



C.R.P(PD)No.3507 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).Nos.3507 of 2017

and

CMP.No.16273 of 2017

K.Subramaniam

..Petitioner

Vs.

1.R.Thangaraj
2.N.Jayalakshmi
3.A.Amaravathi
4.K.Thangavel
5.R.Selvaraj
6.Muthayee
7.K.Sakunthala
8.S.Chellammal

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.08.2017 made in I.A.No.397 of 2017 in O.S.No.575 of 2012 on the file of the Principal District Munsif Court, Erode.

For Petitioner : Mr.C.Munusamy

For Respondents : No Appearance



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ORDER

Let me not keep this revision petition any further on the file of this Court. This Civil Revision Petition arises from an order passed in I.A.No.397 of 2017 in O.S.No.575 of 2012. The said suit is now pending for 10 years and if, orders are held over in this revision petition, it will continue to be pending for another 10 years.

2.The suit in O.S.No.575 of 2012 had been filed by one K.Thangavel against eight defendants. The 6th defendant / K.Subramaniam is the revision petitioner herein. The suit had been filed with respect to a property of Kasianna Gounder, who died on 01.04.1984. The geneology table had been given in the plaint and the plaintiff and the revision petitioner herein / 6th defendant, are the sons of Kasianna Gounder. They also have other brothers and sisters. The further defendants are the sons and daughters of one of their sisters, who died prior to institution of the suit.

3.It is claimed that the suit property is a self-acquired property of Kasianna Gounder and therefore, all those, who can probably claim a share



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in the said property in view of the death of Kasianna Gounder, have been implied in the suit and the plaint had been laid for partition and separate possession of the particular suit property.

4.The present revision petitioner / 6th defendant alone is contesting that particular version to seek partition primarily because he relies on a particular Will and claims that by the said Will, Kasianna Gounder had bequeathed the property to the revision petitioner / 6th defendant in the suit.

5.The trial had commenced and evidence of the plaintiff had been adduced. Thereafter, the revision petitioner / 6th defendant had also been examined as D.W.1. He also produced the Will and it had also been marked as a document. He then, filed an application seeking to issue process to the attestors of the Will to examine them. That application had also been allowed. At that particular stage, the 1st, 2nd and 3rd defendants in the suit had filed I.A.No.397 of 2017 calling upon the Court to forward the Will to determine the genuinity of the thumb impression of Kasianna Gounder.



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Filing of the said Interlocutory Application had effectively put spokes on the further progress in the trial of the suit. Filing of the present revision petition has further strengthened such spokes and there has been absolutely no progress in the suit.

6.The proper approach which should have been taken by the Trial Court would have been to examine the attestors, analyse the evidence to find out whether the Will had been proved in manner known to law and if, still, the Court entertains doubt regarding the genuinity of the thumb impression then, the process of forwarding the Will for examination by a forensic expert with respect to the thumb impression could have been undertaken by the Court. However, the attestors, to examine whom permission had already been granted, should adduce evidence. I hold that the order of the Principal District Munsif in I.A.No.397 of 2017, directing that the Will should be forwarded for examining the thumb impression by a forensic expert, has to be kept in abeyance.

7.Let the trial proceed. Let the attestors to the Will also be



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examined. Let the learned District Munsif examine whether the Will had been proved in manner known to law. The Will can be forwarded for forensic examination only if there are sufficient pleadings for the same and that has to be as last resort.

8.In the order impugned, no specific observation has been given as to whether any one of the parties have doubted the execution of the Will by Kasianna Gounder. It had however, been observed that the revision petitioner had produced the Will in the begining itself. Therefore, it is the duty of the Court to first give a finding on whether the Will had been proved in manner known to law.

9.I would therefore, set aside the order in I.A.No.397 of 2017.

10. Let the suit proceed further by examining further witnesses on behalf of the defendants. If on analysis of the evidence, the Court still has any doubt then, at that particular stage, after recording the evidence, exercising power vested, the Court can take a decision to forward the Will



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for forensic examination. If the Court does not entertain any doubt about the execution of the Will, the Court can proceed to pass judgment in the main suit itself.

11.In such observations, this Civil Revision Petition stands disposed of with a direction to the Principal District Munsif Court, Erode to proceed further with the trial in O.S.No.575 of 2012 and come to logical conclusion on the issues on or before 31.07.2022. No costs. Consequently, connected miscellaneous petition is closed.

23.03.2022

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order



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To:-

The Principal District Munsif Court,
Erode.



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C.V.KARTHIKEYAN, J.

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