



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP (MD) No.1481 of 2019

WEB COPY

1. C.Vijayalakshmi

2. S.Rajakantham

3. K.Kousalya

Trustees of Sri Balamurugan Koil Trust

... Petitioners

versus

Nil

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.03.2019 passed in Trust O.P.No.5 of 2018 on the file of the learned Principal District Judge, Madurai.

For Petitioners : M/s.G.Prabhu Rajadurai

ORDER

The revision petitioners are the Trustees of Sri Balamurugan Kovil, which was constructed by the father of the revision petitioners. The said temple is a private temple and the same was maintained by the father of the revision petitioners. On 12.08.2002, the revision petitioner's father executed a registered Will in respect of his properties and the same was followed with a Codicil dated 19.06.2006 styled as a Will. Thereafter, in order to maintain the temple after his life time, he made an arrangement in the said Will creating Trust with the petitioners as Trustees to hold a property measuring 33 cents in S.Nos.67/5 and 55/1 in Sakkimangalam Village with a direction to the petitioners to maintain the temple from and out of the income of the said property. On the death of their father, the petitioners continued to maintain the said temple. As there was no income from the land and the same was lying waste without any income, the revision petitioners wanted to sell the land in order to maintain the temple. Hence, the revision petitioners moved the Principal District Court, Madurai, by way of filing a petition under Section 34 of the Indian Trust Act, 1882, seeking permission to sell the petition mentioned property for a sum of Rs.2,50,000/- and to invest the same in a Nationalized Bank under a Fixed Deposit Scheme. But, the said petition has been dismissed by the Court below by holding that the petitioners have not produced trust deed to show the existence of the trust over the petition mentioned property and the Will dated 12.08.2002, which was produced by the petitioners has to be proved by examining one of the attestors.



Hence, the revision petitioners are before this Court.

2. The learned counsel appearing for the revision petitioners submitted that due to non-availability of water sources in the land, no cultivation activities are going on and hence, the revision petitioners are struggling to maintain the temple. Hence, the petition under Section 34 of the Indian Trust Act 1882 was filed to sell the property. In the said petition, the revision petitioners have filed two Will dated 12.08.2002 and 19.06.2006, but, in order to prove the same, no evidence was let in before the Court below. The learned counsel further submitted that now, the revision petitioners are ready to let in evidence before the Court below, in order to prove the Will. Hence, the learned counsel prayed for remanding the matter back to the Court below.

3. Heard the learned counsel for the revision petitioners and perused the impugned order.

4. Though the Court below has correctly held that as per Section 68 of the Indian Evidence Act, the execution of Will has to be proved by way of examining one of the attestors, now, the revision petitioners are ready to let in evidence to prove the Will. In order to render complete justice, this Court is inclined to give an opportunity to the revision petitioners to let in evidence to prove the execution of Will. Hence, this Court is of the view that it would be appropriate to remand this matter to the trial Court, by setting aside the order dated 11.03.2019 passed in Trust O.P.No.5 of 2018.

5. Accordingly, the order dated 11.03.2019 passed by the learned Principal District Judge, Madurai, in Trust O.P.No.5 of 2018 is hereby set aside and the matter is remanded back to the Court below for a fresh consideration of the petition filed under Section 34 of the Indian Trust Act.

6. In the result, the Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

OGY



To

The Principal District Judge,
Madurai.

+1 CC to M/s.G. PRABHURAJADURAI, Advocate (SR-85227[F] dated
05/09/2019)

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KM/ (27.09.2019) 3P 3C