



C.R.P.(PD) No. 1739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.R.P.PD.No.1739 of 2017

and

C.M.P.No.8222 of 2017

Subbarayalu @ Baste Irussapan
S/o. Sivalingam
No.11, Karuvadikuppam Road
Muthialpet
Puducherry – 605 003.

... Petitioner

Vs.

Umadevi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.03.2017 made in I.A. No. 20 of 2013 in O.S. No. 52 of 2009 on the file of the I Additional District Munsif Court, Puducherry.

For Petitioner : Mr. T.Sathiyamoorthy

For Respondent : Mr. T.P.Manoharan
Senior Counsel
For Mr. K.P.Jotheeswaran



C.R.P.(PD) No. 1739 of 2017

ORDER

Heard Mr. T.Sathyamoorthy, learned counsel for the petitioner and Mr. T.P.Manoharan, learned senior counsel appearing for the respondent.

2. The Plaintiff in O.S. No. 52 of 2009 now pending on the file of the I Additional District Court, Puducherry is the Revision Petitioner herein. The Respondent is the Defendant in the said suit.

3. Let me narrate a few facts before taking up the revision petition. The property, which is the subject matter of O.S. No. 52 of 2009, was originally, claimed by the Petitioner herein, and his two brothers, in view of a particular Will executed by their father. In that particular Will, the father had bequeathed $\frac{1}{2}$ undivided share on the northern side property to the elder brother, $\frac{1}{4}^{\text{th}}$ undivided share on the southern side of the property to the petitioner and another $\frac{1}{4}^{\text{th}}$ undivided share on the southern side of the property to the younger brother of the petitioner. Thereafter, the younger brother had relinquished his half share on the southern side of the property to the Petitioner.



4. While this was so, the revision petitioner herein, placed a claim over the very same property by way of another Will executed by the father. These contentions of the brothers necessitated adversarial litigations between the two brothers. This litigation finally landed in a Second Appeal in S.A. No. 1113 of 1997. A learned Single Judge of this Court by order dated 12.07.2011 had examined both the Wills. The Will relied on by the petitioner herein had been marked as Exhibit-A8 during the course of Trial and the Will relied on by the elder brother had been marked as Exhibit-B1. The learned Single Judge in the course of the Second Appeal had made the following observations, particularly, with respect to Exhibit-A8 which is relied on by the revision petitioner herein.

“17. If a cursory comparison of the signatures in Exs.B1 and A8 is made, it is very obvious that they are at variance. The learned counsel for the respondent would submit that since the deceased was seriously ill, the variance in the signature has occurred. But the said explanation cannot be accepted for the simple reason that variance is not minor as projected by the learned counsel for the respondent, but the variance is great. It does not



WEB COPY

require any equipment such as a magnifying glass to see that the signature in Exhibit-A8 completely varies from the admitted signature as found in Exhibit-B1.

18. This conclusion has to be weighed along with the evidences of Pws 3 and 4, who have stated that they did not see the deceased making signature in Exhibit-A8. If a holistic evaluation of all the above facts is made, it will only go to establish that the plaintiff /respondent has not proved that Exhibit-A8 was executed by the deceased. The requirements of Section 68 of the Evidence Act have not been complied with at all by the respondent. Therefore, the claim for title made solely on the basis of Exhibit-A8 cannot be granted. They, the lower Appellate Court was not right in granting the relief.

19. Now yet another aspect also requires consideration. The Will (Exhibit-A8), was forwarded in a sealed cover for being deposited with the Sub Registrar. The deposit was made in the presence of two witnesses as could be seen from the cover. One witness Mr. N.Varadharajan has identified the deceased before the Sub Registrar. On the



WEB COPY

cover also the deceased had signed and the signature found in the cover is also at variance with the signature found in the cover is also at variance with the signature found in the Will. The said Mr. Varadharajan has not been examined. There is no explanation for the same. Thus the respondent has failed to prove that Exhibit-A8, was executed by the defendant.”

These findings, which have become final, and have been pointed by Mr. T.P.Manoharan, learned senior counsel as binding, and having a direct bearing on the decision to be taken in the revision petition.

5. I will examine this fact a little later.

6. In the meanwhile, it appears that the respondent herein claimed to have purchased the entire property, namely, northern side and southern side. She claimed title over the property from one Leone, who had sold the property to her in 1997. The said Leone further claimed title owing to a decree of specific performance on the basis of an agreement, which he had entered into with the children of the vendor of the Petitioner's father.



WEB COPY

7. Thus, there is a situation, where the father had purchased the property from the vendor and for good measure, the children of the vendor had conveyed the property owing to a specific performance decree to one Leone and from Leone the respondent herein claimed title and ownership over the property.

8. This fact is also stressed by Mr. T.P.Manoharan, learned senior counsel, who urged consideration of the aspect of limitation.

9. The elder brother appears to have then filed a suit against the respondent herein, which suit had been dismissed and an application to restore the suit, had also been dismissed. The elder brother is no longer in the picture today.

10. The revision petitioner filed O.S. No. 52 of 2009, and it must be kept in mind that this suit has been filed during the year 2009, after 12 years from the date of purchase by the respondent which was in 1997 and the relief sought in the said suit was a declaration that the sale deed dated 29.04.1997 in favour of the respondent is a fabricated and



C.R.P.(PD) No. 1739 of 2017

fraudulent document and is not binding and for permanent injunction restraining the respondent from putting up any construction particularly, on the southern side.

