

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.1443 of 2015 and
MP.No.1 of 2015

1.R.Bhanumathy
2.R.Meenakshi
3.R.Srilekha
4.R.Gnanasekaran
5.R.Karthika

..Petitioners

Vs.

1.R.Pushpa
2.R.Jayapandian
3.R.Palpandian
4.R.Soundara Pandian
5.R.Alex Pandian

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order of the trial court order dated 19.01.2015 and made in I.A.No.958 of 2013 in O.S.No.92 of 2013 on the file of Subordinate Judge, Tambaram and allow the revision.

For Petitioners : Mr.V.Balasubramanian
For Respondents : Notice served

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order in I.A.No.958 of 2013 in O.S.No.92 of 2013 on the file

of Subordinate Judge, Tambaram thereby dismissing the application filed by the petitioners to produce the admission and discharge records of the first petitioner's husband one, K.Rangasamy.

2. The petitioners are plaintiffs. They filed suit for partition in respect of the suit schedule property. According to the petitioners, the first petitioner is the second wife of late K.Rangasamy and petitioners 2 to 5 are children born through the said late Rangasamy and the first petitioner herein. The respondents are the first wife and children of late K.Rangasamy. After filing the written statement in the suit, the petitioners came to understand that the said late K.Rangasamy executed Will in their favour dated 10.10.2011. The late Rangasamy was hospitalised on 20.10.2011 and the hospital report revealed that he was not normal and was suffering from memory loss. Therefore, the Will could not have been executed by him and it is fabricated by the respondents herein. Therefore, the petitioners filed petition to issue subpoena to the Superintendent, Government Rajiv Gandhi General Hospital, Chennai-3 to produce the admission and discharge details of the late K.Rangasamy with reference to IP.No.94633.

3. The learned counsel for the petitioners would submit that the trial court dismissed the petition for the reason that the petitioners

should themselves prove the case and not on the weakness or non production of evidence of the defendants. Even according to the respondent, the said Will is not a registered one and as such when the respondents raised the plea that the schedule property was already bequeathed in their favour by late K.Rangasamy, automatically the burden shifted on their shoulder to prove the plea raised by them. Unfortunately, the trial court recorded the above wrong finding as against the petitioners herein. He further submitted that the petitioners have to prove that the alleged Will could not have been executed by the said late K.Rangasamy, since he was admitted as in-patient at Rajiv Gandhi Government General Hospital, Chennai on 20.10.2011 and he was discharged on 24.10.2011. He was suffering from memory loss and as such he could not have executed the Will on 10.10.2011.

4. Though notice was served to the respondents and their names are printed in the cause list no one appeared on behalf of them before this Court in person or through pleader.

5. Admittedly, the petitioners are the second wife and the children born through one K.Rangasamy. The respondents are the first wife and the children born through the same K.Rangasamy. After

demise of the said late Rangasamy, the petitioners filed the suit for partition as against the respondents herein. The respondents filed written statement stating that the suit schedule property was already bequeathed in their favour by the late Rangasamy by the Will dated 10.10.2011. The said Will is a registered one. The petitioners took a stand that the said late Rangasamy was admitted as inpatient in Rajiv Gandhi Government General Hospital, Chennai on 20.10.2011 and he was discharged from the hospital on 24.10.2011. They produced a xerox copy of the discharge summary which revealed that the late K.Rangasamy was admitted in the hospital on 20.10.2011 and he was discharged from the hospital on 24.10.2011. Therefore, they filed petition to issue subpoena to the Superintendent, Rajiv Gandhi Government General Hospital, Chennai to produce admission and discharge details of their father late K.Rangasamy. The trial court dismissed the same for the reason that the petitioners should themselves prove the case and not on the weakness or non production of the evidence of the defendants. Further reasoned that as per the averments, it cannot be totally said that the late Rangasamy was totally of unsound mind. Therefore, this Court finds no infirmity or irregularity in the order passed by the court below and this civil revision petition is liable to be dismissed.

6. It is made clear that the observations made by the court below that the petitioners should themselves prove the case and not on the weakness or non production of evidence of the defendants contrary to the petition filed by the petitioners herein, since the respondents raised plea that the suit schedule property already bequeathed in their favour by the registered Will dated 10.10.2011. Therefore, the respondents are liable to prove the Will in the manner known to law.

7. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

05.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The Subordinate Judge,
Tambaram



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