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CRP(PD)No.2180 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No.2180 of 2017

and

C.M.P.No.10468 of 2017

- 1.Zaheer Hussain
- 2.Sadiq Basha
- 3.Siddique
- 4.Rafeeq

... Petitioners

vs.

- 1.Andul Khadar alias Sheik Khadar
- 2.Zahedha Begum
- 3.Aneese alias Haneef
- 4.Noorjan
- 5.Karthikeyan
- 6.Chellamuthu
- 7.Manivel
- 8.Kaliyathal
- 9.Sumathi
- 10.Mani
- 11.Ramasamy
- 12.The Sub Registrar
Sub Registrar's Office,
Palacode Road,
Kaveripattinam Town,
Krishnagiri T.K & Dist.
- 13.Asina
- 14.Mageswaran
- 15.Madhesh alias Madheswaran
- 16.Elangovan
- 17.Kuppusamy

... Respondents



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Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Order dated 01.03.2017 in I.A.No.58 of 2017 in O.S.No.23 of 2010, on the file of the learned Principal Subordinate Judge, Krishnagiri and allow the CRP.

For Petitioners : Mr.V.Nicholas
For R11 : Mr.T.Sathiyamoorthy

ORDER

The plaintiffs in O.S.No.23 of 2010 which is now pending on the file of the Principal Subordinate Court, Krishnagiri, are the revision petitioners herein.

2.They had filed I.A.No.58 of 2017, under Order XVIII Rule 3 of the Code of Civil Procedure seeking permission to lead rebuttal evidence after the respondents/defendants had adduced their evidence.

3.It must be noted that the plaintiffs have actually let in evidence and they stopped their evidence and filed an under Order XVIII Rule 3 of C.P.C., seeking permission to let in rebuttal evidence and to await the nature of evidence to be adduced by the defendants.

4.That application came up for consideration before the learned Principal Subordinate Judge, Krishnagiri and by order dated 01.03.2017, the said



application was dismissed, necessitating filing of the present revision petition.

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5.The said application had been filed based on the assumption that the respondents/defendants would produce a Will dated 12.04.1993 and while producing the said Will, the same will have to be proved in manner known to law. Necessary witnesses who had attested the Will, would also have to be examined and therefore, assailing the Will, rebuttal evidence would be required to be adduced on the side of the plaintiffs. However, the respondents/defendants had not even graced the witness box. There was no guarantee they would actually rely on the Will or even mark the list of document during the course of their evidence.

6.The defendants had filed written statement and even though a provision is available in the Code of Civil Procedure that along with the written statement, the list of documents must be enclosed, to the extent possible that records can be seen, the Will had not been listed as a document along with the written statement.

7.The learned Subordinate Judge, was therefore of the opinion that the application had been filed based on presumption that the Will will be produced during trial. In the written statement filed on behalf of the sixth and seventh



defendants, reliance has been placed only on two separate Sale Deeds both dated 25.02.2002. The Will had not been shown as a document along with written statement.

8.The learned counsel for the revision petitioners however urged that necessary permission must be granted that if at all the defendants produce the Will in question, that the revision petitioners must be granted opportunity to lead rebuttal evidence.

9.Even before going any further, it would be appropriate that the brief facts are stated.

10.The suit had been filed for declaration of title over the “A”, “B”, “C”, “D” Schedule properties granting permanent injunction of the aforesaid properties, for partition and separate possession of “E” Schedule property and for declaration of various documents which included the Sale Deed, Gift Deed as null and void and for other reliefs.

11.Along with the plaint, a list of documents had also been filed and the xerox copy of the Will dated 12.04.1993 executed by Sheikh Ismail Sahib and



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Gori in favour of the plaintiffs and also in favour of the first and third defendants and another one individual Basha had also been filed.

12.It is the contention of the learned counsel for the revision petitioners that being a Joint Will, in which the beneficiaries are both the plaintiffs and also the first and third defendants, there is every possibility that when the defendants lead evidence, they might produce the original Will. But again, there is also possibility that the defendants may not lay a claim on the basis of the said Will.

13.Therefore, let the trial proceed. Let me not interfere with the order under revision. But let me give the following directions.

(i)Let the learned counsel for the revision petitioners/plaintiffs examine the evidence already recorded on behalf of the revision petitioners/plaintiffs and if further evidence is to be recorded on behalf of the revision petitioners/plaintiffs, necessary application may be filed on that regard and such evidence be let in by the revision petitioners/plaintiffs.

(ii)Thereafter, the respondents/defendants may let in their evidence.

(iii) If during the course of the evidence of the respondents/defendants, the original Will dated 12.04.1993 is produced and witnesses to that effect are



also examined as witnesses, let effective cross examination be done in respect of the evidence adduced by said witnesses.

(iv) At that stage, let the learned Judge decide whether rebuttal evidence is required.

14.It is a fact that the petitioners have not issued with any notice calling upon the defendants to produce any document. They have also not filed any application under Order XI Rule 3 of C.P.C., to strike out the defence. The list of the documents have also not been produced before the Court. At that stage, the revision petitioners/plaintiffs may examine Order XI CPC and its various provisions and if it is permissible, they may file necessary application in accordance with law. Let the learned Judge take a decision at that particular point of time. It all depends on the nature of evidence which is let in by the defendants and an interpretation of the various Rules under Order XI C.P.C.

15.With the above observations, the Civil Revision Petition is dismissed. But it is once again reiterated that the provisions under Order XI Rule 3 C.P.C may be taken advantage of both the petitioners and the respondents herein and they may respectively interpret the same to their advantage. Let trial continue further in O.S.No.23 of 2010 on the file of the learned Subordinate Judge,



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Krishnagiri. No order as to costs. Consequently, the connected miscellaneous petition is also closed.

09.03.2022

Index:Yes/No

Speaking Order:Yes/No

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To:

- 1.The Principal Subordinate Judge,
Krishnagiri.
- 2.The Section Officer,
V.R.Section,
High Court of Madras.

C.V.KARTHIKEYAN, J.

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