

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD). Nos. 3255, 3258 and 3259 of 2019

and

C.M.P. No. 21171 of 2019

Karuppathaal

... Petitioner
in all C.R.Ps

Vs.

1. C. Kamalathaal

Palanisamy (Died)

2. Radhamani

3. Nandakumar

4. Jeevitha Sri

... Respondents
in all C.R.Ps

Prayer in C.R.P. No. 3255 of 2019: Petition filed under Article 227 of the Constitution of India against the order and decree order dated 15.07.2019 in I.A. No. 2 of 2019 in O.S. No. 482 of 2013 on the file of I Additional District Court, Coimbatore.

Prayer in C.R.P. No. 3258 of 2019: Petition filed under Article 227 of the Constitution of India against the order and decree order dated 15.07.2019 in I.A. No. 1 of 2019 in O.S. No. 482 of 2013 on the file of I Additional District Court, Coimbatore.

Prayer in C.R.P. No. 3259 of 2019: Petition filed under Article 227 of the Constitution of India against the order and decree order dated 15.07.2019 in I.A. No. 3 of 2019 in O.S. No. 482 of 2013 on the file of I Additional District Court, Coimbatore.

For Petitioner : Mr. R. Rajarajan
For Respondents : Mr. G.K. Muthukumar
Caveator

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal order passed in I.A. Nos. 1, 2 and 3 of 2019 in O.S. No. 482 of 2013, on the file of I Additional District Court, Coimbatore, by order dated 15.07.2019.

2. In I.A. No. 1 of 2019, the petitioner has filed an application under Section 45 of the Indian Evidence Act and in I.A. No. 2 of 2019, the very same petitioner has filed an application under Section 75 of Civil Procedure Code and I.A.No.3 of 2019 was filed to recall D.W.5.

3. The trial Court, after hearing both sides, dismissed all these applications, against which these respective revision petitions

have been filed by the petitioner / plaintiff.

4. Heard Mr. R. Rajarajan, learned counsel appearing for the revision petitioner / plaintiff and also Mr. G.K. Muthukumar, learned counsel appearing for the respondents / defendants, who entered appearance through Caveat.

5. The learned counsel appearing for the petitioner vehemently contended that, the learned Judge at paragraph No. 8 of the order impugned has stated the reasons for rejecting these applications that, Exs.B5 and B6 which are the documents in question, which are sought to be sent for expert opinion and evidence. In support of the said documents, PW3, who drafted the Ex. B6 and PW2, who stood as a witness, were examined, they have subjected to cross examination at length also, that apart, PW5 also had been examined and he has been subjected to long cross examination by other side.

6. Only in that circumstances, the learned Judge rejected these applications. The said reasoning given by the learned Judge in paragraph No. 8 of the impugned order would tend to take *prima facie*

decisions in support of the defendants / respondents about the execution of the documents in question i.e., Ex.B5 and Ex.B6, therefore that will have an impact on the suit filed by the plaintiff, on that ground, the impugned orders are liable to be set aside.

7. The learned counsel appearing for the revision petitioner would also submit that, once the plaintiff takes a stand that, her father did not execute the documents (settlement and Will) Exs. B5 and B6, it is the defendants' turn to send the documents for expert opinion which they failed, therefore the plaintiff had gone into action and filed these applications, hence, the same ought not have been dismissed by the trial Court.

8. Per contra, the learned counsel appearing for the respondents / defendants would submit that, four witnesses have been examined, who deposed before the Court below, in support of Exs. B5 and B6 and these two documents namely the settlement as well as the Will in favour of the defendants executed by the father of the plaintiff, who also the father of the first and second defendants and grand father

of the third to fifth defendants. These witnesses had deposed explaining the circumstances under which those documents have been executed by the late father of the plaintiff and the first and second defendants and that has been rightly taken note of by the learned Judge in rejecting these applications.

9. The learned counsel appearing for the respondents would also submit that, both the documents have been registered duly in the concerned Registered Office, therefore, that will also add some extra veracity and factual value of the documents concerned and in order to defeat the case of the defendants and also the suit, the present applications have been filed by the petitioner/ plaintiff. Hence, the trial Court has rightly rejected those applications, accordingly, it does not require any interference from this Court.

10. I have considered the said submissions made by both parties and have gone through the materials placed before this Court.

11. As he has been rightly contended by the respondents side,

Exs. B5 and B6 have been registered and in support of the execution of the documents also three witnesses have been examined who deposed before the Court and all those witnesses are subjected to cross examination by the other side.

12. These factors show that, there is no necessity on the part of the Court to refer the documents for expert opinion at a later stage where the cross examination of the witnesses are over and the suit is in the end of the trial stage.

13. However, assessing the reasons given by the trial Court, by taking into account, the deposition of the three witnesses namely PW2, PW3 and PW5 in support of the execution of the documents, that will tend to make a *prima facie* view, as if the admissibility of the execution of the documents in question have been accepted by the trial Court and will have definitely an impact in the suit at the arguments stage and at the time of decision.

14. In so far as the said contention of the learned counsel

appearing for the revision petitioner is concerned, this Court feels that, apart from the said reasons cited at paragraph No. 8 of the impugned order of the learned Judge, even otherwise, there is no need to send these documents, as those documents are registered documents and veracity of the same as well as the circumstances of the execution of the documents can very well be argued by both sides and can be decided on merits by the trial Court in the final decision of the suit. Therefore, for the said purpose, the findings given at paragraph No. 8 of the impugned order may not be necessary. Therefore, this Court feels that the contention raised by the petitioner side in this regard have some force.

15. In that view of the matter, this Court feels that, while eschewing the said findings given by the trial Court at paragraph No. 8 of the impugned order in the context of the evidence adduced by PW2, PW3 and PW5 before the trial Court, the rejection of those applications made by trial Court can be confirmed. Accordingly, this Court is inclined to dispose of these revision petitions with the following orders:

"That the orders which are impugned in all these revision

petitions are sustainable and therefore are liable to be confirmed. But at the same time, the findings given by the trial Court at paragraph No. 8 of the impugned order is hereby eschewed."

16. In view of the order passed in C.R.P. Nos.3255 and 3258 of 2019, there is nothing to be decided in C.R.P. No.3259 of 2019, accordingly the same is dismissed.

17. With these above observations, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

01.10.2019

Index: Yes / No
Speaking order / Non speaking order

vji

To
The learned I Additional District Court,
Coimbatore.

R. SURESH KUMAR, J.

vji



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