

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition No.1094 of 2019
and C.M.P.No.7206 of 2019

Kaliammal (Died)
1.P.Mohan
2.P.Ravichandran

..Petitioners

-Vs-

1.Mani @ Devaki
2.Rajendran

..Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.No.62 of 2019 in O.S.No.126 of 2018 dated 19.02.2019 on the file of the learned District Munsif-cum-Judicial Magistrate at Valappadi.

For Petitioners : Mr.D.Selvaraju
For Respondents : Mr.T.Sezhian

O R D E R

This revision has been filed against the fair and decreetal order dated 19.02.2019, passed by the learned District Munsif Cum Judicial Magistrate, Valappadi in I.A.No.62 of 2019 in O.S.No.126 of 2018.

2. Before the trial Court, the suit was filed for declaration, by the first plaintiff, who is the mother of the plaintiffs 2 and 3, originally against the respondents / defendants. The first defendant was the daughter of the first plaintiff and the second defendant was the son-in-law of the first plaintiff.

3. During the pendency of the suit, the first plaintiff died on 26.03.2017, leaving behind the plaintiffs 2 and 3, as they are the sons of the first plaintiff. Therefore, those plaintiffs 2 and 3 got impleaded themselves as the plaintiffs and such impleadment was allowed by the trial Court. Subsequently, the amended plaint also has been filed on behalf of the plaintiffs, which has also been accepted by the trial Court.

4. At the time of death of the first plaintiff, it seems that the counsel appearing for the first plaintiff, who is also the counsel for plaintiffs 2 and 3, who got subsequently impleaded as such, has filed a memo informing the Court that, the first plaintiff has died. However, instead of mentioning that the plaintiff died on 26.03.2017, he has mentioned in the said memo that "the plaintiff died intestate on 26.03.2017".

5. The said sentence "died intestate" is absolutely not necessary and also according to the revision petitioners, it is not a fact, as according to the revision petitioners, the first plaintiff, during her life time, in respect of the property in question, which is the subject matter before the trial Court in the suit, had bequeathed a Will and the same has got registered, and therefore by virtue of the Will, the property in question was inherited by the plaintiffs 2 and 3. In consonance to the same, averments have been made in the amended plaint and that has also been taken on record by the trial Court and the trial is pending.

6. In the circumstances, the said memo filed by the counsel informing the death of the first plaintiff that on 26.03.2017, the first plaintiff died intestate, may not be justifiable because the first plaintiff did not die intestate, as she also bequeathed the property in favour of the plaintiffs 2 and 3, the revision petitioners herein and therefore, in order to remove the word "died intestate" and instead make it as "died on 26.03.2017", I.A.No.62 of 2019 was filed, and the same has been rejected by the trial Court through the impugned order.

7. I have gone through the impugned order of the trial Court, where the learned Judge has given the reason that, the said I.A.No.62 of 2019 has been filed to drag on the proceedings and the statement given by the revision petitioners who are applicants in the said Interlocutory Application that the memo has been filed mistakenly, as if the first plaintiff died intestate, cannot be accepted.

8. The fact remains that, the suit was laid only by the first plaintiff, who was the mother, against her daughter and son-in-law and during the pendency of the suit, in the year from 2006 to 2012 itself, the Will has been executed and registered by the plaintiffs 2 and 3, who are the sons of the first plaintiff and based on the said Will executed by the first plaintiff, the plaintiffs 2 and 3 can claim right over the property in question in the suit concerned, is altogether a different issue and they can also have it decided by the trial Court, on which this Court does not want to express any view.

9. The plaintiffs 2 and 3, who are the revision petitioners herein, got impleaded as plaintiffs in the suit and they claim that some document has been executed (Will) in their favour, and that the said fact has also been stated in the amended plaint. According to the revision petitioners, the endorsement made in the memo filed by the learned counsel for the plaintiffs to the effect that the first plaintiff died intestate on 26.3.2017, is a wrong information and therefore, the same cannot be permitted to stay in the amended plaint and accordingly they sought to erase it and make the correction that the first plaintiff died on 26.03.2017.

10. This Court is of the considered view that, if such a prayer as sought for in the present application in I.A.No.62 of 2019 is allowed, no prejudice would be caused to the respondents / defendants in the suit, as the issue whether the prayer sought for in the suit to declare the settlement deed said to have been made by the first defendant in favour of the second defendant in respect of the suit property is valid or not and in this context, the issue raised by the plaintiffs on the strength of the alleged Will executed by their mother in their favour, also can be decided during the trial.

11. However, this decision has to be taken only by the trial Court on the strength of the evidence to be let in and therefore, without expressing any view about the claim and counter claim on merits by both the parties, this Court is of the considered view that, the prayer sought for by the revision petitioners before the trial Court in I.A.No.62 of 2019 should have been allowed by the trial Court and therefore, the rejection of the said interlocutory application through the impugned order, is unacceptable.

12. Hence, the present Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. However, this Court is not inclined to express any opinion or view on the merits and demerits of the case, as projected by both the parties, as the same are the matters for trial and to be decided by the trial Court.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

KST

To

The District Munsif-cum-Judicial Magistrate
Valappadi, Salem District

+1 CC to M/s.R. Meenal, Advocate sr 76371.
+1 CC to Mr.D.Selvaraju, Advocate sr 75966.

C.R.P. No.1094 of 2019

PM(CO)
SP(04/11/2019)