



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2061 of 2021

and

C.M.P.No.15684 of 2021

B.Subramaniam

... Petitioner

Vs

Balaraman (Died)

1.V.B.Palanivel

2.Kamala

3.Murugesan

4.Lakshmi

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and final order dated 16.03.2021 passed by the Learned Principal District Munsif, Attur in I.A.No.5 of 2021 in O.S.No.251 of 2003.

For Petitioner : Mr.L.Mouli.

O R D E R

This petition is filed challenging the order passed in I.A.No.5 of 2021 in O.S.No.251 of 2003 passed by the learned Principal District Munsif, Attur on 16.03.2021.

2.I.A.No.5 of 2021 was filed under Order 6 Rule 17 and Section 151 of C.P.C., for amending of plaint seeking the prayer that the will dated 05.04.2002 is true, genuine, valid, acted upon and binding the defendant. This petition came to be dismissed. Against the said order of dismissal, this Civil Revision Petition is preferred.

3.It is seen from the copy of the plaint filed that the petitioner filed a suit against the respondents seeking the relief of declaration that the registered gift settlement deed dated 22.05.2003 is fraudulent, inoperative, null and void and not binding the plaintiff's right, title or interest, possession and enjoyment over the suit property and for the relief of permanent injunction. The petitioner based his claim in respect of the suit property, on the basis of the will, said to have been executed by one Manimuthusamy on



05.04.2002. The will is an unregistered will. It appears that there is a settlement deed executed by the first defendant in favour of the second defendant on 22.05.2003, which is now challenged on the ground that first defendant had no right to execute the said settlement deed. The first defendant is the father of the petitioner and the second defendant is half brother of the petitioner. It appears in the written statement filed by the defendants that they challenged the genuineness of the Will. Therefore, this present petition seems to have been filed for amendment of the plaint. The learned Principal District Munsif, Attur, on considering the rival submissions dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

4.The learned counsel for the petitioner submitted that the petitioner claims title in respect of the suit property on the basis of the will dated 05.04.2002 executed by one Manimuthusamy and he is in possession and enjoyment of the suit property and this will is disputed by the defendants in the written statement, which has made it necessary for seeking the prayer mentioned.

5.In the considered opinion of this court, when the Will is disputed by the opposite side, it is for the petitioner to prove the Will in the manner known to law. The amendment of the plaint for seeking the relief that the Will is true, genuine, valid, acted upon and binding the defendant is absolutely not necessary. If the petitioner is able to prove the Will in the manner known to law, it goes without saying that the Will is binding on the respondent/defendant. Not only that, the amendment petition has been filed after the commencement of trial. Therefore, this court finds no reason to interfere with the order of the learned Principal District Munsif, Attur and the same is confirmed.

6.Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ay/ep

To

The Principal District Munsif,Attur.

+1 cc to Mr.L.Mouli, Advocate Sr.NO. 51182

C.R.P.No.2061 of 2021
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ss(CO)

A.SK(25.10.2021)