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C.R.P(PD)Nos.1148 and 1149 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)Nos.1148 and 1149 of 2022
and C.M.P.No.6036 of 2022

D.Malini

...Petitioner in both C.R.P's

Vs

1.D.Ramamurthy

2.D.Bhuvaneswari

3.Savitri

4.Nalini

5.Hemalatha

6.D.Senthil

7.D.Anand

...Respondents in both C.R.P's

PRAYER in C.R.P.No.1148 of 2022: The Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the Revision Petition and set aside the order and decretal order dated 07.01.2021 in I.A.No.410 of 2021 in O.S.No.229 of 2011 on the file of the Sub Court, Tambaram.



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PRAYER in C.R.P.No.1149 of 2022: The Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the Revision Petition and set aside the order and decretal order dated 07.01.2021 in I.A.No.411 of 2021 in O.S.No.229 of 2011 on the file of the Sub Court, Tambaram.

For Petitioner : Mr.Manisekaran
For R2 : Mr.P.M.Subramaniam

COMMON ORDER

These two revisions are preferred by the plaintiff in O.S.No.229 of 2011 and she challenges the orders passed by the trial Court in I.A.Nos.410 and 411 of 2021, which she had filed for reopening and recalling D.W.1 and D.W.2 for further cross-examination.

2.The learned counsel for the revision petitioner submitted that the plaintiff/revision petitioner has laid the suit for partition, that due to certain over sight some questions were not asked during cross-examination of D.W.1 and D.W.2.



3.Per contra, the learned counsel for the 2nd defendant/2nd respondent contended that the suit is laid for partition in 2011, that the defendant's cause of action is based on a Will, which was executed in her favour by the father of the parties. This Will is in challenge in the suit. Earlier, the defendants 3 to 5 have adopted the written statement of the 2nd defendant. The 1st defendant who, remained ex-parte throughout, now strangely has reappeared to support the case of the plaintiff. The learned counsel added that according to the plaintiff, her father was not in a sound state of mental disposition when he executed the Will in favour of the 2nd defendant and to this extent the cross-examination has been elaborately done. Now, during the pendency of the suit, there is some change of equation between those defendants, who hitherto supported the 2nd defendant and now they have taken up a stand that the signature found in the Will was not the Father's. In other words, they introduce a case of fabrication of Will, which is quite contrary to the line of conduct, which the plaintiff has assumed vis-a-vis the Will in question.

4.This Court weighed rival submissions carefully. The trial Court has held that an opportunity to the plaintiff at this stage would only aid the plaintiff to fill the lacuna in evidence. This line of reasoning cannot *per se* be stated to be



illegal or irregular in procedure. After all, the trial Judge is in absolute control and command over the litigation, when he has seen the witness and recorded the evidence and hence, he is the best judge of the circumstance in which he has passed the orders. The second part is about change of strategy, which this Court does not want to take cognizance of at this stage, since they are essentially attributed not to the plaintiff, but to some of the co-defendants herein.

5.This court does not find any need for interference with the order of the trial Court in I.A.Nos.410 and 411 of 2021. After all, a Will being a solemn document, the burden is entirely on the propounder to dispel every shade of suspicion that may be there or projected by any of the parties. The Court essentially takes the role of the conscience keeper of the attestor. Since the burden is essentially on the propounder of the Will, the Court may have to take independent call as to whether the 2nd respondent has discharged her burden entirely and to the satisfaction of the court.

6.Taking the entire circumstance into consideration, this Court does not consider it necessary to interfere with the orders of the trial Court in



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I.A.Nos.410 and 411 of 2021 in O.S.No.229 of 2011 and since the case is pending since 2011, the trial Court/Sub Court, Tambaram is directed to expedite its trial of the suit in O.S.NO.229 of 2011 within a period of two(2) months from the date of communication of this order, at any rate, not later than July 2022.

7.With the above direction, these Civil Revision Petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

18.04.2022

Index : Yes/No

Tsg/dk

To

Sub Court, Tambaram.



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N.SESHASAYEE, J.,

Tsg/dk

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