



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2021

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) NOS.1028 & 1029 OF 2019

AND

C.M.P.NO.6786 OF 2019

Ayyasamy

...Petitioner / Petitioner / Defendant
(in both the CRPs)

Vs

1.Lakshmi (deceased)

2.K.Sakthivel

...Respondent / Respondents / Plaintiffs
(in both CRPs)

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.12.2018 passed in I.A.No.437 of 2018 and I.A.No.438 of 2018 in O.S.No.239 of 2010 on the file of the I Additional District Munsif Court, Bhavani.

For Petitioner .. Mr.V.Vijayakumar

For 2nd Respondent .. Mr.S.Senthilnathan

COMMON ORDER

This Civil Revision Petition has been filed taking advantage of Article 227 of the Constitution of India, to to set aside the fair and decreetal order dated 13.12.2018 passed in I.A.No.437 of 2018 and I.A.No.438 of 2018 in O.S.No.239 of 2010 on the file of the I Additional District Munsif Court, Bhavani.

2.Heard Mr.V.Vijayakumar, learned counsel for the revision petitioner and Mr.S.Senthilnathan, learned counsel for the 2nd respondent.

3.The 1st respondent / Lakshmi had filed O.S.No.239 of 2010 which is now pending on the file of the I Additional District Munsif Court, Bhavani. The said suit had been filed for permanent injunction restraining the defendant from interfering with peaceful possession and also for recovery of a portion of the property in which it is claimed that the defendant had encroached and also for costs of the suit.



4.The trial proceeded. The plaintiff examined herself as and was also cross-examined. Thereafter, the defendant also examined himself and also was cross-examined. The matter was posted for arguments. At that time, unfortunately, the plaintiff / Lakshmi died. The 2nd respondent herein / K.Sakthivel filed I.A.No.265 of 2018 under Order I Rule 10 of CPC seeking to implead himself as 2nd plaintiff. He claimed right under a Will said to executed by Lakshmi. It is the contention of Mr.V.Vijayakumar, learned counsel for the revision petitioner, that there are certain doubts which surrounds the execution of the will and it is also contended that Lakshmi had a mother surviving and therefore, the 2nd respondent / K.Sakthivel cannot claim declaration of title of any of the property. Raising those grounds, an additional written statement has also been filed by the revision petitioner herein.

5.The matter was then posted for arguments. At that stage, the revision petitioner / defendant filed I.A.Nos.437 and 438 of 2018 seeking to reopen the evidence of the plaintiff and to recall as a witness, K.Sakthivel for cross-examination. Both these applications were dismissed by order dated 13.12.2018 leading to the filing of the present revision petitions.

6.It had been observed by the learned Additional District Munsif, Bhavani, that the 2nd plaintiff / K.Sakthivel had not grazed the witness box and therefore, there was no issue of cross-examination. It is however, contended by Mr.V.Vijayakumar, learned counsel for the revision petitioner that he claims right through a Will and therefore, questions surrounding the Will have to be put in.

7.I would not interfere with the said order now questioned in this Revision Petition. If a party produces a Will, the proof of the same is a burden cast entirely on the propounder of the Will. He may take up the option of proving the Will or he may not take up the option of proving the will. The choice is left with said individual. The Will cannot be proved in manner known to law, unless it is marked as a document. The 2nd plaintiff has been impleaded on the strength that he is a beneficiary under the Will of deceased 1st plaintiff, Lakshmi. But however, that remains a mere statement.

8.Let arguments therefore be advanced by both the plaintiff and the defendant in the suit and the defendant during the course of arguments may also impress the learned Judge that the Will which is claimed to give a right to the 2nd plaintiff had not been proved and let the learned Munsif pass a judgment on all those aspects.



9.It is to be noted that the revision petitioner herein had also filed additional written statement and contentions therein should also be taken note by the learned Munsif. Therefore, recalling or putting questions in cross-examination, when a witness had not even tendered evidence in chief would not serve any purpose.

10.Let the parties advance arguments. No further evidence is to be recorded in O.S.No.239 of 2010. The matter is pending for more than a decade. Therefore, a direction is given to the learned I Additional District Munsif, Bhavani, to dispose of the said suit on or before 31.08.2021.

11.A responsibility is cast on both the learned counsels for the plaintiff and the defendant to advance arguments in the suit without taking any unnecessary adjournments.

12.With the above observations, the Civil Revision Petitions are disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smv

To

The I Additional District Munsif Court,
Bhavani.

+1cc to Mr.V.Vijayakumar, Advocate, S.R.No.35394

C.R.P.(PD) Nos.1028 & 1029 of 2019

UM(CO)
RVM(10/08/2021)