



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.788 & 820 of 2020
and
C.M.P. (MD) Nos.5323 & 5571 of 2020

A.M.Ravichandran .. Petitioner/Petitioner/
2nd Defendant - in both CRPs
-vs-

A.M.Solairajan .. Respondent/Respondent/
Plaintiff - in both CRPs

Prayer in C.R.P. (PD) (MD) No.788 of 2020 :- Petition filed under Section 115 of Civil Procedure Code to set aside the fair and executable order passed by the Fast Track Mahila Judge, Dindigul in I.A.No.55 of 2019 in O.S.No.63 of 2011 on 27.01.2020 as far as rejecting Document No.6, Xerox copy of the Will dated 19.10.2012.

Prayer in C.R.P. (PD) (MD) No.820 of 2020 :- Petition filed under Article 227 of the Constitution of India to set aside the fair and executable order passed by the Fast Track Mahila Judge, Dindigul in I.A.No.58 of 2019 in O.S.No.63 of 2011 on 27.01.2020 passed in send for the documents petition.

For Petitioner : Mr.N.S.Karthikeyan
(In both CRPs)
For Respondent : No appearance
(In both CRPs)

COMMON ORDER

The above Civil Revision Petitions are filed by the petitioner/2nd defendant challenging the following orders, dated 27.01.2020 passed by the learned Fast Track Mahila Judge, Dindigul:-

(i) I.A.No.55 of 2019 in O.S.No.63 of 2011 is an application filed under the provisions of Order 8 Rule 1(A)(3) and Section 151 of Civil Procedure Code to permit the petitioner/2nd defendant to mark xerox copy of the Will dated 19.10.2012;

(ii) I.A.No.58 of 2019 in O.S.No.63 of 2011 is an application



filed to send for the petition mentioned document from the Tamil Nadu Mercantile Bank, Royapettah, Chennai-14.

2. The facts in brief, to dispose of the above petitions, are narrated hereinbelow:-

2.1. I.A.No.55 of 2019 was filed after the plaintiff's side evidence was closed and the matter listed for the evidence of the 2nd defendant. The petitioner had filed 17 documents along with the impugned application. In the affidavit filed in support of the said application, the 2nd defendant had given the reasons for not filing the documents along with the written statement. The respondent/plaintiff has not made a serious contest except for stating that the 6th document was an unregistered xerox copy of the Will, which is inadmissible in evidence and the document was fraudulently created.

3. By a non-speaking order, the learned Judge proceeded to partly allow the application by receiving all the documents except Document No.6, viz., photo copy of the Will dated 19.10.2012. The reason for not accepting the 6th document is not evident from a reading of the four line order. Therefore, C.R.P.(PD) (MD) No.788 of 2020 is allowed the order dated 27.01.2020 passed in I.A.No.55 of 2019 in O.S.No.63 of 2011 is set aside and the matter is remitted back for fresh disposal.

4. C.R.P.(PD) (MD) No.820 of 2020 is filed challenging the order passed in I.A.No.58 of 2019, which was an application filed by the 2nd defendant to send for the Will dated 19.10.2012 from the Branch Manager, Tamil Nadu Mercantile Bank, Royapet, Chennai-14.

5. The learned Judge had dismissed this application stating that it is for the 2nd defendant to prove his case and the onus cannot be shifted on the Courts. The learned Judge has taken a bizarre view that it is for the 2nd defendant to discharge the mortgaged amount and have the Will dated 19.10.2012 released to disprove the plaintiff's claim. Challenging the same, the 2nd defendant is before this Court by way of C.R.P.(PD) (MD) No.820 of 2020.

6. The plaintiff has filed the suit for a partition stating that the properties are ancestral properties of the plaintiff and the 2nd defendant, who are the children of the 1st defendant. Pending the suit, the 1st defendant had passed away. Prior to his death, the 1st defendant had executed a Will dated 19.10.2012, bequeathing his properties on his children. Since the said Will was executed pursuant to the filing of the suit and the written statement, the 2nd defendant has come forward with the impugned application.



7. It is the case of the 2nd defendant that the Will had been mortgaged with the Tamil Nadu Mercantile Bank, Royapettah Branch and therefore, the document had to be considered in order to arrive at a decision in the suit for which, he prays to send for the document from the Bank. The learned Judge has totally erred in dismissing the application and directing the 2nd defendant to pay the entire loan amount and thereafter, obtain the original Will to be presented before the Court.

8. The Code of Civil Procedure provides the procedure for summoning documents. The 2nd defendant is only exercising the right given to him under the Code. This Court is of the considered opinion that the learned Judge is wrong in dismissing the application on the ground that the onus is upon the 2nd defendant to prove his claim without looking into the fact that the application calling for the document by itself was an attempt to discharge the 2nd defendant's onus. That apart, the order of the learned Judge is bereft of any reasoning. In these circumstances, C.R.P.(PD) (MD) No.820 of 2020 is allowed and the order dated 27.01.2020 passed in I.A.No.58 of 2019 in O.S.No.63 of 2011 is set aside and the matter is remanded back to the learned Fast Track Mahila Judge, Dindigul.

9. In the result, both the Civil Revision Petitions are allowed and the order dated 27.01.2020 passed in I.A.Nos.55 and 58 of 2019 in O.S.No.63 of 2011 are set aside and the matter is remitted back for fresh disposal. Considering the fact that the suit is of the year 2011, the learned Fast Track Mahila Judge, Dindigul, shall endeavour to dispose of the applications within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.



To

The Fast Track Mahila Court, Dindigul.

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-38415[F] dated 13/12/2021)

C.R.P.(PD) (MD) Nos.788 & 820 of 2020

Dated: 09.12.2021

RD(30.12.2021) 4P 3C