



C.R.P.No.4207 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	04.08.2022
PRONOUNCED ON :	08.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.4207 of 2014
and M.P.No.1 of 2014

1) Ravi kumar

2) R.Mohan

3) R.Kannan

4) R.Balaji

... Petitioners/ Respondents13,
16, 18 & 19 / Defendants13
16, 18 & 19

Vs.

1) V.Kotti @ Madubala

... 1st Respondent/ Petitioner/
Plaintiff

2) E.Manohari

3) S.Neelavathi

4) R.Rajalakshmi

5) G.Kasthuri

6) G.Venkatesan

7) G.Kamakshi @ Meenakshi

8) G.Srinivasalu



C.R.P.No.4207 of 2014

9) G.Narasimmalu

10) Santhanalakshmi

11) Vijayalakshmi

12) G.Harikrishana Babu

13) G.Subbalakshmi

14) R.Maheswari

15) R.Ananthalakshmi

16) R.Rajakumari

17) R.Sujatha

... RR 2 - 17/ RR 1-12, 14, 15,
17 & 20 / Defendants 1-12,
14, 15, 17 & 20

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 23.09.2014 passed in I.A.No.6873 of 2014 in O.S.No.4063 of 2002 on the file of the III Assistant City Civil Court, Chennai.

For 1st Petitioner : Mr.A.Prabakaran

For R-1 : Mr.L.Prabahar



C.R.P.No.4207 of 2014

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ORDER

Aggrieved against the order dated 23.09.2014 passed in I.A.No.6873 of 2014 in O.S.No.4063 of 2002 on the file of the III Assistant City Civil Court, Chennai, the petitioners have preferred the present Civil Revision Petition.

2.The brief facts, that are necessary for the disposal of the present civil revision petition are as follows:-

2.1. The first respondent herein is the plaintiff in O.S.No.4063 of 2002. The suit was filed for partition of the plaintiff's 1/12th share in the suit property and the suit was decreed ex-parte. Thereafter, with huge delay, the defendants filed a petition to set aside the ex-parte decree which was allowed by the Appellate Court. Meanwhile, the plaintiff/first respondent herein, had filed an interlocutory application in I.A.No.6873 of 2014 under Section 151 of the Civil Procedure Code read with Section 213 of the Indian Succession Act, to unmark the alleged Will marked as Exhibit B1. The learned Judge, has allowed the application filed by the plaintiff and thereby unmarked Exhibit B1. Aggrieved against the same, the respondents/defendants have filed the present revision petition.



C.R.P.No.4207 of 2014

3. According to the learned counsel for the petitioners/defendants, the suit property is a self-acquired property of one Mrs.Chellammal, who is the paternal grand mother of the revision petitioners. She had three children viz. Papaammal, Govindaraj and Ramadass. During her life time, the said Chellammal had executed the registered Will dated 14.08.1979 in document No.37/1979 and the same is marked as Exhibit B1. Through the said Will, Chellammal bequeathed half share of the suit property in favour of her son Govindaraj and the remaining half share in favour of her 2nd son Ramadass. The learned counsel for the petitioners also submitted that her daughter Papaammal and son Govindaraj pre-deceased their mother on 14.09.1980 and 14.12.1989. and the said Chellammal also died on 10.09.1993. Ramadass, who is the plaintiff's father died on 07.11.2000. Thereafter, the legal heirs of Ramadass and Govindaraj entered into a Partition Deed/Ex.B.2 document, as their fathers acquired half share each, as per Exhibit Ex.B.1/ Will.

3.1. According to the learned counsel for the petitioners/defendants, the plaintiff traces her right to the suit property only through her grand mother and has not challenged the Will nor the partition Deed. He further relied on the judgment made in *Guruswamy and others vs Santhanam* reported in 2005 (5) CTC 102 wherein it has been held that merely because document is marked as



C.R.P.No.4207 of 2014

Exhibit, it will not take away right of the other party to object to its admissibility.

He also relied on the judgment made in ***Commissioner Jalanthar Division and others vs Mohan Krishnan Abrol*** reported in **2004 (4) CTC 35** wherein it has been held that the property vests in executor on death of testator by virtue of Will and not by virtue of probate, but the testator is not the beneficiary of Will and hence, prayed for allowing the present revision.

4. Per contra, the learned counsel appearing on behalf of the first respondent would submit that the exhibit Ex.B.2, which is the partition deed is entered between the legal heirs of the beneficiary of the unprobated Will/ Ex.B.1. Only through Ex.B1, which is an unprobated Will, the petitioners are tracing their title. As per Section 213 of the Indian Succession Act, it is particularly stated that only on probating a Will, the beneficiary could derive title. To strengthen his submission, the learned counsel relied on the judgment made in ***C.G.Rajendran vs. M.Senthil Kumar*** reported in **2002 (3) CTC page 338** wherein, it has been held that an unprobated Will cannot be used by the beneficiary to establish his right under the Will. He further drew the attention of this Court to the judgment made in ***Sridharlal vs. Nirdosh*** reported in **2009 (2) CTC 157** wherein it has been held that the unprobated Will for the property situated in Chennai City, reliance cannot be placed on such Will, which cannot



C.R.P.No.4207 of 2014

be marked as evidence. The Court below, after considering the above principles of law, has rightly allowed the application by unmarking Ex.B.1., which does not merit interference of this Court and therefore, he prayed for dismissing the revision.

5. Heard the learned counsel for the petitioners as well for the first respondent and perused the materials placed before this Court.

6. In the considered opinion of this Court, the Court below ought not to have held that an unprobated Will cannot be looked for collateral purpose. The issue that has to be decided in this revision petition is that as to whether unmarking of Ex.BI, merits interference or not. The unprobated Will can always be used for collateral purpose. The petitioner cannot substantiate their claim as a matter of right on the basis of unprobated Will, but necessarily the same can be used for collateral purpose. It is also seen that the Will is of the year 1979 and the Will has been acted upon after 22 years. Based on the Will, partition also taken place after a period of nearly 22 years and it has been challenged and therefore, the learned Judge ought not to have unmarked the Will, but could have seen as to whether it can be considered for collateral purpose. As such, the order passed in I.A., unmarking Ex.B.2, is not correct. The learned Judge ought to



C.R.P.No.4207 of 2014

have decided the issue that as to whether Ex.B.1 can be used for collateral purpose or not.

7. In the light of the above reasonings, the order passed allowing of application by unmarking of Ex.BI. requires interference of this Court. Accordingly, the Civil Revision Petition is Allowed. The order dated 23.09.2014 passed in I.A.No.6873 of 2014 in O.S.No.4063 of 2002, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2022

Index : Yes / No
Internet : Yes
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To:

- 1) The III Assistant City Civil Court, Chennai.
- 2) The Section Officer, V.R.Section, High Court, Madras.



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C.R.P.No.4207 of 2014

J.NISHA BANU, J.,

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Order made in
C.R.P.No.4207 of 2014

Dated:
08.11.2022