



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.04.2021
Delivered on : 18.06.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P (MD) No.961 of 2017

and

C.M.P. (MD) No.4250 of 2017

Ahalya Devi

... Petitioner

Vs.

Jeyaraj (Died) (Exonerated)

1.Devasenathipathy

2. Vasantha Kumar

3. Ashok Kumar,

... Respondents

Prayer: Civil Revision Petition filed under Section 227 of C.P.C., against the fair and decreetal order, dated 13.03.2017 passed in I.A.No.71 of 2017, in O.S.No.486 of 1997, on the file of the District Munsif Court cum Judicial Magistrate Court, Bodinaickanur.

For Petitioner	: Mrs.Parameshwari
For R1	: Dismissed
For R2	: Mr.C.Ganesh Kumar
For R3	: No appearance

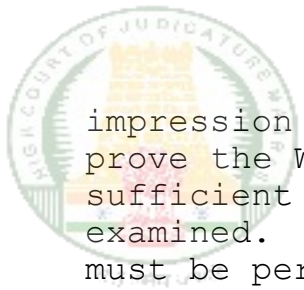
ORDER

This Civil Revision Petition is filed against the order, dated 13.03.2017 passed in I.A.No.71 of 2017, in O.S.No.486 of 1997, on the file of the District Munsif cum Judicial Magistrate Court, Bodinaickanur.

2.The revision petitioner is the plaintiff and the respondents are the defendants 2 to 4 in I.A.No.71 of 2017.

3.Brief substance of the petition in I.A.No.71 of 2017, is as follows:-

The original suit in O.S.No.486 of 1997 was filed for declaration and for permanent injunction. The case was posted for judgment on 10.02.2017. The original suit was filed on the basis of a Will and the Will has to be proved under Section 68 of the Evidence Act. In a connected suit in O.S.No.90 of 2004, a witness, by name, Sridharan was examined as a witness and the said Sridharan was one of the attestor of the 'Will'. His evidence in O.S.No.90 of 2004 was marked as Ex.B1 and Ex.B14. The petitioner was under the



impression that marking of Ex.B1 and Ex.B14 is sufficient enough to prove the Will. Later, the petitioner came to know that this is not sufficient to prove the Will and that the attestor has to be examined. Hence, the trial has to be re-opened and the petitioner must be permitted to examine further witnesses.

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4.Brief substance of the counter in I.A.No.71 of 2017, is as follows:-

The petitioner has filed the petition to examine witness, to prove Ex.B1 and B.14. The suit was filed in the year 1997 and the petitioner was cross examined on 15.12.2016 and the plaintiff's side evidence was closed on that date. On the side of the defendant, it was clearly stated that Will cannot be proved unless the attestor is examined. On 24.01.2017, the defendants side evidence was closed. Arguments were heard. Only when the case was adjourned for judgment, the petitioner has come forward with this petition with an intention to drag on the proceedings and hence, the petition has to be dismissed.

5.After hearing both sides, the trial Court has dismissed the I.A. petition. Against the same, the petitioner has preferred this Civil Revision Petition.

6.On the side of the revision petitioner, it is stated that mere delay cannot be a ground for denial of justice. A judgment of the Hon'ble Supreme Court reported in **(2011) 11 Supreme Court Cases 275 (K.K.Velusamy Vs. N.Palanisamy)** is cited, wherein, it is stated as follows:-

"22.In this case, we are satisfied that in the interests of justice and to prevent abuse of the process of Court, the trial court ought to have considered whether it was necessary to reopen the evidence and if so, in what manner and to what extent further evidence should be permitted in exercise of its power under Section 151 of the Code. The court ought to have also considered whether it should straightway recall P.W.1 and P.W.2 and permit the appellant to confront the said recorded evidence to the said witnesses or whether it should first receive such evidence by requiring its proof of its authenticity and only then permit it to be confronted to the witnesses (P.W.1 and P.W.2)".

7.On the side of the respondents, it is stated that documents mentioned by the petitioner in the petition are not relevant to the case. Ex.A1 is a sale deed in the name of the original owner viz., Kamuthai Ammal and Ex.A14 is the judgment passed in A.S.No.163 of 2008 and both the documents or examination of the witnesses to prove those documents are not necessary and hence, prayed the revision to be dismissed.



8.A perusal of the records reveals that the trial Court has dismissed the petition, since Ex.A1 is a sale deed standing in the name of Kamuthai Ammal and Ex.P14 is the judgment made in A.S.No.163 of 2008 and that there is no necessity for examination of a witness to prove Ex.A1 and Ex.A14. It is seen that the revision petitioner is claiming right over the property by way of a Will. The revision petitioner wants to examine one of the attestors of the Will, to prove the Will, under Section 68 of the Indian Evidence Act. The petitioner has given two document numbers mistakenly in the petition. An opportunity for the petitioner to put forth his case has to be given, in the interest of justice.

9.In the above circumstances, the impugned order, dated 13.03.2017, passed in I.A.No.71 of 2017, in O.S.No.486 of 1997, on the file of the District Munsif cum Judicial Magistrate Court, Bodinaickanur, is hereby set aside. This petition is allowed. The revision petitioner is permitted to examine only the attestor of the alleged Will. The respondents must be given an opportunity to cross examine the witness. The revision petitioner is directed to examine the attestor of the Will within a period of one month from the date of receipt of copy of this order, failing which, the order will stand automatically cancelled. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The District Munsif cum Judicial Magistrate,
Bodinaickanur.

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

Pre-delivery order made in
C.R.P(MD)No.961 of 2017
18.06.2021

AS(28.06.2021) P 3C