

6IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. No.3333 of 2018
and
C.M.P.No.18908 of 2018

Srinivasan (Died)

1. Selvi
2. Sowmiya

... Petitioners

.Vs.

1. K.Balaji
2. Ammu

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the Fair and Decreetal Order of the Subordinate Judge at Dharmapuri dated 21.08.2018 in I.A.No.218 of 2018 in O.S.No.184 of 2011.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.P.Muthamizh Selvakumar

O R D E R

The plaintiffs in O.S.No.184 of 2011 have come up with this Civil Revision petition, questioning the correctness of the order of the trial Court in and by which the trial Court had condoned the delay in filing a document.

2. The suit is one for partition filed by the son and daughters of one Kannaiyan against another son Balaji. The suit was resisted by the defendant contending that the deceased Kannaiyan had left a Will dated 04.10.1998, in an by which he had bequeathed all the properties to the defendant. It is also claimed that the Will was handed over to Kannaiyan's sister, Pappammal to be kept in safe custody. However, the said Will was not produced along with the written statement. The plaintiffs issued a notice requiring the defendant to produce the Will dated 23.04.2013. The said notice was also not complied with. While so, the defendant filed an application in

I.A.No.218 of 2018 seeking to condone the delay in production of the Will.

3. In the affidavit filed in support of the said application, he had stated that his father had handed over the Will to his Aunt Pappammal and after the death of his father, Pappammal gave the Will to him, he had requested her to keep it with her. It is also averred that the Pappammal died on 20.08.2014 and her belongings were with her son. When he enquired her son, her son promised to make a search and hand over the Will as and when it is traced. Claiming that the son handed over the Will just before the filing of the application, the defendant sought for condonation of delay.

4. This application is opposed solely on the ground that it is belated and the non production of the Will, despite issuance of notice is also cited as a reason.

5. The trial Court considered the rival contentions and allowed the application for production of the Will. Aggrieved, the plaintiffs have come up with this Civil Revision petition.

6. I have heard Mr.P.Valliappan, learned counsel appearing for petitioners and Mr.P.Muthamizh Selvakumar, learned counsel appearing for the respondents.

7. Mr.P.Valliappan, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in condoning the delay in production of the document. He would point out that the defendant relies upon the Will even in his written statement and he is expected to produce the same along with written statement. Having failed to produce the Will along with the written statement, he should have at least produced it when the notice to produce was issued in the year 2013. According to him, the trial Court was not right in condoning the delay despite such indifferent conduct of the defendant.

8. Contending contra, Mr.P.Muthamizh Selvakumar, learned counsel appearing for the respondents would submit that the document was with his aunt and she having died in 2014, it became very difficult for him to trace the document. Once the document was traced, the same was produced before the Court. All that has been done by the Court is to condone the delay in receiving the document. The burden is on the defendant to prove the Will in accordance with law. Therefore, this Court cannot and need not interfere with the discretion exercised by the Court below under Article 227 of the Constitution of India.

9. I have considered the rival submissions.

10. What has been done by the trial Court is only to condone the delay in filing the document, the Court has not granted a decree or an order on the basis of the document. The document being a Will has to be proved in accordance with law. The mere production or receipt of the document does not prejudice to the cause of the plaintiff. On the other hand, the rejection of a document would totally prejudice the defendant in as much as his entire defence is based on that instrument. If the trial Court had refused to condone the delay, it would have deprived itself of a chance to have a very valuable evidence before it in deciding the rights of the parties. I therefore, do not find any reason to interfere with the discretion exercised by the trial Court. The Civil Revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Subordinate Judge at Dharmapuri.

+1cc to Mr.P.Valliappan, Advocate Sr.No.26057

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vsn ii (co)
rr ii (15/09/2020)

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