



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.04.2021
Delivered on : 26.04.2021

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 1448 of 2017
and
C.M.P. (MD) No. 7477 of 2017

1. Sangili (Died) 1) Bathrakaali
2. Chellakani,
3. Rajamani
- ... Petitioners/Plaintiffs
- Vs.
1. Muruga Kadavul,
- ... 1st Respondent/1st Defendant
2. Virudhungan District Central Co-Operative Bank
Through its Manager,
Chattirapatti Branch,
Viruthunagar District
3. Perumal,
4. Sangiliveerammal,
5. Sangili Kaalai
- ... Respondents 2 to 5/Defendants 2 to 5

Prayer : Civil Revision petition filed under Article 227 of Constitution of India, to allow the Civil Revision Petition and to set aside the fair and decreetal order, dated 04.11.2016, made in I.A.No.78 of 2016 in O.S. No.557 of 2009 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioners : Mr.R.Vijayakumar
for Mr.R.Gandhi
For R1 : Mr.S.Balasubramania Iyer
For R2 to R5 : No appearance

O R D E R

This civil revision petition has been filed by the petitioners against the order, dated 04.11.2016, passed in
<https://hcservices.ecourts.gov.in/hcservices/>



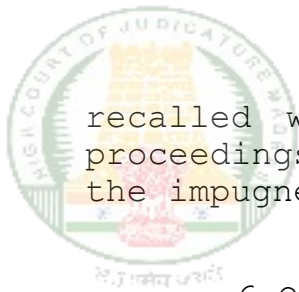
I.A.No.78 of 2016 in O.S. No.557 of 2009 on the file of the Additional District Munsif, Srivilliputhur.

2.The revision petitioners are the plaintiffs 2 to 4. The first respondent herein is the first defendant. The respondents 2 to 5 herein are the defendants 2 to 5 in the suit. The first defendant (first respondent herein) filed a petition in I.A.No.78 of 2016 before the trial Court to reopen and recall and that petition was allowed by the trial Court. Against the same, the revision petitioners have filed this Revision.

3.On the side of the revision petitioners, it is stated that the suit in O.S.No.378 of 2001 was filed by the first respondent on the basis of a Will alleged to have been executed on 01.12.1997. That suit was dismissed for default. When the case of the first defendant / first respondent herein was already dismissed by the competent Court, the revision respondents have filed the petition for filing the Will and for adducing evidence to prove the same. After the cross examination of D.W.1, only to fill up the lacuna in this case, the revision petitioners have filed this petition. The purpose of filing the reopen petition was not specifically stated in the reopen petition. There is no acceptable reason for allowing the petition. The cost imposed is illusory and prayed the impugned order to be set aside.

4.On the side of the respondents, it is stated that the revision petitioners filed a false suit against the respondents. The first plaintiff died on 23.05.2001. The first plaintiff has executed a Will in favour of the revision first respondent on 01.12.1997. To prove the Will, the revision petitioners have to examine additional witnesses. The case is pending for the arguments of the first defendant and the first revision respondent has to be given an opportunity to put forth his case by reopening the case and by adducing additional evidence.

5. On the side of the revision petitioners, it is stated that the first revision respondent already filed a suit in O.S.No.378 of 2001 based on the Will, dated 01.12.1997, for declaration of title and the revision petitioners were also made as parties in the suit. Subsequently, the suit was dismissed for default, on 28.07.2003. So, the first respondent is aware of the alleged Will, even in the year 2001 itself. Why the first revision respondent failed to adduce the evidence based on the Will in this suit, was not stated in the affidavit filed by the first respondent. Though the present suit was filed in the year 2009, the first respondent has chosen to file a petition only in the year 2015, after the arguments on the side of the plaintiffs was over. Already the first revision petitioner has filed two similar petition, and this petition is the third one. The name of the persons, proposed to be examined by the petitioners, were not mentioned in the petition. The name of the witnesses to be



recalled were not stated in the petition. Only to drag on the proceedings, the first respondent has filed this petition and prayed the impugned order to be set aside.

6. On the side of the first respondent, it is stated that the respondent is duty bound to prove the Will interms of Sections 67 and 69 of the Evidence Act. As the defendant, the first respondent herein is at liberty to file this petition. An opportunity should be given to the respondents and a time schedule may be fixed for the completion of the trial. The defendant cannot be penalised for non-proving the Will and prayed the revision petition to be dismissed.

7. It is seen that the petitioner has filed the reopen and recall petition for the third time before the trial Court. Already the evidence on both sides were over. The plaintiffs side argument was over and at the stage of defendant side argument, the first respondent has come forward with this petition. A perusal of the affidavit reveals that no reason has been stated in the affidavit for the delay in filing the petition. If the first respondent is really interested in this case, he might have proved the Will in the suit filed by him in the year 2001 itself, but, he left the case to be dismissed for default. The first respondent has not taken any steps to restore the suit in O.S.No.378 of 2001. The Will is said to have been executed by the predecessor of the revision petitioner on 01.12.1997 and the first respondent was aware of the Will even in the year 2001 and the Will was available with the first respondent. The present suit was filed in the year 2009. A cost of Rs.100/- was imposed on the first respondent for causing the delay. A payment of Rs.100/- cannot justify the delay caused by the first respondent. No particulars as to the number of witnesses to be examined and the name of the witnesses are given in the petition.

8. In the above circumstance, the order passed by the trial Judge is liable to be set aside and the same is hereby set aside. Hence, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



1.The Additional District Munsif Court,
Srivilliputhur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. 2 Copy

+1 CC to M/s.R.GANDHI, Advocate (SR-17400[F] dated 26/04/2021)

+1 CC to M/s.SPL GP (SR-17710[F] dated 27/04/2021)

Pre-delivery order made in

C.R.P. (MD)No.1448 of 2017

26.04.2021

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CN(03.05.2021) 4P 6C