



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) (PD) .No.348 of 2019

and

C.M.P (MD) .No.1704 of 2019

Kathalingam : Petitioner/Petitioner/
1st Respondent/1st Defendant

Vs.

1.Muniyandi Thevar : 1st Respondent/1st Respondent/
3rd Party

Kovakkal@Kovammal (Died)

2.Gopal

3.Rengasamy : Respondents 2 & 3/Respondents 2 & 3/
Plaintiff 2 & 3

4.Kathalingam

Perumal Naicker (died)

5.Ramasamy Naicker

Masakkal (died)

6.Rammakkal

7.Chinnammal

8.Alagar @Alagarsamy

9.Bommakkal : Respondents 5 to 9/Respondents 5,7,
9 to 12/Defendants 5,6,9 to 12

PRAYER : This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 01.09.2018 passed in unnumbered E.A.No. of 2018 in E.A.No.75 of 2017 in E.P.No.17 of 2014 in O.S.No.539 of 1982 on the file of the learned Principal District Munsif Cum Judicial Magistrate No.I, Srivilliputhur.

For Petitioner : Mr.M.P.Senthil
<https://hcservices.ecourts.gov.in/hcservices/>

For Respondent : No appearance

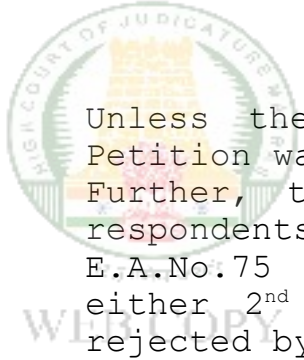
**ORDER**

This Civil Revision petition has been preferred against the order dated 01.09.2018 passed in unnumbered E.A.No. .. of 2018 in E.A.No.75 of 2017 in E.P.No.17 of 2014 in O.S.No.539 of 1982 on the file of the learned Principal District Munsif Cum Judicial Magistrate No.I, Srivilliputhur.

2.The suit in O.S.No.539 of 1982 was filed by one Kovakkal @Kovammal for declaration of title and for recovery of possession of the suit property and the said suit was decreed in favour of the said Kovakkal @Kovammal who was died. Against which, E.P.No.17 of 2014 was filed by the respondents 2 and 3 herein for recovery of possession based on the decreetal order passed in O.S.No.539 of 1982. In the said E.P., E.A.No.75 of 2017 was filed by the petitioner herein to examine the opposite parties ie. Respondents 2 and 3 herein as witnesses. After observing the oral and documentary evidence, the said. E.A.No.75 of 2017 was rejected by the learned Principal District Munsif Cum Judicial Magistrate No.I, Srivilliputhur. Subsequent to that the petitioner, who is the first defendant in the suit filed an un-numbered I.A. to declare that the decree put under execution in the E.P is void and in-executable and dismiss the E.P.

3.The petitioner in the said un-numbered I.A., contended that the respondents 2 and 3 have filed the execution petition claiming position of the property and the petitioner herein has also filed a counter statement. This petitioner as 3rd party has filed the application in E.A.No.75 of 2017, in which, the petitioner contended that he is in possession and enjoyment of the suit property by way of sale for more than 40 years and during the pendency of the second appeal against O.S.No.539 of 1982, the said Kovakkal @Kovammal was died without any issue and her husband also died. Hence, the respondents 2 and 3 herein fraudulently created the Will. The respondents 2 and 3 taking advantage of the situation created a false Will as if it was left by Kovakkal @Kovammal in favour of them filed petitions in the second appeals in S.A.Nos.506 of 1999 and 507 of 1999 to add them as legal representatives of the deceased Kovakkal @Kovammal and permit them to continue the second appeal and this Court permitted them to come on record in the said second appeals and hence, the second appeals were disposed against the petitioner herein.

4.The petitioner herein further contended that unless the respondents 2 and 3 herein claimed themselves are legal heirs, an appropriate relief can be given to him. Hence, the Execution Petition based on the said decree is not passed on merit. Further, no survey number or boundary has been mentioned either in the plaint or in the judgment and hence, the identity of the suit property is also in doubt. Therefore, the petitioner has filed this petition.

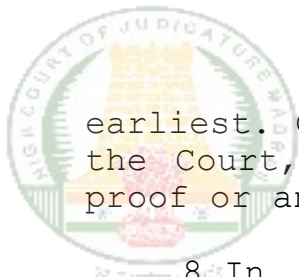


Unless the respondents 2 and 3 prove the Will, the Execution Petition was filed by the them cannot be decided by the trial Court. Further, the petitioner contended that he wants to examine the respondents 2 or 3 as witness for his side evidence. Hence, E.A.No.75 of 2017 was filed by the petitioner herein to examine either 2nd or 3rd respondent herein as witness and the same was rejected by the Executing Court.

5.The revision petitioner herein in the said petition filed under Section 47 C.P.C., questioning the order of the Court in permitting the respondents 2 and 3 as legal heirs of the deceased Kovakkal @Kovammal. He is also very much disputing the mandatory procedure in Order 22 Rule 5 C.P.C, since the respondents 2 and 3 claiming themselves as legal heirs of the deceased Kovakkal was a rank forgery and they are liable to prove the Will executed by Kovakkal. The other contention raised by the petitioner is that the decree passed in O.S.No.539 of 1982 is invalid, illegal and without jurisdiction. Further, the identification of the schedule property is also not incapable and the nature of the property is also disputing by the revision petitioner. The revision petitioner is very much disputing the directions of the property in Survey Nos.814/2 and 814/1E2 and he is aggrieved against the note order of the Executing Court. The said petition was returned by the Court by questioning the maintainability of the said petition. Aggrieved against the said order, the petitioner has preferred this revision.

6.The revision petitioner contended that the learned District Munsif erred in law in rejecting the application merely stating that the application is not maintainable without advertting to the very scope and ambit of Section 47 C.P.C., and the petitioner sought for restoring the case and decide the case on merits. The matter was heard and the Executing Court has found that the respondents 2 and 3 claimed themselves as legal heirs and they are also brought on record on the second appeal itself. The judgment and decree passed in the second appeal was not challenged by this petitioner/judgment debtor and he has not raised any such contention in the counter filed in E.P., After full contest, the delivery was ordered on 20.03.2017.

7.The Executing Court after observing the identity of the property has ordered delivery. The identification of the property which incapable in the Court was not made by this petitioner in the counter statement of the execution proceedings. Further the delivery warrant was also issued on 20.03.2017 was not extended as incapable of identifying the property. Whereas the said delivery warrant was extended only for want of V.A.O, Surveyor and Police help. That apart, there is nothing on record to show that the petitioner is having any interest or right in the remaining extent of suit survey numbers and the said petition was also filed only on 23.07.2018 whereas the delivery was ordered as early as on 20.03.2017. If the petitioner is really aggrieved against the judgment and decree or in the first appeal, he would have taken appropriate steps at the



earliest. Only with an intention to defeat and defraud the right of the Court, the petitioner filed such an application, without any proof or any document and the same application is not maintainable.

8. In view of the above, this Civil Revision Petition is dismissed with cost of Rs.1000/-. The petitioner is directed to pay a sum of Rs.1,000/- to the credit of the Hon'ble Chief Justice Relief Fund, attached to this Bench within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif
Cum Judicial Magistrate No.I,
Srivilliputhur.

Copy to : 1.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

2.The Section Officer, Accounts Section,
Madurai Bench of Madras High Court,
Madurai.(for payment of Chief Justice Relief Fund)

+1 CC to M/s.N.SHANKAR GANESH, Advocate in SR-56506

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msa

PK/24.04.2019 : 4P/6C