

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.1791 of 2016

and

C.M.P.No.9398 of 2016

1.N.Nandakumar

2.Parameswari

3.Varalakshmi

4.Saraswathi

.. Petitioners

Vs.

1.Kannan

2.Indira

3.Chitra

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 17.02.2016 made in I.A.No.104 of 2013 in O.S.No.231 of 2013 on the file of the I Additional District Court, Tirupur.

For Petitioners : Mr.G.Ethirajulu

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and final order

dated 17.02.2016 made in I.A.No.104 of 2013 in O.S.No.231 of 2013 on the file of the I Additional District Court, Tirupur.

2.The petitioners are defendants 2 to 5 in O.S.No.231 of 2013 on the file of the I Additional District Court, Tirupur. The respondents filed the said suit against the petitioners and other defendants for partition of the suit properties. The petitioners filed written statement and are contesting the suit. Trial commenced. The respondents examined the 1st respondent as P.W.1 and one R.Krishnamoorthy was examined as P.W.2 and marked 12 documents as Exs.A1 to A12. At that stage, the petitioners filed I.A.No.104 of 2016 under Rule 75 (2) of Civil Rules of Practice, for examining the Tahsildar, Avinashi or his representatives. According to petitioners, the 1st respondent is not the son of Bakthavathchalam and the said Bakthavathchalam is not the son of Mathaian Chettiar. The 1st respondent produced Ex.A6/legal heirship certificate dated 21.09.2012 to prove that he is the son of the said Bakthavathchalam. According to petitioners, the 1st respondent obtained the said legal heirship certificate by producing false evidence. The petitioners filed O.S.No.354 of 2012 on the file of the District Munsif Court, Avinashi, against the respondents for permanent injunction. In the said suit, the petitioners pleaded that the 1st respondent is stranger. Only after receiving

summons in the said suit, the 1st respondent obtained the legal heirship certificate after delay of 8 years of the death of said Bakthavathchalam. Hence, the petitioners suspect the genuineness of Ex.A6/legal heirship certificate produced by the 1st respondent and filed the present I.A.No.104 of 2016. The respondents filed counter affidavit in the present I.A.No.104 of 2016 and denied all the averments and submitted that the respondents filed Exs.A5 to A12 and proved that the 1st respondent is the son of the said Bakthavathchalam. The Revenue Authority issued legal heirship certificate only after due enquiry and prayed for dismissal of the application.

3.The learned Judge considering the averments in the affidavit, counter affidavit and documents marked in the suit by the respondents, dismissed I.A.No.104 of 2016, holding that legal heirship certificate is not a conclusive proof to determine the paternity. The 1st respondent has produced other documents to prove that he is son of said Bakthavathchalam. The legal heirship certificate produced by the 1st respondent has to be considered along with other documents filed by the 1st respondent and hence, examination of Tahsildar is not necessary to test the veracity of the legal heirship certificate.

4.Against the said order dated 17.02.2016 made in I.A.No.104 of 2013

in O.S.No.231 of 2013, the petitioners have come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioners contended that the learned Judge failed to consider the consent of 1st respondent for examination of Tahsildar, Avinashi, at the time of cross examination with regard to Ex.A6/legal heirship certificate. The learned Judge failed to see that the other documents produced by the 1st respondent are only based on Ex.A6/legal heirship certificate and not based on SSLC book. The 1st respondent has not mentioned the name of his mother in any of the records and not proved his parentage. The learned Judge ought to have taken adverse inference on the 1st respondent. The learned Judge failed to see the date of death of the said Bakthavathchalam is on 09.06.2004 and the 1st respondent obtained the legal heirship certificate only on 21.09.2012. In the legal heirship certificate, the name of the wife and daughter of Bakthavathchalam are not mentioned. The legal heirship certificate issued by the Tahsildar is only based on false evidence given by the 1st respondent and hence, it is necessary to examine the Tahsildar, Avinashi. The order of the learned Judge is unsustainable and liable to be set aside and prayed for allowing the Civil Revision Petition.

6.The learned counsel appearing for the respondents made his submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

8.From the materials available on record, it is seen that the petitioners are defendants 2 to 5 in O.S.No.231 of 2013. The said suit was filed by the respondents for partition against the petitioners and other defendants. The petitioners are contesting the suit by filing written statement. The 1st respondent examined himself as P.W.1 and examined one R.Krishnamoorthy as P.W.2 and marked 12 documents as Exs.A1 to A12, including Ex.A6/legal heirship certificate. After the evidence of P.W.1 & P.W.2, the petitioners filed the present I.A.No.104 of 2016 for examination of Tahsildar, Avinashi. According to petitioners, the 1st respondent obtained the legal heirship certificate by furnishing false details and playing fraud. The 1st respondent claiming to be the son of Bakthavathchalam, who died on 09.06.2004, after 8 years of death of the said Bakthavathchalam, obtained the legal heirship

certificate only on 29.01.2012. According to petitioners, this creates suspicion about the genuineness of legal heirship certificate. The learned Judge considering the documents filed by the respondents, held that respondents have filed other documents apart from legal heirship certificate to show that 1st respondent is son of Bakthavathchalam. The learned Judge further held that legal heirship certificate is not the conclusive proof to show that 1st respondent is the son of Bakthavathchalam. The said legal heirship certificate has to be considered along with other documents. Further, the contention of the learned counsel appearing for the petitioners that the 1st respondent's sister's husband was not included in the legal heirship certificate is without merits. The 1st respondent's sister viz., Thilagavathi died in the year 1994. According to 1st respondent, he is the only son of Bakthavathchalam.

9.From the materials on record, it is seen that the respondents filed suit for partition. The 1st respondent is claiming to be the son of Bakthavathchalam. It is for the 1st respondent to prove that he is son of Bakthavathchalam. From the order of the learned Judge, it is seen that the 1st respondent has produced 12 documents during trial. Ex.A6 is the legal heirship certificate. The learned Judge considered five other documents and held that legal heirship certificate alone is not a conclusive proof to determine

the paternity. It has to be considered along with other material documents and hence, examination of Tahsildar, Avinashi, is not required to test the veracity of the legal heirship certificate produced by the 1st respondent. Further, the petitioners are seeking to examine the Tahsildar, Avinashi, on the ground that there is suspicion about the genuineness of Ex.A6/legal heirship certificate. Mere suspicion is not enough to examine the Tahsildar, Avinashi, with regard to Ex.A6/legal heirship certificate. The learned Judge considered all the materials in proper perspective and dismissed the I.A.No.104 of 2016 and there is no error in the said order of the learned Judge warranting interference by this Court.

10.In the result, this Civil Revision Petition stands dismissed. The suit is of the year 2013 and the same is in Trial stage. The learned I Additional District Judge, Tirupur, is directed to dispose of the suit as expeditiously as possible, in any event, within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.10.2021

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Index : Yes / No

Internet : Yes / No

V.M.VELUMANI, J.
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To

The learned I Additional District Judge,
Tirupur.



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