

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2020

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THE HON'BLE Mr. **JUSTICE V.BHARATHIDASAN**

C.R.P. (PD) No.2259 of 2009

and M.P.No.1 of 2015

1.A.Jayapal
2.J.Rajapalani@ Sabari
3. J.Palanivelrajan@ Badri ... Petitioners

..Vs..

R.Thenmozhi ... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.6 of 2015 in O.S.No.15 of 2008, on the file of 1st Additional District and Sessions Judge, Vellore dated 01.06.2015.

For petitioners : Mr.V.Raghavachari

For Respondent : Mr.T.M.Hariharan

ORDER

This Revision has been filed against the order dated 01.06.2015 in I.A.No.6 of 2015 in O.S.No.15 of 2008, allowing the Application filed to call for the medical records of the father of the Plaintiff

Mr.V.R.Annamalai Chettiyar from the years 1980 to 2005.

2. The respondent/plaintiff filed a suit for partition in O.S.No.15 of 2008. In the above suit, the petitioners 1 and 2/defendants1 and 2 filed written statements stating that during the life time of their father V.R.Annamalai Chettiyar, he executed a Will in respect of certain properties in favour of the first defendant. But it was disputed by the Plaintiff stating that the petitioners father was mentally ill and he was continuously taking treatment from the year 1980-2005 from C.M.C. Hospital Vellore. Hence, he is not in a position to execute a Will. In order to prove the same earlier, the respondent filed applications to reopen the Plaintiff's evidence and also to call for medical records from the hospital in I.A.Nos.118 and 119 of 2013. The said application was dismissed by the Trial Court. Challenging the same, the respondent/plaintiff filed a Civil Revision Petition before this Court in C.R.P.Nos.3377 and 3378 of 2014. This Court by order dated 04.09.2014 dismissed the above C.R.P's vide order dated 04.09.2014. with an observation that it is the duty of the defendants to putforth their title on the basis of the Will dated 06.10.2004 have to prove that the document/will is true and genuine. It is open to the Plaintiff to

rebut the evidence by way of sent for the medical document and examine the witness to disprove the document. Thereafter the trial proceeded and the defendant has examined the attesor and scribe and the respondent/plaintiff filed an application in I.A.No.6 of 2015 to call for the medical records of the father of the Plaintiff Mr.V.R.Annamalai Chettiyar from the years 1980 to 2005. That application came to be allowed by the Trial Court. Challenging the same, the present Revision has been filed.

3. The learned counsel for the petitioner submitted that similar application filed by the petitioner earlier have been dismissed by the trial Court which was also confirmed by this Court in earlier revision petition. However, the liberty is only given to the petitioners that after examination of the witnesses by the defendants, if necessary, to send for the document and examine the witness to prove mental disorder of the father. But the trial Court without giving any reason mechanically allowed the application in a total non application of mind and therefore prayed this Court to set aside the same.

4. The learned counsel for the respondent would submit that

eventhough earlier application filed has been dismissed and the liberty is given to the petitioner to review the application once the defendants proved the will. In the instant case, now the defendants has produced Will and also examined the attesting witness and scribe to prove the Will. Hence, the necessity arises for the Plaintiff to review the application as per the liberty granted by this Court and considering the said aspect the Trial Court has allowed the Application.

5. This Court have considered the submission made by the learned counsel on either side and perused the materials available on records carefully.

6. In a similar application filed by the petitioner, earlier this Court passed an order in C.R.P.Nos.3377 and 3388 of 2014, which reads as follows:

"11. It is well settled dictum of Apex Court that the person who relied upon the Will/Propounder of the Will has to prove the Will as true and genuine, after dispelling suspicious circumstances arose in the Will. As per the decision of the Hon'ble Apex Court

reported in 2008 (4) SCC 530 (Thiruvengadam PillaiVs... Navaneethammal and another), the negative defence need not be proved. In view of the same, it is the duty of the defendants/respondents to put forth their title on the basis of the will dated 06.10.2004 have to prove that the document/Will is true and genuine. In such circumstances, I am of the view that there is no necessity for the plaintiff to reopen the case for sent for the medical document and examine the witness. However, if the defendants have proved their case, it is open to the plaintiff to rebut the evidence by way of sent for the medical document and examine the witness, to disprove the document. In such circumstances, I m of the view that these impugned orders do not warrant any interference from this Court.

