



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1627 of 2019

and CMP(MD)No.8509 of 2019

1)Thangam Religious and Charitable Trust

Rep by its Executive and Trustee,

D.Hari

2)D.Hari

... Petitioners

vs.

1)G.Hariharan

2)D.Vijula

3)N.Thiyagarajan

4)Freeda Rani

5)Lakshmi Ramasundaram

6)C.Ramasundaram

7)Rukmoni Ammal

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 16.08.2018 made in I.A.No.365 of 2013 in O.S.No.132 of 2012 on the file of Principal District Judge, Kanyakumari at Nagercoil.

For Petitioner	: Mr.H.Thayumanaswamy
For R1, R5 and R6	: Mr.S.C.Herold Singh
For R2 & R3	: Mr.C.Dhanaseelan
For R4	: No appearance

ORDER

Against the dismissal of the impleading petition, this revision petition is filed by the proposed party.

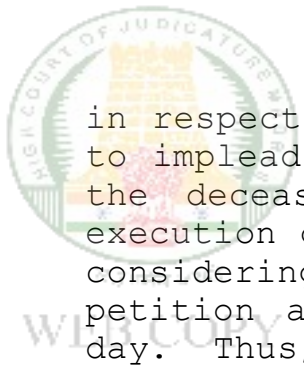
2.One S.L.Thangam filed a suit in O.S.No.132/2012 before the District Judge, Nagercoil, against the respondents/defendants, for the relief of declaration and injunction and other reliefs. Pending suit, the sole plaintiff died on 21.05.2013. The revision petitioners filed an application in I.A.No.365/2013 to implead themselves as additional plaintiffs stating that the plaintiff/S.L.Thangam died on 21.05.2013 leaving behind a registered will dated 16.08.2012 bequeathing all her movable and immovable properties in favour of the 1st petitioner's Trust for the religious and charitable purposes stated in that will and also



appointing the 2nd petitioner as executor of the 1st petitioner's Trust. The 2nd respondent/2nd defendant filed counter in the said I.A. contending that the deceased plaintiff never executed any will in favour of the revision petitioner/proposed party and the revision petitioner is only the advocate on record for the plaintiff to conduct the above suit through the vakalat. The sole plaintiff died on 21.05.2013 and the plaintiff's advocate has no right to continue the case after the death of his client and when the plaintiff was bedridden in unconscious mind, her advocate with malafide intention for unlawful gains, created a forged will in the name of Thangam Charitable Trust by using the signed papers given by the deceased plaintiff to conduct the suit. The Court below holding that when there is no proof regarding the formation of the petitioner's Trust, the Trust which is non-existent cannot be impleaded, dismissed the impleading petition, against which, this revision petition is filed.

3.The learned counsel for the petitioners would state that the Court below ought to have seen that the plaintiff has executed a registered will appointing the 2nd petitioners as executor of the 1st petitioner's Trust and bequeathed all her properties to utilise the same for various religious and charitable purposes. He would further state that any person who inter-meddles with the estate of the deceased is equally a legal representative, as such, the petitioners are to be impleaded as legal representatives of the deceased plaintiff. Thus, he would pray for setting aside the impugned order.

4.The 2nd respondent has filed counter. The learned counsel for the 2nd respondent would state that the deceased plaintiff's claim of title to the suit property was the subject matter of the earlier suit in O.S.No.145/1996 filed by the defendants 1, 5 and 7 in the present suit who jointly filed O.S.No.145/1996 before the 1st Additional Sub Court, Nagercoil, for declaration of title, rendition of accounts and for permanent injunction. The suit properties in the present suit were also included in the earlier suit in O.S.No.145/1996. The deceased plaintiff S.L.Thangam was arrayed as 1st defendant and the present revision petitioners were arrayed as defendants 8 and 9 in O.S.No.145/1996. The said suit was dismissed by judgment and decree dated 28.10.2004, against which, appeal in A.S.No.60/2010 was filed which was partly allowed by judgment and decree dated 29.05.2017, granting preliminary decree for partition and permanent injunction as against the defendants therein(including the revision petitioners herein who were defendants 8 and 9). No appeal was filed against the said judgment and decree passed in A.S.No.60/2010. He would further state that as per the judgment passed in A.S.No.60/2010, the deceased plaintiff S.L.Thangam has no right over the suit property in the present suit, as such, she has no power to execute any will



in respect of the suit property and the proposed party who sought to implead himself in the suit is none other than the advocate of the deceased plaintiff S.L.Thangam and he has not proved the execution of the alleged will by S.L.Thangam and the learned Judge considering the same, has rightly dismissed the impleading petition and the suit was also dismissed as abated on the same day. Thus, he would pray for dismissal of the revision petition.

5. Heard the learned counsel for the petitioners as well as the respondents 1 to 3, 5 and 6. There is no appearance for the 4th respondent either by herself or through counsel.

6. Perusal of record shows that the deceased plaintiff has filed the present suit for declaration and injunction and other reliefs. Pending suit, she died in 2013. The revision petitioners filed a petition to implead themselves as additional plaintiffs stating that the plaintiff/S.L.Thangam died on 21.05.2013 leaving behind a registered will dated 16.08.2012 bequeathing all her movable and immovable properties in favour of the 1st petitioner's Trust for the religious and charitable purposes stated in that will and also appointing the 2nd petitioner as executor of the 1st petitioner's Trust. The 2nd respondent has filed counter stating that the suit property in the present suit was the subject matter of the earlier suit in O.S.No.145/1996 filed by the defendants 1, 5 and 7 in the present suit. In that suit, the deceased plaintiff S.L.Thangam was arrayed as 1st defendant and the present revision petitioners were arrayed as defendants 8 and 9. Though the said suit was dismissed, the appeal suit filed thereagainst was partly allowed on 29.05.2017. Admittedly, no appeal was filed against the judgment passed in the appeal suit. Perusal of record shows that the proposed party seeking impleadment is the advocate of the deceased plaintiff S.L.Thangam and the learned Judge finding that no document is produced for formation and registration of the 1st petitioner's Trust as per the alleged will, as such, the Trust which is a non existent entity and is still-born child, cannot be impleaded, has dismissed the impleading petition on 16.08.2018. On the same day itself, the learned Judge dismissed the present suit in O.S.No.132/2012 as abated and in the said judgment, the 2nd petitioner herein, has been shown as advocate for the plaintiff. It appears that attempting to grab the entire properties of the deceased plaintiff who admittedly died issueless, the advocate for the plaintiff has filed the above vexatious petition based on the forged will, which has been rightly dismissed by the learned Judge, where I do not find infirmity.



7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/msa

To

The Principal District Judge,
Kanyakumari at Nagercoil.

+1 CC to M/s.H.THAYUMANASWAMY, Advocate (SR-7946[F] dated
01/03/2021)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-8030[F] dated
02/03/2021)

ORDER MADE IN
CRP(MD)No.1627 of 2019
DATED : 01.03.2021

KUN(CO)

TR(26.04.2021) 4P 4C