



C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2218 of 2020

and

CMP No.13961 of 2020

R. Aruchamy

...Petitioner

Vs.

1. P. Rangasamy
2. Ranganayaki
3. S. Sivakami
4. R. Balusamy
5. C. Chinnammal

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 25.04.2019 made in I.A. No.628 of 2018 in O.S. No.512 of 2014 on the file of IV Additional District & Sessions Judge, Coimbatore.

For Petitioner : Mr.S. Bharanidharan
for Mr. B.M. Subash



C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

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ORDER

This Civil Revision petition is filed against the fair and decreetal orders dated 25.04.2019 made in I.A. No.628 of 2018 in O.S. No.512 of 2014 on the file of IV Additional District & Sessions Judge, Coimbatore.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court in the Original Suit and in appropriate places, their ranking in the present petition would be indicated.

3. The revision petitioner is the 3rd defendant in O.S.No.512/2014 on the file of the IV Additional District & Sessions Court, Coimbatore. The respondents 1 to 4/plaintiffs filed the suit for partition of the suit properties. The defendants filed their written statement and thereafter, the revision petitioner filed an application in I.A. No.628/2018 under Section 75 CRP r/w 151 CPC to direct the Branch Manager, Corporation Bank, Narasipuram Branch, Coimbatore, to



C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

produce the original Will dated 27.03.1989 before the Court.

4. The plaintiffs filed their counter in that application and after full contest the learned IV Additional District & Sessions Judge, Coimbatore, dismissed the said application vide her orders dated 25.04.2019 by observing that the petitioner cannot be permitted to send for the Will from the bank with which he has mortgaged the same. It is further observed that if the revision petitioner wants to prove the Will, he should do so as per Section 63 of the Indian Succession Act and Section 68 to 71 of the Indian Evidence Act and without discharging the loan to the bank, the revision petitioner cannot get the Will from the bank. Aggrieved over which, the present Civil Revision Petition is filed.

5. The matter is listed today under the caption "Adjourned admission". Heard Mr.S. Bharanidharan, learned counsel appearing on behalf of Mr. B. Mohan, learned counsel on record.



C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

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6. At the outset it may be observed that in the written statement, the revision petitioner contended that the suit properties originally belonged to his father Ramana Gounder and that during his life time he executed a Will dated 27.03.1989 in favour of the 3rd defendant and that the 3rd defendant had also mortgaged the said Will in the Corporation Bank, Narasipuram Branch, Coimbatore. It is further contended by the revision petitioner that in order to prove the Will, the same should be sent for from the bank.

7. A perusal of the records shows that the petitioner had already filed a petition in I.A. No.317/2017 with similar prayer and after a detailed enquiry, the said petition was dismissed on 03.08.2017. He did not prefer any revision/appeal against the orders passed in I.A. No.317/2017. It is appropriate to extract the orders passed by the trial court.

"6. This petition is second of its kind filed by the petitioner. Earlier petition has been filed in I.A. No.317/2017 on 04.02.2017 and dismissed on 03.08.2017 after enquiry on



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both sides. When the orders in I.A. No.317/2017 has not been challenged in appellate forum, it has become final and now the petitioner seeking the same relief again without any change in circumstances is not maintainable. Hence, the petition is liable to be dismissed in limini.

7. Further, when the petitioner has mortgaged the Will in question and other documents in the Bank for borrowing loan during the pendency of the suit and when the execution of the Will itself is questioned and disputed is highly condemnable. Furthermore, the petitioner having mortgaged the Will in dispute during pendency of the suit and sending for the same would amount to depriving the Bank of its valuable security which seems to be the hidden intention of the petitioner. It is trite that the petitioner is relying upon the Will for his claim and as such the burden is upon him to prove the Will as per Section 63 of Indian Succession Act and Section 68 to 71 of the Indian Evidence Act. While so, the petitioners is to discharge the loan and redeem the Will deposited in the bank and produce the same to prove his claim."



C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

WEB COPY

I do not find any infirmity in the orders passed by the IV Additional District & Sessions Judge, Coimbatore, and accordingly the Civil Revision Petition stands dismissed.

8. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the fair and decretal orders dated 25.04.2019 passed in I.A. No.628 of 2018 in O.S. No.512 of 2014 by the learned IV Additional District & Sessions Judge, Coimbatore, is upheld.
- iii. Since the suit is of the year 2014, the learned IV Additional District & Sessions Judge, Coimbatore, is directed to dispose of the suit in O.S. No.512/2014 as expeditiously as possible.

03.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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C.R.P.No.2218 of 2020 & CMP No.13961 of 2020

R. HEMALATHA, J.
bga

To,

1. The IV Additional District & Sessions Judge, Coimbatore
2. The Section Officer, VR Section, High Court, Madras.

C.R.P.No.2218 of 2020

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