



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.883 of 2018
and
C.M.P.No.4844 of 2018

Rathinam (died)

1.M.Malarkodi

.. Petitioner

Vs.

1.M.Saroja
2.M.Devika
3.M.Gopinath
4.Minor M.Arulkumar
(rep. by Guardian, his mother
Chinnaponnu)

.. Respondents

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decretal order made in I.A.No.1023 of 2015 in I.A.No.156 of 2013 in O.S.No.142 of 2013 dated 09.08.2017 on the file of the District Munsif Court, Rasipuram.

For Petitioner : Mr.K.Selvarangan

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed against the fair and decretal order made in I.A.No.1023 of 2015 in I.A.No.156 of 2013 in O.S.No.142 of 2013 by the District Munsif Court, Rasipuram.

2.The facts of the case in nutshell are that suit schedule property was originally owned by Ponnammal, Aunt of the second petitioner and she executed a Will dated 16.07.2001 bequeathing the suit property in favour of the first petitioner's brother Mani. After the demise of the said Ponnammal on 28.11.2007, the suit property was in possession and enjoyment of the first



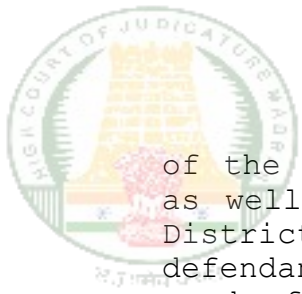
petitioner's brother Mani and he died on 29.05.2008. Thereafter, the first petitioner is in exclusive possession and enjoyment of the same. The first petitioner executed a settlement deed in favour of the second petitioner. The suit in O.S.No.142 of 2013 was instituted by the respondents 1 to 3 against the 4th respondent Minor Arulkumar for partition. In the said suit, on 25.08.2014, a preliminary decree was passed and when the final decree application is pending, the impleading petition was filed by the petitioner. The said impleading application was resisted by the respondents contending that the Wills dated 16.07.2001 and 05.03.2008 are forged and the petitioners are not in possession over the suit property. The application was dismissed. Challenging the same, the present revision has been preferred.

3.The learned counsel appearing for the petitioners would urge that the petitioners are necessary and proper parties in the final decree application, however, the Trial Court, without considering the facts that they claim title over the property, dismissed the same. It is also stated that the proposed parties have filed a separate suit in O.S.No.87 of 2015 seeking declaration of title and the other reliefs in respect of the suit property and the said suit is also pending before the same Court.

4.Though the first respondent has been served and her name is printed, none appears for her. The service on the other respondents is incomplete.

5.A perusal of the records show that the suit in O.S.No.142 of 2013 was filed for partition and a preliminary decree was also passed. Thereafter, the plaintiffs have filed an application for passing final decree. At this juncture, the petitioners filed the present petition for impleading themselves as parties to the proceedings. The petitioners claimed right over the property based on the Will executed by Ponnammal dated 16.07.2009 in favour of the first petitioner's brother Mani and based on the Will executed by the said Mani in favour of the first petitioner. Since the petitioners claimed title over the property based on the above stated Wills and they have also a suit O.S.No.87 of 2015 to establish the same, I find no illegality or irregularity in dismissing the impleading application. In that view of the matter, this civil revision petition fails and the same is liable to be dismissed.

6.It is pertinent to note that the petitioners have sought for declaration of their title based on the Wills referred above and also for declaration to declare the preliminary decree obtained in O.S.No.142 of 2013 dated 25.08.2014 as null and void in the subsequent suit O.S.No.87 of 2015. It is the submission



of the learned counsel for the petitioners that the second suit as well as the final decree application are pending before the District Munsif Court, Rasipuram. Since in the said suit, the defendants have filed their written statement and the suit is ready for trial, the Trial Court is hereby directed to dispose of the suit in O.S.No.87 of 2015 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

7. With the above direction, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

skn

To

1. The District Munsif,
Rasipuram.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.K.Selvarangan, Advocate Sr No.41394

C.R.P.No.883 of 2018
and
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BR (CO)
PR (14/09/2021)