



CRP.(PD)No.105 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2022

PRONOUNCED ON : 12.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.(PD).No.105 of 2020

and

CMP.No.668 of 2020

A.Jayaraja

...Petitioner

-Vs-

R.Raman (Died)

1.S.Kaveri

2.Saroja

3.Kannan

4.Parvathi

Kamalammal (Died)

5.Elumalai

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.11.2019 in I.A.No.1274 of 2019 in O.S.No.210 of 2005 on the file of the Additional District Munsif, Alandur.



CRP.(PD)No.105 of 2020

For Petitioner : Ms.J.Jayalaksmi for
M/s.Paul and Paul

For Respondents : Mr.M.Thangadurai for R1 to R4
R5- Notice not ready

ORDER

This petition had been filed to set aside the fair and decreetal order dated 05.11.2019 in I.A.No.1274 of 2019 in O.S.No.210 of 2005 on the file of the Learned Additional District Munsif, Alandur.

2. This petition is filed by the second Defendant under Article 227 of the Constitution of India, to prevent the miscarriage of justice caused by the order passed by the Learned Additional District Munsif Court, Alandur.

3. It is the submission of the Learned Counsel for the Petitioner that the Learned Additional District Munsif, Alandur, have permitted the Plaintiffs to re-open the evidence of the Plaintiffs after conclusion of the trial. The suit is filed



by the Plaintiff for bare injunction. During pendency of the suit, the Plaintiff died.

Therefore, the Legal Heirs impleaded themselves as Plaintiffs 2 to 6. Subsequently, sixth Plaintiff also died. When the trial commenced, the Plaintiffs' side witness was examined as PW1. After closing of the Plaintiffs' evidence, the Defendant examined himself as DW1 and the evidence was closed. When the case was posted for arguments, the Learned Counsel for the Plaintiffs sought to re-open the evidence for the Plaintiffs on the ground that at that time of Plaintiffs evidence, the Will executed by the first Plaintiff in favour of the Plaintiffs 2 to 6 was marked and to prove the Will, the attestors of the Will had to be examined. Therefore, the Plaintiffs had filed an application under Section 151 of CPC to examine the attestors of the Will. The second Defendant, who is the DW1 in the suit, objected the same by filing counter. The Learned District Munsif, Alandur, had allowed the petition in I.A.No.1274 of 2019.

4. It is the submission of the Learned Counsel for the Revision Petitioner that there is no pleading in the plaint regarding the execution of Will by the first Plaintiff in favour of the Plaintiffs 2 to 6. Without pleading there cannot be evidence, and the suit is only for bare injunction. The Will is not at all relevant to



the facts in dispute. The alleged Will executed by the first Plaintiff, (deceased) in favour of the Plaintiffs 2 to 6 is self serving document. It has no relevancy to the facts in dispute between the Plaintiffs and the Defendant. It is the further submission of the Learned Counsel for the Revision Petitioner that the original Plaintiff namely, R.Raman did not prosecute the suit for bare injunction. The suit was filed in the year 2005 and when the suit was ripe for trial in the year 2008, since the Plaintiffs did not proceed with the suit, the suit was dismissed on 01.03.2012. Thereafter, the petition to set aside the order of dismissal with the condone the delay petition was filed and the said petition was allowed and the suit trial commenced only in April 2017, and even then the plaintiffs did not show any indulgence. It is only the dilatory tactics adopted by the Plaintiffs to protract the proceedings.

5. The Learned Counsel for the Respondents submitted that when the Plaintiffs deposed the evidence, the Will executed by the first Plaintiff was marked and at that time, the Defendant did not object the same. Only after the conclusion of the trial, the Plaintiffs came to know that the attestors of the Will have to be examined to prove the Will by re-opening the suit for Plaintiffs' side evidence. The



Petitioner herein, the Defendant in the suit is in no way prejudiced. Therefore, this petition is lacking on merits and is to be dismissed as having no merits.

6. On consideration of the rival submissions, the submission of the Learned Counsel for the Petitioner herein is found acceptable. Considering the nature of the suit as bare injunction, the marking of the Will does not have any bearing on the suit. Also as pointed out by the Learned Counsel for the Petitioner that there is no pleading in the plaint regarding the execution of Will. Under those circumstances, the marking of the Will as Ex.A1, even though not objected by the Defendant in the suit, there is no necessity of re-opening of the suit to examine the witnesses to the Will. If it is a suit for declaration of title or on the claim of the property by Will, it is justified. The suit is only for bare injunction. The Will was already marked as Ex.A1. However, the marking of the Will or examination of the attestors to the Will has no bearing in the outcome of the case. Therefore, the Revision Petition filed by the second Defendant is found acceptable and reasonable.

In the result, **this Civil Revision Petition is allowed.**



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CRP.(PD)No.105 of 2020

SATHI KUMAR SUKUMARA KURUP,J.,

dna

The order passed by the Learned Additional District Munsif, Alandur, in I.A.No.1274 of 2019 in O.S.No.210 of 2005 dated 05.11.2019 is set aside. Subsequently, the I.A.No.1274 of 2019 is dismissed as not maintainable. The Learned Additional District Munsif, Alandur, is directed to dispose of the case within a reasonable period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12.08.2022

Index:Yes/No
Internet:Yes/No
dna

To

The Additional District Munsif, Alandur.

**Pre-Delivery Order made in
CRP.(PD).No.105 of 2020
and
CMP.No.668 of 2020**



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CRP.(PD)No.105 of 2020