

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

O.S.A. No. 300 of 2018

1. Muthulakshmi
2. Mallika
3. S.Punitha
4. Arasu Prakash ...Appellants

Vs.

1. Rani
2. Baby K. Abhinaya ...Respondents

Prayer: Appeals under Order XXXVI Rule 1 of O.S. Rules and Clause 15 of Letters Patent against order dated 11.04.2018 made in Appl.No.1305 of 2018 in O.P.D.No.3299 of 2006 on the file of this Court.

For Appellants : Mr.M.Nalla Thambi

For Respondents : Mr.P.Marikannan

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellants being aggrieved over the order of the learned Single Judge dated 11.04.2018, by which the order passed by the learned Master condoning the delay in re-representation was confirmed after initially holding that the aforesaid order requires interference and, therefore, to be remitted for fresh consideration.

2. The contesting first respondent initially filed an application in O.P.D.No.3299 of 2006 seeking to probate the Will relied upon by her. There was a considerable delay in re-presenting the said petition. The appellants also filed an OP seeking to probate the Will in their favour. This was objected by the contesting respondents and, therefore, the petition was converted into testamentary original suit in TOS No.15 of 2006. There is also a suit filed in Tr.CS.No.563 of 2007 which was to

be tried along with T.O.S.No.15 of 2006. Thereafter, the suit in O.S.No.5128 of 2004 filed earlier was transferred and re-numbered as C.S.No.309 of 2017. All the said proceedings relate to the same suit property.

3. The learned Master condoned the delay in re-presenting the papers. This was challenged by the appellants before the learned Single Judge. The learned Single Judge was pleased to remit the matter for fresh consideration. After passing the aforesaid order, it was brought to his notice that OP has been numbered in O.P.No.18 of 2018. Therefore, the learned Single Judge changed his view and held that inasmuch as the Original Petition has been numbered, the earlier order will have no significance. The subsequent decision taken by the learned Single Judge is being challenged by the appellants.

4. Learned Senior Counsel appearing for the appellants would submit that after having taken the decision earlier to remit the matter to the learned Master to record evidence, the learned Single Judge ought not to have changed his view merely because the Original Petition has been numbered. It is further submitted that the Testamentary Original Suit filed at the instance of the appellants in TOS.No.15 of 2006 is at the advanced stage. Therefore, the order passed by the learned Single Judge requires interference.

5. Learned counsel appearing for the respondents would submit that no prejudice would be caused to the appellants if the Testamentary Original Suit is taken up along with the other pending suits and petitions. In fact, first respondent has already filed an application for taking up the matters together for joint trial. Hence, no interference is required.

6. Condoning the delay in re-presenting is a matter between the Court and the party unless the third party interest is crept in, which is not the case before us. In the case on hand, both the parties before us relied upon their respective Wills. Admittedly, as of now T.O.S. No.15 of 2006 is pending and so also the other suits filed. Therefore, we are not, at this stage, going into the merits of the case. The learned Master by giving reasons allowed the application filed by taking note of the fact that Original Petition has already been numbered. We are also of the view that inasmuch as the connected matters are pending, the order of the learned Single Judge requires to be confirmed.

7. After all, it is for the learned Single Judge to decide which of the Wills relied upon by the parties is true and genuine. Permitting the respondents to mark the Will in the pending Testamentary Original Suit or to contest it by OP No.18

of 2018 will not make any difference. It is for the petitioners in OP No.18 of 2018, who are contesting respondents before us, to prove the genuineness of the Will. In any case, the Original Petition filed by the appellants has already been converted in the Testamentary Original Suit. Even this Original Petition, i.e., OP No.18 of 2018, will have to be converted into Testamentary Original Suit. We do not want to stand on the technicalities at this stage as considerable delay has already occurred. Therefore, suo motu, we convert the OP No. 18 of 2018 into Testamentary Original Suit to be tried along with T.O.S.No.15 of 2006. Registry is directed to convert O.P.No.18 of 2018 into Testamentary Original Suit to be tried along with T.O.S No.15 of 2006.

8. We request the learned Single Judge to dispose of the above subject matters within a period of six months from the date of receipt of a copy of this order. It is well open to the contesting respondents to get appropriate orders in the applications filed for joint trial of suits along with the Testamentary Original Suits. In such view of the matter, we request the learned Single Judge to dispose of the said application within a period of four weeks from the date of receipt of a copy of this order.

The appeal is disposed of with the above said observations. No costs. Consequently, connected CMP No. 14136 of 2018 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1 cc to M/s.M.Nallathambi, Advocate, S.R.No.13920

+1 cc to M/s.P.Marikannan, Advocate, S.R.No.13321

O.S.A. No. 300 of 2018

RR(CO)
SSM(18/03/2019) .