

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2376 of 2018
and
C.M.P.No.14701 of 2018

Paneerselvam

...Petitioner/3rd Defendant

Vs.

1.Vittabai
2.Dillibabu
3.Roopavathy

...Respondents/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 12.06.2018 passed in I.A.No.762 of 2017 in O.S.No.97 of 2008 on the file of the Subordinate Judge, Ponneri.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.R.Krishnaswamy

O R D E R

This Civil Revision Petition is filed by the third defendant in the suit in O.S.No.97 of 2008 challenging an order refusing the permission to reopen his evidence, to issue summons to a dead person by name Kanniyappan and to issue a commission for examining the witness by name Gunasekaran, who is said to be the attesting witness of the Will dated 14.07.1997 executed by the grand-father of the petitioner Subramaniya Naicker.

2. The suit in question, namely, O.S.No.97 of 2008 was filed by the first respondent seeking partition and separate possession of her 1/3rd share in the suit property. According to her, the suit property originally belonged to the family of her maternal grand-father Subramaniya Naicker and there was a division between Subramaniya Naicker and his two brothers, while Subramaniya Naicker was allotted with 9 cents of land, his brothers were allotted with 8 cents of land each in the suit property. Under two sale deeds dated 04.10.1956, Subramaniya

Naicker had purchased the shares of his brothers in the suit property. Thus he became the owner of the entire 25 cents. It is also claimed that Subramaniya Naicker died intestate leaving behind his only daughter Valliammal, wife of Varadhappa Naicker. It is stated that Valliammal even during her life time had executed a settlement deed on 05.05.2006 settling the property in favour of the plaintiff and the defendants 1 and 2 to the exclusion of the third defendant.

3. It is stated that the third defendant had filed a suit in O.S.No.189 of 1989 for the relief of partition through his children. The said suit was dismissed for default and an application to restore the suit was transferred to District Munsif Court, Thiruvottriyur, and the same is now pending before the said court. Claiming that the third defendant has resorted to various illegal methods to grab the property, the plaintiff has come up with present suit, seeking partition and separate possession of her 1/3rd share. The defendants 1 and 2 support the cause of the plaintiff.

4. The third defendant filed a separate written statement contending that Subramaniya Naicker did not die intestate. It is claimed that Subramaniya Naicker had executed a Will on 14.07.1997 bequeathing the suit property to his second wife Paripoornammal and to the children of the third defendant after Paripoornammal's life time. The suit went for trial. It is not in dispute that the third defendant had let in evidence. He has stated that one of the attesting witnesses to the Will of Subramaniya Naicker dated 14.07.1997 namely, Kanniyappan had died and summons were taken by him to examine one Arul Prakash son of the other attesting witness as well as the scribe of the instrument. Though no averment was made in the application to summon Arul Prakash, as to the non availability of his father Gunasekaran the other attesting witness. After the examination of Arul Prakash, the evidence was closed and suit was posted for arguments. It is stated that arguments were heard and the suit is posted for judgment. सत्यमेव जयते

5. It is at this juncture, the third defendant/petitioner herein has come up with the instant application in I.A.No.762 of 2017 seeking to issue summons to Kanniyappan, the dead person, to give evidence regarding the attestation of the Will dated 14.07.1997 and to issue a commission to examine Gunasekaran, who is an attesting witness to the Will. The very prayer in this application shows that both the petitioner and his counsel have scant regard for Court proceedings. It is admitted that Kanniyappan is no more. But, an affidavit is filed seeking issuance of summons to Kanniyappan for his examination in Court. The petitioner has chosen to examine the scribe as well as the son of one of the attesting witnesses in proof of the Will, in

compliance with the Section 69 of the Evidence Act. Even in the affidavit filed in support of this application, it is stated that the second witness Kanniyappan is not alive.

6. It is not known, as to how, after making such a statement, the petitioner seeks issuance of summons to Kanniyappan to appear before the Court to give evidence. Having examined the persons, who are acquainted with the signature of the attesting witnesses, the petitioner cannot now go back and seek examination of one of the attesting witnesses. The entire proceedings show the causal manner, in which, the Court has been treated by the petitioner and his counsel. The Trial Court has given valid reasons for not accepting the request of the petitioner for reopening the evidence. May be, the result of this application will be very harsh, but, we cannot close our eyes to the conduct of the petitioner as well as his counsel before the Trial Court and grant indulgence to the petitioner to examine the attesting witness. I therefore, do not see any illegality or irregularity in the orders of the trial Court in dismissing the application.

7. Hence, this Civil Revision Petition fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

To

The Subordinate Judge, Ponneri.

+1cc to Mr.V.Ajay Khose, Advocate in SR.27688 dt.26.8.2020

C.R.P.No.2376 of 2018
and

C.M.P.No.14701 of 2018

MR(CO)

RV(17/09/2020)