



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD)(MD) No.1668 of 2014

and

M.P(MD) No.1 of 2014

WEB COPY

1.V.Sathrusangaravel

2.S.Ananthavalli

...Petitioners/Petitioners/
Defendants 1 & 2

Vs.

1.S.R.Ganapathi (Died)

2.P.Gnanasekaran

3.S.Velavan

...1st Respondent/
1st Respondent/Plaintiff

...Respondents 2 & 3/
Respondents 2 & 3/
Defendants 3 & 4

4.G.Vignesh Kumar

...4th Respondent

(Fourth respondent is brought on record as LR of the
deceased first respondent vide Court order, dated 04.11.2020
made in C.M.P(MD) No.343 of 2020)

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India to set aside the order, dated 09.01.2014 made
in I.A.No.152 of 2013 in O.S.No.188 of 2007, on the file of the I
Additional Sub-Judge, Madurai.

For Petitioner : Mr.R.Vijay Kumar

For Respondents : Mr.V.Srinivasan
For R-2 & R-3

Mr.R.Narayanan
For R4

O R D E R

The Civil Revision Petition has been filed against the
dismissal of I.A.No.152 of 2013 in O.S.No.188 of 2007, on the file
of the I Additional Subordinate Judge, Madurai, seeking to reject
the application.

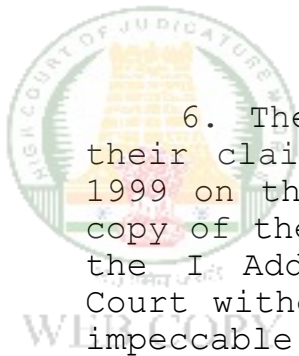


2.The revision petitioners are the defendants 1 & 2 in O.S.No.188 of 2007. The first respondent/plaintiff has filed in O.S.No.188 of 2007, on the file of the I Additional Subordinate Judge, Madurai seeking for declaration and injunction in respective of the suit scheduled property.

3.It is the claim of the first respondent/ plaintiff that he had purchased the suit property for a sum of Rs.4,90,000/- (Rupees Four Lakhs Ninety Thousand only) under a registered sale deed, dated 26.06.2003, from the previous owner one Mr.P.Muthuvinayaga Sundaram, through his power agent Mr.R.Balasubramanian under Document No.1468/2003. It is the case of the first respondent/ plaintiff that the said Muthuvinayaga Sundaram derived title based on the ''Will'' executed by one Mr.Thangavel Pillai, dated 07.02.1995 in favour of him.

4.It is the case of the petitioners/ defendants 1 and 2 that earlier the said P.Muthuvinayaga Sundaram, had filed a suit in O.S.No.399 of 1999, on the file of the Principal District Munsif Court, Madurai, seeking for permanent injunction on the strength of the Will, dated 07.02.1995 alleged to have been executed by Mr.Thangavel Pillai. The said suit was decreed by the trial Court. Against the said decree and judgment of the trial Court, the respondents have filed two separate first appeals in A.S.No.72 of 2003 and A.S.No.117 of 2003, on the file of I Additional Subordinate Court, Madurai and the Appellate Court by a common judgment, dated 04.10.2005 had set aside the order and the appellate Court, had also held that the alleged Will, dated 07.02.1995 is a fabricated one. Against the order of the first appellate Court, the said P.Muthuvinayaga Sundaram, had preferred second appeals in S.A.Nos.566 and 588 of 2006 before this Court and later during the pendency of the second appeal, said Muthuvinayaga Sundaram, passed away on 16.11.2011 and since the legal heirs of the said Muthuvinayaga Sundaram had not taken any steps, the second appeals were dismissed as abated and till date, no steps have been taken to set aside the order of abatement. Finding that the alleged Will dated 07.02.1995 has been declared to be a forged Will, the petitioners /defendants 1 & 2 have filed a petition seeking for rejection of plaint and the trial Court finding that the Court cannot take into account any material beyond the plaint and that it is a matter for trial, had dismissed the petition. Against which, the present Civil Revision Petition has been filed.

