



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD)No.2426 of 2016 (PD)

and

C.M.P. (MD)No.11423 of 2016

Sadaya Ramanujam

... Petitioner/Respondent/Defendant

Vs.

G.Gurusamy (Died)

1.G.Balamurugan

2.G.Prabhakar

... Respondents/Petitioners/

Respondents of decreased Plaintiff

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the fair and decreetal order dated 17.10.2016 made in I.A.No.517 of 2015 in O.S.No.336 of 2014, on the file of the learned Subordinate Judge, Theni, and allow the Civil Revision Petition.

For Petitioner : Mr.R.A.Mohanram

For Respondents : Mr.B.Rajesh Saravanan for R.1

No appearance for R.2

ORDER

One G.Gurusamy filed O.S.No.336 of 2014, on the file of the Sub Court, Theni, seeking the relief of declaration and recovery of possession. The said Gurusamy passed away on 25.05.2015. His sons, namely, G.Balamurugan and G.Prabhakar, got themselves impleaded in the suit by filing I.A.No.517 of 2015 and came on record. The said interlocutory application was allowed on 17.10.2016. Questioning the same, the present civil revision petition has been filed.

2. Heard the learned Counsel on either side.

3. The contention raised in the memorandum of grounds is that the interlocutory application has been allowed merely on the strength of a Will, which was marked in the proceedings. The learned Counsel for the revision petitioner would point out that the said Will has not been proved as per law. The second contention is that following the demise of the original plaintiff, a mere memo was filed, instead of a formal application. The same was returned and only thereafter, the present interlocutory application in I.A.No.517 of 2015 was filed. He would vehemently contend that mere filing of memo will not extend the period of limitation.



4. No doubt, both the contentions raised by the learned Counsel appearing for the revision petitioner are sound and sustainable. In fact, the respondents ought to have filed the interlocutory application in the very first instance, instead of filing a mere memo. But then, it is not in dispute that the respondents are the sons of the original plaintiff and therefore, they are entitled to prosecute the suit. Therefore, this Court is not inclined to interfere with the order impugned in the civil revision petition on a mere technical ground.

5. Hence, while sustaining the order impugned, this civil revision petition is dismissed. However, it is made clear that the Will could not be said to be proved or established merely because it is marked in the present proceedings and it is the duty of the respondents to prove the Will in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (PROTOCOL)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Subordinate Judge,
Theni.

- 1 CC TO Mr.B.Rajesh Saravanan , ADVOCATE IN SR No.84217.
+ 1 CC TO Mr.R.A.Mohanram , ADVOCATE IN SR No.83586.
-
- GK
- DS SKN SAR3 09 11 2018 2P 4C

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