7. From the careful reading of the order, it can be seen that the liberty is given to the petitioner to rebut the evidence only in the event of the defendants proved the case and also if it is necessary. Further, it can be seen that while granting liberty to the Plaintiff this Court has put a rider, stating that only in the event the defendants proved their case it is open to the plaintiff to rebut the evidence by way of sent for the medical document and examine the witness, to disprove the document.

8. However the court below without considering the order passed by this Court in proper perspective and without recording any reason, whatsoever, without giving any specific finding, whether the medical records are necessary, mechanically allowed the application to send for medical records of V.R.Annamalai Chettiar, in the non application of mind.

9. In such circumstances, this Court is inclined to set aside the order passed by the Court below in I.A.No.6 of 2015 in O.S.No.15 of 2008.

Accordingly, this Civil Revision Petition is allowed. The order dated 01.06.2015 passed in I.A.No.6 of 2015 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

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29.01.2020

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To

The 1st Additional District and Sessions Judge,
Vellore



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V.BHARATHIDASAN,J

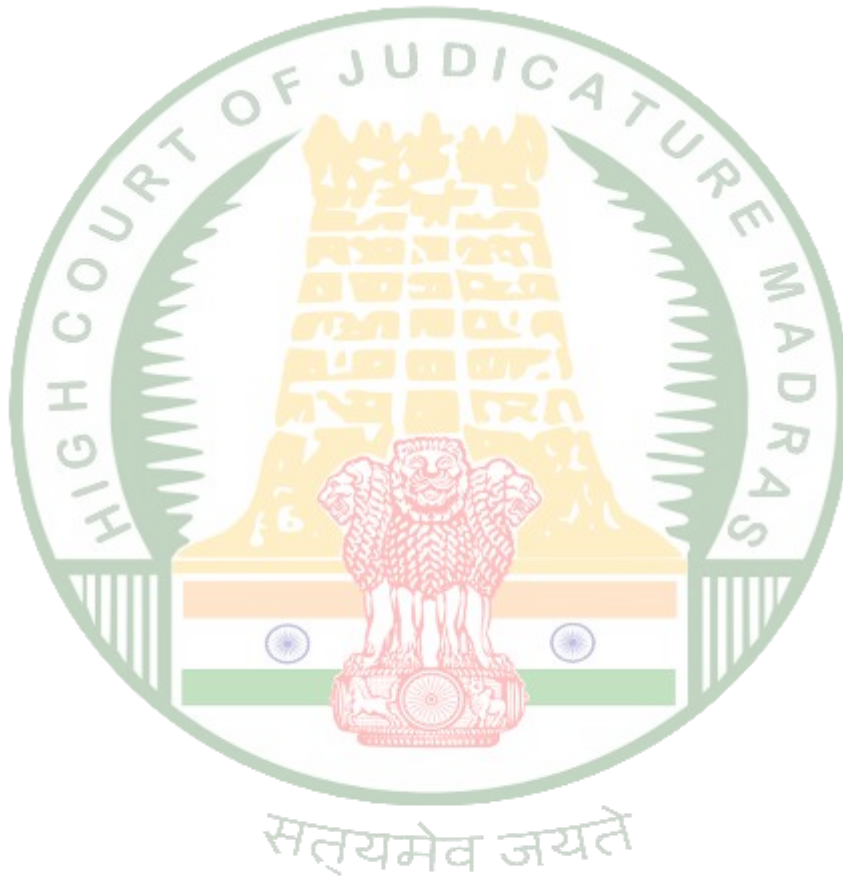
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