5. Mr.R.Vijay Kumar, learned counsel for the petitioners would submit that the plaintiff's have based claim over the property based on the Will, whereas there are definite findings of the Courts of law that the Will based on which the plaintiff claim right is a fabricated Will. The plaintiffs cannot claim any legal right over the property based on such fabricated Will.



6. The petitioners/defendants 1 and 2 in order to substantiate their claim have produced copies of judgements in O.S.No. 399 of 1999 on the file of the Principal District Munsif, Madurai and the copy of the common judgment in A.S.No. 72 of 2003 and 117 of 2003 by the I Additional Subordinate Court, Madurai, whereas the trial Court without taking into consideration the documents which are of impeccable nature had erred in dismissing the petition. He would further submit that as against the order passed by the I Additional Subordinate Court, Madurai, the predecessor in title had filed S.A.Nos.566 and 588 of 2006 and appeals have been dismissed as abated and no steps have been taken till date to restore same. When the appellate Court has held that the Will is fabricated one, there is no useful purpose in conducting trial and it is nothing but abuse of process of law. The Trial Court had erred in not rejecting the plaint.

7. Mr.R.Narayanan, learned counsel for the fourth respondent would submit that the claim of the defendants can be proved only after a full-fledged trial by adducing both oral and documentary evidence. Further, apart from the Will, the plaintiffs also claim their right on the basis of Hindu succession Act, since there are no legal heirs to Mr.Thangavel Pillai and thereby the trial Court rightly finding that the defence set up the petitioners/defendants 1 and 2 in their written statement or other documents produced by them, cannot be taken into consideration at that stage had dismissed the petition. He would further submit that the trial has commenced and P.W.2 has been examined and as on date, the case stands posted for cross examination of P.W.2.

8. Heard the learned counsel on either side. Perused the materials available on record.

9. In this case the petitioners/defendants had filed petition under Order 7 Rule 11 claiming that the suit is barred by limitation and that the Will based on which the suit has been filed is a fabricated one. The Trial Court finding that the question of limitation is a mixed question of fact and law and finding that the pleas taken by the defendants in the written statement and the documents relied on the defendants would be irrelevant at the stage of the petition for rejection of plaint had dismissed the petition. In **Bhau Ram .vs. Janak Singh and others** reported in (2012)8 SCC 701, the Hon'ble Apex Court has held as under :

"15.The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant [vide C. Natrajan vs. Ashim Bai and Another, Mayar (H.K.)Ltd. and Others vs. Owners &



Parties, Vessel M.V. Fortune Express and others, Sopan Sukhdeo Sable vs. Assistant Charity Commissioner and Saleem Bhai vs. State of Maharashtra. The above view has been once again reiterated in the recent decision of this Court in *The Church of Christ Charitable Trust & Educational Charitable Society. vs. M/s Ponniyamman Educational Trust*

16) As rightly pointed out by learned counsel for the respondents, the questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that only the averments in the plaint can be looked into while deciding the application under Order 7 Rule 11. This aspect has been rightly dealt with by the High Court"

10.Considering the above dictum and the facts and circumstances of the case, I do not find any infirmity in the order passed by the trial Court and hence, this Civil Revision Petition is liable to be dismissed. However, taking into consideration the fact that the suit is of the year 2007 and that it is now in the midst of trial, this Court is of the opinion that a direction may be given to the trial Court to complete the trial in an expeditious manner.

11.In the result, this Civil Revision Petition is dismissed and the I Additional Subordinate Judge, Madurai, is directed to conclude the trial in O.S.No.188 of 2007, as expeditiously as possible, preferably, within a period of three (3) months from the date of receipt of a copy of this order. The observations made in this Civil Revision Petition are only for the disposal of this Civil Revision Petition and it is made clear that it will not have any bearing on the trial of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm/nsr

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 I Additional Subordinate Judge,
Madurai.

Copy to:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.NARAYANAN, Advocate (SR-30426[F] dated 28/09/2021)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-30356[F] dated
27/09/2021)

C.R.P. (PD) (MD) No.1668 of 2014
24.09.2021

MGJ(26.10.2021) 5P 5C