



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

Coram

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

C.R.P.PD.No.2303 of 2017

and

C.M.P.No.10870 of 2017

1. Menaka
2. Sudha
3. Manikandan
4. Andal

... Petitioners

Vs.

1. Balasubramanian
2. Mathiyazhagan @ Narayanasamy
3. Subramanian
4. Murugan
5. Annapoorani
Ramachandran (Died)
6. Valliammal
7. Saroja
8. Kalaiselvi
9. Latha
10. Venkatachalapathi

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal orders dated 16.03.2017 made in I.A.No.157 of 2017 in O.S.No.145 of 2005 on the file of the II Additional District Munsif, Ulundurpet.



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For Petitioners .. Mr.C.Munusamy

For R1, R5 and R10 .. M/s.R.Poornima

ORDER

This Civil Revision Petition has been filed against the Fair and Decreetal order dated 16.03.2017 made in I.A.No.157 of 2017 in O.S.No.145 of 2005 on the file of the II Additional District Munsif, Ulundurpet.

2.The Plaintiffs in O.S.No.145 of 2005 pending on the file of the II Additional District Munsif, Ulundurpet are the revision petitioners herein. The said suit in O.S.No.145 of 2005, had been filed by them seeking partition and separate possession of the suit mentioned properties and to pass preliminary decree in accordance with such share allotted to the plaintiffs.

3.A written statement had been filed in the said suit by the defendants.



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4. Thereafter, an Interlocutory Application in I.A.No.157 of 2017 came to be filed by the revision petitioners/Plaintiffs. They had filed the said application under Order 16 Rule 1 of CPC, stating that one Ramachandran who had executed a Will in the year 2004, had taken treatment at JIPMER Hospital, Puducherry in the year 1999 and in the Government General Hospital, Chennai, between 2000 and 2001 and had subsequently taken treatment at Puducherry Mahatma Gandhi Medical College Hospital in the year 2008 and that thereafter, the said Ramachandran had unfortunately passed away. An application was filed seeking to call for records from the Government General Hospital, Chennai and from Puducherry Mahatma Gandhi Medical College Hospital and to examine the responsible Officials from both the hospitals as witnesses and also for further relief to summon as witness, the Sub Registrar, Ulundurpet, where the Will said to have been written by the said Ramachandran was registered in the year 2004.

5.A counter had been filed in the said application.



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6. Thereafter, an order was passed on 16.03.2017, wherein the II Additional District Munsif, Ulundurpet holding Full Additional Charge at Ulundurpet, had observed that there no bonafide reason had been advanced as to why the Sub Registrar has to be examined. It was also stated that as per the discharge summaries which has been already marked as Exs.B7 to B10, there was no dispute whether the said Ramachandran had taken treatment in the said hospitals. The said application was dismissed, necessitating filing of the present Revision Petition.

7. Heard Mr.C.Munusamy, learned counsel for the revision petitioners and Ms.R.Poornima, learned counsel for the respondents R1, R5 and R10

8. The issue can be narrowed down to quite simple facts. There was a Will which was executed in the year 2004. A suit was filed seeking partition and separate possession. The executant of the Will had taken treatment in three separate hospitals in three separate time periods, one in the year 1999 at JIPMER Hospital, Puducherry, the second in the years



2000-2001 at Government General Hospital, Chennai and the third in the year 2008 at Puducherry Mahatma Gandhi Medical College Hospital. The discharge summaries issued by the three hospitals had been marked as Exs.B7 to B10.

9.An application had been filed seeking to summon as witnesses i.e. Chief Medical Officers of the three hospitals. But, the records speak for themselves. Even if the Chief Medical Officers are present, they would only confirm the discharge summaries, which have already been filed. Moreover, it is seen that the Will was executed in the year 2004. The treatment periods at JIPMER and Government General Hospital Chennai, were in the years 1999 to 2001 and therefore would not have any direct bearing on the executant when the Will executed in the year 2004. The third treatment at Puducherry Mahatma Gandhi Medical College Hospital was in the year 2008, which again cannot speak about the physical or mental condition of the said Ramachandran in the year 2004. Therefore, issuing summons to the said officials would not advance the cause to the Plaintiffs. It would be advisable if the plaintiffs grazes the witness box and establish their right to seek partition and examine of the other independent witnesses.



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10. So far as the application seeking to summon the Sub Registrar, Ulundurpet, a reasonable presumption can be drawn under Section 114 of the Evidence Act, that an Official act done during the course of discharge of Official duty would have been done appropriately and in proper manner. There is no issue raised with respect to the registration of the Will. Therefore, I would not permit examination that particular witness also.

11. The order under revision dated 16.03.2017 dismissed in I.A.No.157 of 2017 is upheld and the Civil Revision Petition stands dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

12. I am informed that O.S.No.145 of 2005 is now posted for advancing arguments before the II Additional District Munsif, Ulundurpet. A direction is given that immediately after arguments are advanced, before the end of June 2022, the judgment must be pronounced and the suit must be disposed. If evidence had already been



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recorded with respect to the validity of the Will, then such evidence may be analyzed during the pronouncement of the judgment.

11.04.2022

Internet: Yes/No
Index: Yes/No
mn/smv

To,
The II Additional District Munsif Court, Ulundurpet.



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C.V.KARTHIKEYAN,J.

mn/smv

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