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C.R.P. No. 3733 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3733 of 2017
and
C.M.P. No. 17364 of 2017

C.Ganesan,
S/o. Late Chinnama Naicker

... Petitioner

Versus

1. Smt. Poovathal,
W/o. Velusamy Naicker

2. E.R.Vijaya Anand,
S/o. S.T.Rajasekar

3. K.P.Sakthivel,
S/o. K.P.Panchanathar
Respondents

...

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 17.07.2017 made in I.A.No. 482 of 2016 in O.S.No. 565 of 2017 on the file of II Addl. District Munsif, Coimbatore.

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For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.M.S.Subramanian

ORDER

The Revision Petitioner herein is the plaintiff in the suit in O.S.No.565 of 2007 on the file of II Addl. District Munsif Court, Coimbatore, which was filed by him for the relief of declaration and permanent injunction against the defendants.

2. The defendants also contested the suit. The plaintiff claiming title over the property belongs to his father and based upon a Will, the property belong to him. The defendants denied the plaintiff's claim contending the suit property belong to their father and they claimed right over the property. Issues were framed and the trial was begin. When the witness was started to be examined, the plaintiff attempted to issue summons to the Attestor of the Will, the 3rd defendant raised objections and at one occasion, as per the



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contention of plaintiff that he said to have admitted the Will as true.

Thereafter, there was some confusion arose between the counsel and the court and according to the petitioner, the Presiding Officer of the court has endorsed in the notes paper that the 3rd defendant is not denying the Will executed by petitioner's father in favour of petitioner. Hence, the necessity arose for the plaintiff to file an application in I.A.No. 482 of 2016 under Order XI Rule 1 and 2 r/w Sec.151 of C.P.C. to serve interrogatories. The said application was strongly objected by the defendants denying the contentions of revision petitioner. On hearing both sides, the trial court held that the defendants 1 and 2 denied the said Will. In the said circumstances, the defendants have to prove the truth and genuineness of Will. Therefore, the reasons assigned in the affidavit is not permissible under law. Accordingly, the said application was dismissed. Challenging the said findings, the present Civil Revision Petition has been filed.

3. The learned counsel for revision petitioner submitted that the trial court ought to have got a reply from the defendants about the interrogatory in the form of an affidavit, but instead of that, the application was dismissed by the trial court is erroneous one. Hence, he prayed to set aside the same.



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4. At the time of argument, the learned counsel for Revision Petitioner submitted that due to the conduct of 3rd defendant, the plaintiff filed the said application before the trial court for interrogation, but the same was not accepted by the trial court. By way of reply, the learned counsel for defendants submitted that all the defendants denied the truth and genuineness of the Will and the plaintiff is bound to prove the same independently as he is in custody of the Will. In spite of that, he filed an application to serve interrogatories. Hence, he prayed to allow this Civil Revision Petition.

5. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondents and perused the records.

6. On considering both side submissions and on perusal of records, in the year of 2007, the plaintiff filed a suit for declaration and injunction in respect of suit property based upon a claim that the property belongs to his father and also as per the Will. So, he has to prove the Will independently



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as per Sec. 68 of Evidence Act. Even ANY argument made in the court, that cannot be taken into consideration, because the defendants 1 and 2 totally denied the validity of the Will. Therefore, the interrogation of the plaintiff, as such, is not maintainable in law. The Trial court has rightly appreciated the said fact.

7. In the result, this Civil Revision Petition is dismissed and the order passed by the trial court in I.A.No.482 of 2016 is confirmed. However, on seeing the facts, the suit is pending from the year of 2007, the trial court is directed to proceed with the case and to dispose the same by giving opportunity to both parties within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
II Addl. District Munsif,
Coimbatore.

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T.V.THAMILSELVI, J.

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