



C.R.P. No. 4813 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4813 of 2017

Mayilvahanan,
S/o. Somasundaram

... Petitioner

Versus

1. Dheivanilla
2. Vasanthi
3. S.Natarajan
4. A.Senthilkumar
5. Dharani
6. Kalayarasi
7. Thanikachalam
8. Ramachandran
9. Ravi
10. Indiragandhi
11. Perumal Asari
12. Saroja
13. Rajendiran
14. Venmal
15. Parvathiammal
16. Rajee
17. Ganesan
18. Sivakumar
19. Ganesan

1/8



C.R.P. No. 4813 of 2017

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20. The Special Thasildar,
Land Acquisition, Attur

21. C.Thangaraj
S/o Chinnamuthu Gounder

22. C.A.Thangaraj
S/o Atthiyappa Gounder

... Respondents

PRAYER : Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 24.04.2017 made in I.A.No.9 of 2016 in L.A.O.P. No.4 of 2011 on the file of learned Sub-Judge, Attur and permit the petitioner to be added as necessary party in the L.A.O.P.No. 4 of 2011 pending before the Sub-Judge, Attur.

For Petitioner : Mr.T.Dharani

For Respondents : Mr. S.Senthil for R1 to R5 & R7

Mr.P.Jagadeesan for R8 to R14

Mr.B.Tamilnidhi,
Addl. Govt. Pleader for R20

R6, R15 to R19, R21 & R22 -
No appearance



C.R.P. No. 4813 of 2017

WEB COPY

ORDER

The Revision Petitioner herein is the petitioner/third party in the application filed in I.A. No. 9 of 2016 in L.A.O.P.No. 4 of 2011, on the file of Sub-Judge, Attur.

2. The proposed petitioners claimed themselves as made over parties contending that based on the decree made over made by legal heirs of one Arumugam, who obtained a decree in O.S.No. 328 of 1981 on the file of District Munsif, Attur, they are having right over the property in S.F.No.165/1, an extent of 4.76 cents and in S.F.No.165/13, an extent of 1.93.5 hectares, totally, it comes to 1.15 acres. However, as per the notifications dated 18.05.2009 and 10.06.2010 issued by the competent authorities, the State acquired the land as described in form of reference to court annexed in Page No.5 of typed set of papers, in which the land in S.F.No.165/13, a vast extent of property belong to various persons acquired. But, as the compensation amount awarded by the authority was not accepted by the parties, it was referred to Sub-Court, Attur in L.A.O.P. No.4 of 2011.



C.R.P. No. 4813 of 2017

During the pendency of L.A.O.P. proceedings, this Revision Petitioner filed an application in I.A.No.9 of 2016 to implead himself and respondents 21 and 22, since they have obtained a decree made over from the legal heirs of Arumugam, who is said to be having share in S.F.No.165/13. On considering both side submissions, the learned trial judge dismissed the said application concluding that the property particulars was not mentioned in the made over decree, besides in the earlier suit in O.S.No. 328 of 1981, the description of property was also not found in the decree. Challenging the said findings, the present Civil Revision Petition has been filed.

3. The learned counsel for Revision Petitioner submitted that as per the decree made over, they are entitled to claim right over the property in S.F.No.165/13, but the trial court has not accepted the said made over decree and erroneously dismissed the application. Hence, he prayed to set aside the findings of the trial judge.

4. The learned counsel for respondents 8 to 14 submitted that earlier decree holder Mr.Arumugam is not having any share in the property and he



falsely claiming right over the property based on a exparte decree passed in O.S.No.328 of 1981 and consequently, the decree made over made by revision petitioner is also invalid. Hence, the trial court rightly appreciated the said fact, which needs no interference. Accordingly, they prayed to dismiss this Civil Revision Petition.

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

6. On considering both side submissions and on perusal of records, the suit in O.S.No. 328 of 1981 was filed by one Palaniammal for the relief of declaration based on a Will. Subsequently, the said Palaniammal died and one Arumugam was impleaded as 2nd plaintiff in the suit. As per the decree dated 27.09.2006 all the defendants remained exparte and the suit was decreed in favour of plaintiffs as prayed for. But, as per the relief claimed in the suit, based on a Will, they are claiming right over the property and in the suit, four documents were relied on by the plaintiffs viz., Ex.A1 is the copy Will dated 06.03.54, Ex.A2 is the original Will dated 24.04.87, Ex.A3 is the original Sale deed dated 08.07.81 and Ex.A4 is the series of



acknowledgment card. So, based on the Will, the plaintiffs claiming right over the property, more particularly, at the time of filing the suit, Palaniammal claiming right over the property based on the Will dated 06.03.1954, but the same is not proved in the court of law. However, during the pendency of suit, the 1st plaintiff Palaniammal died and one Arumugam is impleaded as 2nd plaintiff and he is claiming right over the property based on a Will dated 24.04.1987, this Will is also not proved before the court of law. But, the trial court erroneously allowed the suit and passed an order in a simple way by relying the documents Ex.A1 to A4. It is like a one line cryptic order. The trial court also failed to take note of mandatory procedure as required under Sec.68 of Evidence Act that the Will has to be proved by examining anyone of attestors of the Will. The conduct of trial judge is unjustifiable one and the same is amounting to ignorance of law. Therefore, this Court reserves its right to call for explanation from the concerned officer on the administrative side.

7. On perusal of records, it reveals that there is no description of property in a suit as claimed by the plaintiffs and 2nd plaintiff not proved his claim over the property based on a Will by examining anyone of attestor of Will.



C.R.P. No. 4813 of 2017

Hence, the decree is totally invalid and nonest in law. However, based on an invalid decree, the legal heirs of Arumugam made over the decree in favour of Revision Petitioner and respondents 21 and 22, as such is not maintainable in law. At the most, the legal heirs of Arumugam has to approach the trial court to prove the Will as if they are having right over the property. Therefore, the reasons assigned by trial judge in I.A.No. 9 of 2016 is set aside, besides the decree in O.S.No. 328 of 1981 is also non-est in the eye of law. Accordingly, this Civil Revision Petition is dismissed as no merits. No costs.

31.10.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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N.B. Registry is directed to call for explanation from Mr.M.G.Selvaraj, District Munsif, Attur.

To

1. Sub-Judge, Attur.
2. The Special Thasildar, Land Acquisition, Attur.
3. The Public Prosecutor, High Court, Madras.

7/8



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C.R.P. No. 4813 of 2017

T.V.THAMILSELVI, J.

rpp

C.R.P.No. 4813 of 2017

31.10.2022