



C.R.P.(PD).Nos.345 and 348 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.345 and 348 of 2022

and

C.M.P.No.1827 of 2022

Ayyanar

...Petitioner/Petitioner/4th defendant
in both revisions

-Vs-

Anushaya Ammal (died)

1.Sheshakalayani

2.Ravikumar

3.Vaithiyanathan

4.Ramanathan

5.Sathiyarayan

...Respondents/Respondents/Plaintiffs
in both revisions

6.Sanker

7.Venkata Krishnan

8.Kumar

...Respondents/Defendants 2 to 3
in both revisions

(Respondents 6 to 8 are not necessary parties in this revision. Hence, dispense with the notice to the respondents 6 to 8)



C.R.P.(PD).Nos.345 and 348 of 2022

Prayer in C.R.P.(PD).345 of 2022: Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 13.12.2021 passed in I.A.No.1139 of 2021 in O.S.No.95 of 2008 on the file of the learned Additional District Munsif, Tindivanum.

Prayer in C.R.P.(PD).348 of 2022: Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 13.12.2021 passed in I.A.No.1140 of 2021 in O.S.No.95 of 2008 on the file of the learned Additional District Munsif, Tindivanum.

For Petitioner : Ms.S.Janani
in both revisions

For Respondents : Mr.N.Suresh for R5
in both revisions

COMMON ORDER

The 4th defendant is before this Court challenging the order passed by the learned Additional District Munsif, Tindivanum, in I.A.Nos.1139 and 1140 of 2021 in O.S.No.95 of 2008, which are the applications filed for re-opening the plaintiffs' side evidence and recalling PW1 to PW4 for the purpose of cross examination, respectively.



2.The facts in brief are as follows:

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One Anushaya Ammal, mother of the respondents 1 to 5 herein /plaintiffs had filed the suit O.S.No.95 of 2008 on the file of the learned Additional District Munsif, Tindivanam for a declaration and injunction in respect of the suit schedule property. The plaintiff had based her claim on an unregistered Will dated 03.10.1982 executed by her mother Venkalakshmi Ammal in her favour. Venkalakshmi Ammal in turn purchased the property on 09.03.1966 from one Sundara Chettiar and Ranga Chettiar. The said Anushaya Ammal submitted that from the date of the death of her mother on 07.02.1990, she has been in possession and enjoyment of the suit properties. The plaintiff Anushaya Ammal and her mother had been in enjoyment of the suit property for several years. While so, the defendants 1 to 3 with the active connivance of the 4th defendant/revision petitioner herein had taken advantage of the patta continuing to stand in the name of the Ranga Chettiar and Sundara Chettiar to create third party interest. Pending the suit, the plaintiff Anushaya Ammal passed away



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on 14.12.2014 and thereafter, the plaintiffs 1 to 5 were brought on record as her legal representatives. In view of the disturbance to her possession and enjoyment of the suit property, the suit has been filed.

3.The 4th defendant had filed a Written Statement in which he would submit that he is adopting the Written Statement of the 1st defendant. He would submit that he had perused the Encumbrance Certificate before purchasing the property which showed that there was no encumbrance and thereafter, he had purchased the property. Therefore, he is a bonafide purchaser for value. The record would further show that after conclusion of the evidence on the plaintiff side, the impugned petitions have been taken out by the revision petitioner. The reason given for recalling the above application is that the 4th defendant had omitted to ask questions with reference to the validity of the Will dated 03.10.1982. The plaintiff had objected to the said petition contending that the 4th respondent/defendant had cross examined the plaintiff on 30.01.2012. The 4th defendant had



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cross examined PW2 on 07.02.2012 and PW3 on 06.03.2012 and PW3 had passed away on 07.07.2021. PW4 was cross examined on 26.06.2012. The records would show that on 07.06.2013, the plaintiff was once again cross examined. They would submit that the petition is nothing but an attempt to drag the proceedings.

4.The learned Additional District Munsif, Tindivanam, by her order dated 13.12.2021 was pleased to dismiss the said application contending that no adequate reasons have been given for allowing the said application and these applications appear to have been filed with an intention to overcome the *lacuna* in the pleadings and evidence. This application has been filed at the stage when the matter is posted for arguments after a full fledged trial. The contention of the 4th defendant that the earlier counsel had died and he has appointed a new Counsel who advised them to take out this application, cannot be countenanced.



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5.Considering the fact that the witnesses have been examined elaborately and the existence of the Will has been set out in the Plaint in detail, the petitioner ought to have asked his question to PW1. That apart, the 4th defendant had not raised any pleadings questioning the Will. In these circumstances, I do not find any reason to interfere with the orders passed by the learned learned Additional District Munsif, Tindivanum.

Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.02.2022

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
mps

To

The Additional District Munsif,
Tindivanum.



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P.T. ASHA, J,

mps

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