

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 1025 of 2019

and

C.M.P. Nos. 6770 and 22790 of 2019

1. Malliga
2. Samuvel

... Petitioners

-Vs-

1. Mentally ill-health Indirani
2. Mentally ill-health Prema Thangam
3. Meckanz

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and final order dated 30.01.2019 in I.A. No. 1 of 2019 in O.S. No. 374 of 2015 on the file of II Additional Sub Court, Erode.

For Petitioners : Mr. S. Kaithamalaikumaran

For Respondents : Mr. R. Thiagarajan for Caveator

ORDER

This Civil Revision Petition has been filed against the fair and final order passed in I.A. No. 1 of 2019 in O.S. No. 374 of 2015 on the file of II Additional Sub Court, Erode, by order dated 30.01.2019.

2. Before the trial Court, the defendants 1 to 3 filed the said IA under Order XVI Rule 1(3) and Section 151 of the Civil Procedure Code to examine the further witnesses on the defendants side.

3. Since the said application, after contest, was allowed through the impugned order, aggrieved over the same, the revision petitioners who were the plaintiffs in the suit and were the respondents in the said IA, preferred the present revision petition.

4. I have heard Mr. S. Kaithamalaikumaran, learned counsel appearing for the revision petitioners and Mr. R. Thiagarajan, learned counsel appearing for the respondents.

5. Before the Court below, the suit for partition was filed by the plaintiffs, where a Will had come up for adjudication and in order to prove the Will on the side of the defendants, they wanted to examine the attesting witnesses of the Will, where one Nallamuthu stood as one of the attesting witnesses. Therefore only to identify the signature of the said Nallamuthu in the said Will, his son one N. Prabu had to be

examined on behalf of the defendants, only for the said main purpose, the said application seems to have been filed, as projected by the learned counsel for the respondents.

6. In this context, it is the objection on the side of the revision petitioners that, the defendants wanted to prove the Will by bringing unwanted witnesses to depose on behalf of them in support of the execution of the Will, therefore it was opposed by the revision petitioners / plaintiffs before the Court below, which has not been considered in proper perspective.

7. It is the further submission of the learned counsel appearing for the revision petitioners that, already DW1, who is one of the attesting witnesses, has been examined, therefore the present proposal to examine N. Prabhu another attesting witness is no more required, therefore on that ground, he is opposing the said impugned order.

8. In this context, it is the stand of the respondents / defendants that, DW1 was the Notary Public, who notarized the Will, only in that capacity, he has been examined.

9. Insofar as the attesting witness is concerned, who is no more, therefore, only for the limited purpose to identify the signature of the said Nallamuthu, his son one N. Prabhu has to be examined, hence, the said application has been filed. In so far as the proposed examination of the third defendant himself as witnesses is concerned, for such examination, no such permission is required from the Court, therefore in respect of the order passed by the Court below in the order impugned, permitting the third defendant as one of the witnesses on behalf of the defendants side is concerned, it goes without saying that, such right is always with the defendants who are always parties to the suit to be their witnesses and therefore unmindful of the said portion of the impugned order, in so far as other aspects i.e., allowing the defendants to examine these witnesses, particularly, the said N. Prabhu is concerned, it is fully justifiable and therefore, it does not require any interference from this Court.

10. I have considered the said submission made by both sides and perused the materials placed before this Court.

11. As has been rightly pointed out by the learned counsel for the respondents herein, the said N. Prabhu admittedly being the son of the late Nallamuthu, who stood as attesting witness of the Will in question and therefore only to identify the signature of the said Nallamuthu, being only attesting witness of the Will, the respondents side wanted to examine his son N. Prabhu. Therefore the said plea made on behalf of the respondents / defendants before the Court below was allowed, which, in the considered opinion of this Court, is a sustainable one.

12. Moreover, it has been contended by the learned counsel for the respondents that, the permission allowing the third defendant to be the witnesses on behalf of the defendants is concerned, such gesture, in the eye of law, is not required to be made by the Court below, as such right is always vested with the parties with the suit.

R. SURESH KUMAR, J.

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13. When that being the position, this Court feels that, absolutely there can be no plausible reason to oppose the said reason given by the Court below to examine the said witnesses on behalf of the defendants / respondents.

14. Accordingly, the Civil Revision Petition does not considered to be merited one, hence it fails and accordingly it is dismissed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

30.10.2019

Index: Yes / No

Speaking order / Non speaking order

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To

The II Additional Sub Court,
Erode.

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and**



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