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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.04.2021

Delivered On : 28.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) (PD)No.1101 of 2018

and

C.M.P. (MD)No.4756 of 2018

Johnson

.. Petitioner

Vs.

1.Kamalam(Died)

2.Gnanadhas

3.Santha kumari

4.Prema

.. Respondents

(respondent no.1 is given up)

Prayer: This Civil revision petition is filed under Article 227 of Constitution of India, to call for the records relating to the order passed the learned Subordinate Judge, Kuzhithurai dated 18.01.2018 in I.A.No.399 of 2017 in S.O.P.No.31 of 2012 and to set aside the same.

For Petitioner : Mr.N.Dilip kumar

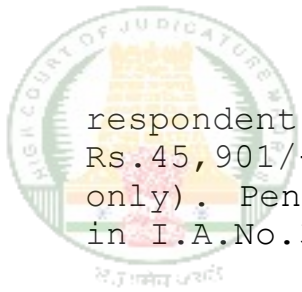
For Respondents 2 and 4 : Mr.K.N.Thambi

For 1st Respondent : Died

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.399 of 2017 in S.O.P.No.31 of 2012 dated 18.01.2018, on the file of the learned Subordinate Judge, Kuzhithurai.

2.The respondents herein are the petitioner in S.O.P.No.31 of 2012. The respondents herein have filed a petition in S.O.P.No.31 of 2012, to issue a succession certificate entitling the first petitioner(widow) for a sum of Rs.91,802/- (Rupees Ninety One Thousand Eight Hundred and Two only) to the first



respondent herein and entitling petitioners 2 to 4 each Rs.45,901/- (Rupees Forty Five Thousand Nine Hundred and One only). Pending suit, the respondents herein have filed a petition in I.A.No.399 of 2017 to amend the original petition.

3.The brief substance of the petition in I.A.No.399 of 2017 is as follows:

The petitioners' mother executed a Will on 19.01.2012, bequeathing her share over the petition mention money deposited by the petitioners' deceased father. The petitioners' share got altered, as the Will came into effect, after her death. Hence, the main O.P. has to be amended.

4.The brief substance of the counter in the petition is as follows:

The Will is a fabricated document. Without proving the Will, the petitioners could not be permitted to amend the O.P. and prayed the petition to be dismissed.

5.After hearing both sides, the trial Court allowed the petition. Against which, the revision petitioner has preferred this revision.

6.On the side of the revision petitioner, it is stated that certain amount is in bank deposit in the savings account bearing number 3079 maintained by Mr.Nallathambi Nadar, who died interstate on 13.06.2007. A petition under Section 372 of the Indian Succession Act was filed by the widow of the deceased, one of the sons and two daughters by arraying the other son as the respondent. The outstanding amount available in the savings account of the deceased includes the rental amounts deposited by the cell phone tower companies, cell phone towers were installed in the common immovable properties. There is a dispute regarding the gift deed and there is another dispute regarding the religion of the parties. The second petitioner in S.O.P. has already filed an original suit in O.S.No.16 of 2012. By filing the amendment petition, the respondents wanted to introduce new averments in the original petition and that they also wanted to introduce a change in the share of the respective parties, thereby, in directly, they want to get an order presuming that the Will is valid so that they can inherit major portions in all the properties of the father. The main S.O.P. was filed in respect of movable properties. The respondents ought to have filed the original Will and they should have to file a petition under Order 22 Rule 10 of CPC. The Will was not proved and was not marked as a document. Without proving the Will, the respondents cannot be permitted to make amendments



in original S.O.P. The alleged Will is a fraudulent one and prayed the order to be set aside.

7. On the side of the petitioner, it is stated that only when all the legal heirs are brought on record, the Court can proceed further in the appeal. In support of his contention, the judgment of the Hon'ble Supreme Court in the case of **Jaladi Suguna (deceased) through Lrs. v. Satya Sai Central Trust and others** reported in **(2008) 8 Supreme Court Cases 521** is cited, wherein it is stated as follows :-

"9. The said judgment and order of the High Court dated 19.09.2006 is under challenge in this appeal by special leave. The appellants' challenge is three-pronged. Firstly, they challenged the procedure adopted by the High Court in hearing the appeal without bringing the legal representatives on record and deciding the appeal on merits first and thereafter, deciding the issue relating to legal representative. Secondly, they challenge the decision on the question as to who are the legal representatives of Suguna. Thirdly, they challenge the judgment on merits upholding the validity of the gift deed and dismissing the suit.

16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representative, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The Court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits."

