



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (MD) No.2097 of 2017 (PD)

and

C.M.P (MD) No.10448 of 2017

1.Mercy

2.M.S.Sudhaker

.. Petitioners /

Petitioners / 3rd parties

Vs.

1.Muthu

.. 1st respondent /

1st respondent / Plaintiff

Samyadass (died)

2.Usha

3.Hema

4.Latha

5.Murugan

6.Murugesan

7.Ramalingam

8.Mother Chelinmary

... Respondents 2 to 8/

Respondents 3 to 9/

Defendants 2 to 8

PRAYER: Petition filed under Article 227 of the Constitution of India, praying to call for the records pertaining to the fair and decreetal order passed in I.A.No.467 of 2014 in O.S.No.98 of 2005, dated 20.07.2016 by the learned Additional District Munsif, Eraniel and set aside the same with regard to the 1st appellate Court to decide the validity of the Will dated 25.07.1995 on the basis of available remedy.

For Petitioner

: Mr.K.P.Narayanakumar

For 1st respondent

: Mr.M.P.Senthil

For respondents 2 to 6

: No appearance

For 8th respondent

: Mr.N.Pragalathan



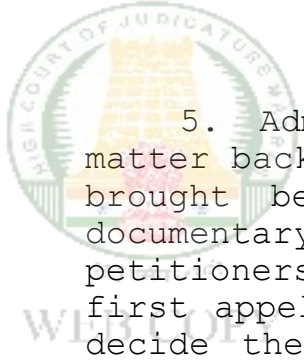
ORDER

This civil revision petition has been filed by the revision petitioners / third parties, praying to set aside the order, dated 20.07.2016, passed in I.A.No.467 of 2014 in O.S.No.98 of 2005, by the learned Additional District Munsif, Eraniel, insofar as the finding with regard to the validity of the Will, dated 25.07.1995.

2. It is stated in the petition that the 1st respondent / plaintiff has filed the suit in O.S.No.98 of 2005 for partition against his father Mr.Swamidass / 1st defendant and his sisters viz., defendants 2 to 4 and other purchasers / vendees and the said suit was decreed partially with respect to "A" schedule property and dismissed in respect of "B" schedule property. He would further submit that against the disallowed portion, the 1st respondent / plaintiff has filed an appeal in A.S.No.102 of 2011. During the pendency of the appeal, the 1st defendant viz., Swamidass, died. While so, the revision petitioners / 3rd parties filed an interlocutory application seeking to implead them as the respondents 9 and 10 in the appeal. They have also stated in the said petition that the revision petitioners are the wife and son of the deceased 1st defendant and based on the Will, dated 25.07.1995, executed by the 1st defendant, they have been in possession and enjoyment of the suit property.

3. The appellate Court, after hearing both sides, has remanded the matter to the trial Court to decide the right of the revision petitioners and the legality of the Will, dated 25.07.1995. During the pendency of the matter before the trial Court, the signature of the deceased 1st defendant in the Will was disputed and therefore, the revision petitioners had filed an interlocutory application to compare the signature of the deceased 1st defendant in the Will with the admitted signature. But the same was dismissed, against which the present revision petitioners approached this Court in C.R.P. (MD).No.2460 of 2014 and this Court has allowed the civil revision petition by directing the trial Court to send the Will in question to the expert for comparison of the signature with the admitted signature found in the sale deed executed by the 1st defendant in the year 1997. After analysing oral and documentary evidences, the trial Court has held that the revision petitioners are the legal heirs of the deceased 1st defendant and that the Will has not been proved and thus, out of two issues, the trial Court has decided one issue in favour of the revision petitioners and another against them. Aggrieved by the finding of the trial Court in respect of the Will in question, the present civil revision petition has been filed by the revision petitioners / 3rd parties.

4. Heard the learned counsel appearing for both sides and perused the records carefully.



5. Admittedly, the first appellate Court has remitted the matter back to the trial Court for deciding the new facts which were brought before it. The trial Court, after analysing oral and documentary evidences, decided one issue in favour of the revision petitioners and another against them, and returned the matter to the first appellate Court. Now, it is for the first appellate Court to decide the matter on merits. As per the procedure contemplated under Order 41 Rule 26 of the Civil Procedure Code, the revision petitioners ought to have filed their objections before the first appellate Court. Instead, they have filed this civil revision petition, without following the procedures contemplated under Order 41 Rule 26 of C.P.C.

6. In view of the above, the revision petitioners are directed to file their objections as per the Order 41 Rule 26 of the Civil Procedure Code before the first appellate Court forthwith and the first appellate Court is directed to consider the objections to be filed by the revision petitioners and the other parties and decide the matter on merits and in accordance with law, as early as possible.

7. This civil revision petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Ist Additional Subordinate Judge,
Nagercoil, camp at Padmanabapuram.

2. The Additional District Munsif,
Eraniel.

+1cc to Mr. K. P. NARAYANA KUMAR, Advocate, SR. 46607

+1cc to Mr. M. P. SENTHIL, Advocate, SR. 46429

C.R.P. (MD) No. 2097 of 2017 (PD)
06.02.2018

GCG

KK/SV MMS/SAR 4/19.02.2018/ 3P- 5C/