

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4411 of 2013

and

M.P.No.1 of 2013

Nosha Devi

... Petitioner/Defendant

Vs.

1. A.E.S.Sivasampath

2. A.E.S.Shanmugam

3. A.E.S.Suryamurthy

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 21.08.2013 made in I.A.No.24107 of 2009 in O.S.No.2290 of 2009, on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 21.08.2013 made in I.A.No.24107 of 2009 in O.S.No.2290 of 2009, on the file of the IV Assistant Judge, City Civil Court, Chennai.

2. Aggrieved over the order passed by the trial Court in amendment application in I.A.No.24107 of 2009 in O.S.No.2290 of 2009, filed by the plaintiff for a relief that one Muniakkal was not competent to execute a Will pertaining to the suit property and by way of subsequential relief declaring the Will dated 05.12.1997 is null and void. Hence, the present Civil Revision Petition has been filed.

3. The respondent has filed the suit in O.S.No.2290 of 2009, for bare injunction against one Muniakkal and his legal heirs not to alienate the suit property.

4. Heard Mr.K.V.Ananthakrushnan, learned counsel appearing for the revision petitioner and perused the order of the trial Court.

5. It is the contention of the respondent that the suit property is belonged to one Thimmana Choudry. The said Thimmana Choudary out of love and affection executed a Will in favour of the petitioners sister Janatha Bai in the year 1979. The said Thimmana Choudary died on 07.12.1982. The respondents were residing outside the jurisdiction of the Madras at the relevant point of time, and made

one Muniakkal their aunt to stay in the property. Pending suit, an application has been filed to amend the suit for declaration to declare that the said Muniakkal was incompetent to execute the Will and the same is null and void. The trial Court has allowed the application as against the present Civil Revision Petition has been filed.

6. Heard the learned counsel appearing for the revision petitioner there is no representation for the respondent.

7. It is to be noted that the suit was filed for bare injunction. The testamentary document cannot be a subject to proof the validity and to be decided by the competent Court. Present suit was filed for bare injunction, the testamentary document would be subject to proof and validity and to be decided by the competent Court. The Civil Court in bare injunction suit cannot assume the jurisdiction to decide the competency of the person to execute such Will and grant declaration as to question of the competency of the person executing the Will. The person relying on the Will has to establish the Will by proving the same in the manner known to law.

N.SATHISH KUMAR, J.
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8. Similarly, the person who is ignoring the Will also can show that the Will is forged and the person has no title to execute such Will. In view of the same, I am of the view that the declaration to declare the competency of the person who was not alive, cannot be granted in a bare suit filed for injunction.

9. Hence, the order of the trial Court allowing the amendment application is not correct. Accordingly, the same is set aside and the Civil Revision Petition is allowed and the application for amendment is dismissed. The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

18.02.2019

Index: Yes/No
Speaking/ Non-Speaking
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To

1. The IV Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, VR Section, Madras High Court.

C.R.P(PD)No.4411 of 2013