8. On the side of the petitioner, it is stated that it is the mandatory duty of Court to determine the question of the legal heirs before deciding the case. In support of his contention, the judgment of the Hon'ble Supreme Court in the case of **Mahanth Satyanand @ Ramjee Singh v. Shyam Lal Chauhan and others** reported in **(2018) 18 Supreme Court Cases 485** is cited, wherein it is stated as follows:

"10. Apparently, the issue of bringing on record the legal representative is a pending appeal



has to be dealt with in a manner prescribed under the provisions of Order 22 Rule 5. From the context of the settled legal position, it is clear that when a question arises before the Court in a pending matter as to who will come on record as the legal heir of the deceased, the Court shall, before proceedings to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It is also well settled that when a party dies at the stage of second appeal and there are rival contenders claiming to be the legal representatives of the deceased, as in the present case, there is a burden cast upon the Court to first decide as to who is the legal representative of the deceased. Without doing so, the Court cannot proceed with the disposal of the case on hand. At the same time, the Court cannot make all the contenders as parties. The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits."

9. On the side of the respondents, it is stated that the succession O.P. was filed by the mother, one son and two daughters against another son. During the pendency of the succession O.P., the mother died on 08.11.2013. She left registered Will dated 19.01.2012. On the basis of the Will, the respondents filed a petition for amendment, thereby, increasing the share in the amount deposited by the deceased. The share will be decided in the main S.O.P. The share of the parties cannot be decided in the amendment petition and prayed the revision to be dismissed.

10. The learned counsel for the respondents would rely upon the judgment of this Court in the case of **So. Vaijanthi, through her Power of Attorney Agency, Chokkanathan v. Raghuraman @ Bharathi** Reported in (2001) 2 MLJ 387, wherein it is stated as follows : -

"Civil Procedure Code (V of 1908), O.6, Rule 17 - Amendment of pleadings Petitioner having prayed for only a formal amendment - must be allowed to avoid multiplicity of proceedings".

11. The learned counsel for the respondents would rely upon the judgment of this Court in the case of **A.B.T. Parcel Service v. C.R. Vasudevan** reported in (1995) 1 MLJ 129, wherein it is stated as follows : -

<https://hcservices.ecourts.gov.in/hcservices/> it is open to this Court to take notice of



tend to reduce litigation. This is not one of those cases in which there is a likelihood of prolonged litigation after remand or in which a new case will begin. The amendment will prima facie allow the Society to show to the court that in addition to possession it has also title. This will enable the Court to do complete justice, if the plea is found good, without the parties having to go to another trial."

14.The learned counsel for the respondents would rely upon the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and others v. K.K.Modi and others** reported in **(2006) 4 Supreme Court Cases 385**, wherein it is stated as follows : -

"15.The object of the rule is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side."

15.The learned counsel for the respondents would rely upon the judgment of the Hon'ble Supreme Court in the case of **Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon** Reported in **1969 (1) Supreme Court Cases 869**, wherein it is stated as follows : -

"In our view, the order passed by the trial Court in granting the amendment was clearly right, and the High Court was in error in dismissing the suit on a technicality wholly unrelated to the merits of the dispute."

16.Both the petitioner and the respondents 2 to 4 herein are the legal heirs of deceased. All the legal heirs of the deceased mother were already on record in S.O.P.No.31 of 2012 either as petitioners or as respondent.

17.The respondents herein filed the amendment petition on the basis of a Will. The revision petitioner herein denies the execution of the Will. There is a dispute regarding the Will said to have been executed by the deceased mother/first respondent herein. Only when the will is proved, the respondents herein are entitled for a higher share.



18.The trial Court has allowed the amendment petition subject to the proof of the Will dated 19.01.2012 in the main O.P. The trial Court has observed that the introduction of a schedule in the O.P. will be helpful to clarify the actual amount due to the deceased depositor and the share due for the parties. Since the amendment petition is allowed only subject to the proof of Will in the main O.P., there will not be any prejudice to the revision petitioner.

19.In view of the above circumstances, this Civil Revision Petition is dismissed and the order passed in I.A.No.399 of 2017 in S.O.P.No.31 of 2012 dated 18.01.2018, on the file of the learned Subordinate Judge, Kuzhithurai is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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

1.The Sub Judge, Kulithalai.

+1 CC to M/s.K.N.THAMBI, Advocate (SR-20367[F] dated 28/06/2021)

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-20368[F] dated 28/06/2021)

C.R.P. (PD) (MD) No.1101 of 2018

28.06.2021

AS (05.07.2021) 7P 4C