondents 2 to 6/ Respondents 3 to 7/
Respondents 2 to 6

Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 11.07.2017 of the learned I Additional District Munsif, Kuzhithurai, made in I.A.No.184 of 2017 in O.S.No.358 of 2012.

For Petitioner	: Mr.K.N.Thampi
For R1	: Mr.C.Godwin
For R2 to R6	: No appearance

ORDER

The 1st respondent is the plaintiff in the suit and the petitioners are children of 1st defendant in the suit. The 1st respondent herein filed O.S.No.358 of 2012 before the I Additional District Munsif, Kuzhithurai, for partition of 4/5th share in the suit schedule properties which belonged to his father Simson. The father of the petitioners/1st defendant now deceased filed written statement to the effect that Simson executed a will dated 16.01.1998



in favour of the 7th defendant who is in possession of the suit properties.

2.The trial has commenced on 31.03.2015 and the plaintiff side evidence was closed on 05.06.2015 and the suit was posted for the defendants side evidence on 10.06.2015 and the evidence of the defendants was closed on 04.08.2016 and thereafter, the case was posted for arguments on 10.11.2016. After completion of arguments on the side of the plaintiff, the case was posted for the arguments of the defendants and since the defendants were not ready for arguments on 20.01.2017, the case was posted for judgment on 27.01.2017. At this stage, the 1st respondent/plaintiff filed I.A.Nos.424 and 425 of 2016 to reopen and scrap the evidence of DW3 since DW3 did not submit himself for cross examination. I.A.No.425 of 2016 was allowed and the chief examination of DW3 was scrapped which was confirmed in CRP.No.1434 of 2007 by this Court on 07.08.2017. Thereafter, the petitioners filed the present I.A.No.184 of 2017 for examining the Notary who drafted the will and the Trial Court dismissed the said petition vide impugned order dated 11.07.2017, against which, the present revision petition has been filed.

3.Perusal of the records shows that the stand of the 1st defendant as well as his legal representatives/petitioners herein is that the deceased Simson executed a will in favour of the 7th defendant in respect of the suit properties and therefore, others have no right in the properties of Simson.

4.Admittedly, the revision petitioners are not claiming any benefit under the alleged will and the 7th defendant alone is beneficiary and therefore, it is the duty of the propounder of the will to prove the same . However, the propounder of the will, 7th defendant has not filed the present I.A. Therefore, in my considered opinion, the present petition filed by the petitioners is only to drag on the proceedings and there is no infirmity in the impugned order passed by the learned Judge.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

The I Additional District Munsif, Kuzhithurai.

+1cc to Mr.K.N.Thampi, Advocate, SR.No. 52680

+1cc to Mr.C.Godwin, Advocate, SR.No.52554

CRP(PD) (MD) No.2042 of 2017
02.03.2018