

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.12.2020

Pronounced on : 16.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No. 2077 of 2020
and
CMP.No. 13084 of 2020

Govindasamy

... Petitioner

Versus

1.Parvathi (Died)

2.G. Suresh Babu

... Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 05.08.2020 made in I.A. No.3 of 2019 in O.S. No. 405 of 2010 on the file of Principal District Munsif Court, Erode.

For petitioners : Mr. N.Manoharan

ORDER

The revision petitioner is the defendant in the suit.

2.(a) The Original Plaintiff one Parvathi filed a suit in O.S.No.

405 of 2010 before the learned Principal District Munsif, Erode, against the defendant viz., Govindasamy, the revision petitioner herein, for declaring the absolute title to the suit property and directing the defendant to vacate and deliver vacant possession of the suit properties to her on the strength of the WILL dated 24.04.1986 executed in her favour. During the pendency of the trial, the original plaintiff Parvathi died. Before the death the original plaintiff alleged to have executed a WILL dated 21.02.2008 and registered the same, whereby, title bequathed in favour the present plaintiff. After execution of the WILL, the said Parvathi died on 17.03.2013 and hence, the respondent in this revision petition has filed an I.A.No.675 of 2004 to implead him as the plaintiff in the place of the original plaintiff viz., Parvathi and the same was allowed.

(b) Aggrieved against the said order, the present revision petitioner (Defendant in the suit) had preferred the CRP.No.2970 of 2015, by an order dated 18.07.2019, whereby, this Court has granted permission to the respondent herein to file an application under Order 22 Rule 5 r/w section 151 of CPC., before the trial court and let in evidence to prove the WILL alleged to have been executed by the original plaintiff viz., Parvathi as recorded under the law.

(c) Pursuant to the said order, the respondent herein filed an I.A.No.3 of 2019 to declare the petitioner viz., G.Sureshbabu, as the testamentary legal of plaintiff-Parvathi, as per the WILL executed by her dated 21.02.2008 and he arrayed himself as the second defendant in the suit.

(d) The respondent/defendant filed his counter vehemently opposing the interlocutory application before the trial court. On enquiry, to substantiate his case and to prove the WILL of the original plaintiff-Parvathi, the respondent herein examined himself as PW1, attestators of the WILL were examined as PW2 and PW3 and legal notice dated 09.02.1982 was marked as Ex.P1 and the WILL executed by Nallammal in favour of original Plaintiff-Parvathy was marked as Ex.P2 and the death certificate of Ramasamy, Nallammal and Parvathi were marked as Ex.P3, Ex.P4, Ex.P5 and Ex.P6 is the WILL executed by the said Parvathi in favour of the respondent herein and Ex.P7 and Ex.P8 are connected documents.

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3. The learned Principal District Munsif, Erode, after going through the evidence of the PW2 and PW3 who are the attestors and accepted that the Ex.P6-WILL executed and registered on 21.01.2008 and the same was proved in the manner known to law.

Consequently, the aforesaid I.A.No.3 of 2019 was allowed to implead the respondent herein as the second plaintiff in the suit. Hence, the present Civil Revision Petition has been filed.

4. The learned counsel for the petitioner herein would contend that the alleged WILL said to have been executed by the original plaintiff Parvathy in favour of Mr.G.Suresh Babu, was not proved in the manner known to law. Unless and until, the WILL dated 24.04.1986 alleged to have been executed in favour of the original plaintiff deceased Parvathy is proved in the manner known to law, The petitioner ought not to be allowed to continue the suit in the place of the deceased plaintiff viz., Parvathi.

5. This court decline to accept the contention raised by the revision petitioner that the alleged will executed by the original plaintiff in favour the respondent herein was not proved in the manner known to law. To substantiate his case and to prove the genuineness of the WILL, Ex.P6, the respondent herein examined the attestators of the WILL as PW2 and PW3 and also marked documents as Ex.P3, P4, P5 & P6. On the other hands, to disprove the same the petitioner herein had not given any oral or documentary evidence before the trial court. Hence, the trial court has come to the

conclusion that the WILL Ex.P6 was proved, as required under Section 63 of the Indian Evidence Act and under Section 86 of the Indian Evidence Act.

6. After going through the entire records, I do not find any error in the finding arrived at by the trial court. It is my considered view the second plaintiff was arrayed to the issue on the death of the Parvathi based on the WILL Ex.P6, which is proved in the manner known to law, hence, the present respondent/plaintiff herein who sought to be impleaded as the second plaintiff in the suit on the footing of testamentary legal heir survives since the WILL Ex.P6 is proved in the manner known to law.

7. Further, the trial had not been commented anything upon the alleged WILL said to have been executed by the deceased original plaintiff viz., Parvathi. Hence, considering the scope of the enquiry that it cannot be gone into by the trial court when an application is filed under Order 22 Rule 5 of CPC., to bring the testamentary legal heir of the deceased plaintiff. The Trial Court has followed the correct procedure and has rightly recorded both oral and documentary evidence of PW2 and PW3 coupled with Ex.P3, Ex.P4, Ex.P5 and Ex.P6 which go into the question is proved in the manner known to

law. In the absence of any irregularity or illegality in the impugned order, this Court finds that the grounds raised by the learned counsel for the petitioner is devoid of merits and accordingly, the Civil Revision Petition is dismissed and the order of the trial court is confirmed.

8. It is made clear that the second plaintiff, who is impleaded as the second plaintiff in the place of the original plaintiff (deceased Parvathi) can continue the suit and it is for the trial court to decide the issue on the merits of the case in accordance with law.

9. Accordingly, the Civil Revision Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

16.12.2020

Index : **yes**/no
Internet : yes/no
Speaking/Non-Speaking order

msm

To

1. The Sub Court, Bhavani, Erode District
2. The Principal District Munsif Court, Bhavani.

RMT.TEEKAA RAMAN,J.,

msm



**Pre-Delivery order in
CRP.(PD).No. 2077 of 2020
and
CMP.No. 13084 of 2020**

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