

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD)No.3415 of 2018

and

CMP No.19212 of 2018

T.G.Balathandayuthapani

...

Petitioner

Vs

- 1.Lokammall
- 2.J.P.Jaishankar
- 3.N.Usha
- 4.T.Jayalakshmi @ Govindammal
- 5.K.S.Bullibabu
- 6.M.Saradha
- 7.J.Pandurangaiah
- 8.T.M.Amaravathy
- 9.B.S.Padmavathy
- 10.A.S.Prema
- 11.J.Murugan
- 12.R.Sumathi
- 13.S.Sripriya
- 14.R.Gowri
- 15.C.J.Devammal
- 16.A.S.Kousalya

...

Respondents

(Notice need not be sent to respondents 3 to 16/Defendants 2 to 15 as they are only formal parties. Hence given up for R3 to R16)

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 16.08.2018 passed in I.A.No.3716/2014 in O.S.No.5094/2012 on the file of the II Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.E.Senthilkumar

For Respondent : No appearance
Nos.1 & 2

Respondents No.3 to 16 : Given up

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 16.08.2018 passed in I.A.No.3716/2014 in O.S.No.5094/2012 on the file of the II Additional Judge, City Civil Court, Chennai, thereby dismissing the petition for rejection of plaint.

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2.The petitioner is the first defendant and the respondents 1 & 2 are the plaintiffs. The respondents 1 & 2 filed a suit for partition in respect of the suit properties.

3. Pending the suit, the petitioner filed a petition for rejection of plaint on the ground that the suit schedule properties were derived by his father by the partition deed dated 31.10.1938 vide document No.2875/1938. Therefore, the properties were self-acquired properties of his father. His father viz., T.S.Govindarajulu Chetty bequeathed his entire suit properties by way of the Will dated 05.08.1976 in favour of the petitioner herein. He is the only son and all the other issues are daughters, who got married and all of them are well settled.

4. The Will was probated in O.P.No.60/1981 by an order dated 24.12.1982 by the Subordinate Judge, Tindivanam, which was prepared and issued on 21.01.1983 and the same has been marked as Ex.P11. Thereafter, the petitioner had obtained exclusive possession and enjoyment of the suit properties and he was the exclusive owner of the properties. In fact, in the probate petition, the first respondent herein and the other sisters including the mother of the second respondent herein gave consent affidavits to probate the Will in favour of the petitioner herein.

5.On perusal of the consent affidavit dated 14.09.1981 submitted by the first respondent herein, it is revealed that

“I am the youngest daughter of the deceased T.S.Govindarajulu Chetty. I have perused the petition filed by my brother T.G.Balathandayuthapani for issue of probate with the Will annexed. We are aware that our father has executed this Will and he has also informed us of the same. I have no objections for the petition by my brother being allowed and the Will dated 05.08.1976 executed by my father while in sound disposing state of mind, being probated.”

Likewise, the mother of the second respondent herein gave a consent affidavit dated 15.10.1980, which is as follows:

“I am the second daughter of the deceased T.S.Govindarajulu Chetty. I have perused the petition filed by my brother T.G.Balathandayuthapani for issue of probate with the Will annexed. We are aware that our

father has executed this Will and he has also informed us of the same. I have no objection for the petition by my brother being allowed and the Will dated 05.08.1976 executed by my father while in sound disposing state of mine, being probated.”

6. Accordingly, both the sisters of the petitioner herein gave their respective consent affidavit and they have no objection for the petition being allowed and the Will dated 05.08.1976 by their father being probated in favour of the petitioner. Accordingly, the petitioner was allowed to enjoy the entire properties bequeathed in favour of the petitioner therein.

7. While being so, after a period of 30 years, the respondents 1 & 2 herein, the first respondent is the sister of the petitioner and the second respondent is none other than the own son of the deceased sister of the petitioner viz., Chamundeswari, who had given consent affidavit in the probate petition, filed the suit in O.S.No.5094/2012 for partition in respect of the very same properties, which were probated in favour of the petitioner herein.

8.In fact, after the issuance of probate, the petitioner sold the entire suit properties in favour of various third parties by the registered sale deeds. Now, no piece of suit property is available for partition. When the first respondent and the mother of the second respondent have already given consent affidavits in the probate petition filed by the petitioner herein and they had knowledge about the probate in favour of the petitioner, after a period of 30 years, the present suit has been filed and it is clear abuse of process of law and it is liable to be rejected. However, the Court below, without considering the abovesaid grounds, mechanically dismissed the petition in I.A.No.3716/2014 for rejection of plaint. In support of the above contentions, copies of the documents were marked by the petitioner as Exs.P1 to P22.

9.Therefore, the order dated 16.08.2018 passed in I.A.No.3716/2014 in O.S.No.5094/2012 on the file of the II Additional Judge, City Civil Court, Chennai, is set aside and the plaint in

O.S.No.5094/2012 is rejected. Accordingly, the civil revision petition is allowed. No order as to cost. Consequently connected miscellaneous petition is closed.

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

sms

05.07.2021

To

The II Additional Judge, City Civil Court, Chennai.



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