11. Now, on the date of filing of the suit, the petitioner claimed title over the southern side through the Will marked as Exhibit A8, and that Will had been very seriously commented upon by the learned Single Judge of this Court in the paragraphs extracted aforesaid.

12. It is this factor, which has been now pointed out by Mr. T.P.Manoharan, learned senior counsel, who also pointed out the affidavit filed in I.A. No. 20 of 2013, which is an application filed under Order VI Rule 17 of Code of Civil Procedure Code by the petitioner herein in O.S. No. 52 of 2009. By that application, which incidentally was filed by the petitioner herein, after the trial was commenced in O.S. No. 52 of 2009 and after the petitioner had grazed the witness box and had let in evidence as PW1, the petitioner sought for the following amendments, namely, to declare that the plaintiff is absolute owner of the southern side of the property / 'B' schedule property and for recovery of possession of the 'B' schedule property from the Defendant and to put the



C.R.P.(PD) No. 1739 of 2017

plaintiff into possession by evicting the Defendant from the 'B' schedule property.

13. It is again pointed out by Mr. T.P.Manoharan, learned senior counsel that in the Second Appeal a finding has been given touching upon the genuinity of the Will under which the petitioner claims right and title over the southern side property / what is called as 'B' Schedule property.

14. Mr. T.Sathyamoorthy, learned counsel for the petitioner submits that necessity to file the application arose only after the Second Appeal was disposed and this aspect is pointed out to urge that the application has been filed within the period of limitation as stated under Article 64 of the Limitation Act, 1963 and also if Article 65 of the Limitation Act, 1963 is looked into.

15. Another aspect, which has been pointed out is that admittedly the petitioner was not in possession of the property on the date of filing of the suit and he himself sought for an injunction that construction should



not be put by the Respondent. Constructions can be put by the Respondent only if the Respondent is in the actual physical possession.

When the Petitioner was not in physical possession of the property on the date of filing the suit, then the Petitioner should have valued the suit and paid court fee on the market value of the property and should not take recourse to value the suit and pay fixed court fees to bring it well within the ambit of Munsif Court.

16. This fact is also pointed out by Mr. T.P. Manoharan, learned senior counsel, who stated that the Petitioner should be called upon to value the suit in accordance with the market value of the property and pay necessary court fees. However, there cannot be any claim on the basis of the Will, and amendment will not lie and the Petitioner is prohibited from seeking amendment, contrary to the findings given in the second appeal with relation to the Will. It has to be clarified that:

- (1) The findings of the learned Single Judge in the Second Appeal binds all parties. There cannot be any relief sought or relief granted or even any prayer sought contrary to the specific findings on Exhibit A8-Will relied on by the Petitioner. Since specific findings touching upon its veracity



WEB COPY



C.R.P.(PD) No. 1739 of 2017

have been made by a Learned Single Judge of this Court, the petitioner must give the starting period of dispossession from the property. If the Respondent had been in possession from the date of her purchase, then any application, much less amendment application will be seriously out of time. The Petitioner must give the value of the property and must explain as to why and on what basis he restricts his claim to the southern half. If such restriction is again on the basis of the Will, since the veracity of the Will has been negated by this Court, then he has no case.

- (2) The Petitioner must give the market value of the property and must also give the date from which the Respondent has been in possession of such property. Without all these details the Petitioner can never seek any amendment of the plaint.

17. The order under revision, is interfered with and is set aside but this would not mean that the Petitioner has established any right to seek the amendment. The Petitioner must come forward with all the aforesaid details, specifically the date of dispossession, the date of possession of



C.R.P.(PD) No. 1739 of 2017

the Respondent, the market value of the property as on date of possession. These details must be stated by way of affidavit. Then a counter can be filed and the same can be considered by the Munsif Court. If such an affidavit is not filed, the petitioner cannot seek amendment. Even though the order under revision is set aside, the interlocutory application cannot be considered with unless these details are given by the Petitioner herein.

18. The matter is remanded back to the Court of the I Additional District Munsif to re-consider the interlocutory application in I.A. No. 20 of 2013 and give an opportunity of hearing to the petitioner therein to file an affidavit giving all the aforesaid details and an undertaking abiding with the order of the Second Appeal. An opportunity to file a counter must also be given. An order can then be passed in the interlocutory application. The observations above are binding on the I Additional District Munsif.

19. The Revision Petition is allowed. The order dated 08.03.2017 in I.A. No. 20 of 2013 is set aside. Consequently, connected civil miscellaneous petition is closed. The interlocutory application in



C.R.P.(PD) No. 1739 of 2017

I.A.No. 20 of 2013 is remitted back to the said court for fresh hearing.

No order as to costs.

20. While deciding the merits of the interlocutory application, the I Additional District Munsif Court must also examine the maintainability of such application, particularly, in view of the judgment in the second appeal and on the issue of limitation and on the issue of the valuation of the suit and the court fees paid /payable and the jurisdiction of the Munsif Court to hear the matter, if the value of the suit exceeds the pecuniary jurisdiction of the Munsif Court.

21.02.2022

Internet: Yes/No

Index: Yes/No

Maya

To

The I Additional District Munsif Court, Puducherry.



WEB COPY



C.R.P.(PD) No. 1739 of 2017

C.V.KARTHIKEYAN, J.

Maya

C.R.P.PD.No.1739 of 2017
and
C.M.P.No.8222 of 2017

Dated : 21.02.2022