



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2022

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) No.1663 of 2021

and

C.M.P. (MD) No.8995 of 2021

1.K.Ramesh
2.K.Loganathan

... Petitioners/Petitioner/
Defendants 2 & 3

vs.

1.S.Selvi

... 1st Respondent/1st Respondent/
Plaintiff

2.K.Rakkammal
3.K.Amutha
4.K.Karuppu Raja @ Mathi
5.C.Muthupetchi

... Respondents 2 to 5/Respondents/
Defendants 1 to 6

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.04.2021 in I.A.No.533 of 2020 in O.S.No.22 of 2014 on the file of the learned 4th Additional District Judge, Madurai.

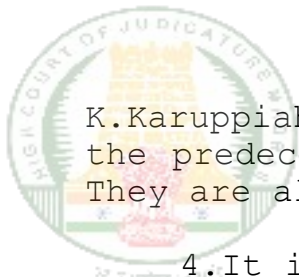
For Petitioners : Mr.V.Nagendran
For R2 to R5 : Mr.PT.S.Narendravasan

ORDER

The defendants 2 and 3, who are the revision petitioners, aggrieved by the dismissal of the application to receive the Xerox copy of the unregistered Will executed by their father, K.Karuppaiah, are before this Court.

2.The facts in brief are as follows:-

3.The 1st respondent herein has filed a suit O.S.No.22 of 2014 on the file of the learned 4th Additional District Judge, Madurai for partition of her 7/36th share in the suit schedule property. The plaintiff has come forward with the case that the suit properties are joint family properties. It is her case that the suit first schedule property was the ancestral property and from out of the income of these ancestral properties, the properties described as schedule 2 and 3 of the suit properties were purchased. The plaintiff and the defendants 2, 3 and 6 are the children of



K.Karuppiyah and the 1st defendant is his wife. The 5th defendant is the predeceased son of Karuppiyah and the 4th defendant is his wife. They are all entitled to a share.

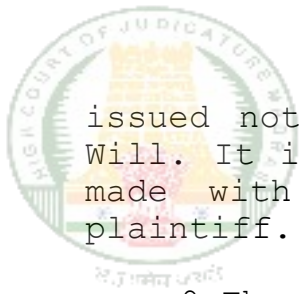
4.It is the case of the plaintiff that Karuppu Raju @ Mani, the 5th defendant died intestate on 25.07.2007. The said Karuppu Raju @ Mani, the 5th defendant, who is the husband of the 4th defendant had predeceased his father on 11.04.1997. Therefore, the defendants and the plaintiff were entitled to a 1/6th share in the suit property with the defendants 4 and 5 being entitled to a 1/6th share jointly. Since the defendants 2 and 3 were not coming forward to partition the property, the plaintiff has filed a suit for partition.

5.One of the defenses raised by the defendants 2 and 3 was that their father, K.Karuppiyah had executed an unregistered Will dated 25.05.2007 bequeathing his self acquired properties in favour of his wife/the 1st defendant for her life and thereafter absolutely on defendants 2 and 3, who are his sons. It is also the case of the defendants 2 and 3 that the allegation that the suit properties are joint family properties is totally false. It is their case that the 2nd and 3rd schedule of properties are not the joint family properties of the plaintiff and the defendants and the 4th item in the 3rd schedule of suit property was the self acquired property of the 3rd defendant. Therefore, the plaintiff was not entitled to a share in the said properties. The 2nd and 3rd schedule of properties were purchased by K.Karuppiyah from out of his own self earnings and therefore, it was his self acquired property. In the written statement, the defendants had also stated that the original Will was in the possession of the 1st defendant and now, the 1st defendant was colluding with the plaintiff to come forward with the above suit.

6.An additional written statement was also filed by the defendants 2 and 3, in which they have clarified that the Will, which is in their possession, was only a Xerox copy besides raising other pleas. When the matter was posted for defendants' side evidence, the revision petitioners herein/the defendants 2 and 3 have come forward with the instant petition.

7.The plaintiff has resisted the said petition by denying the very execution of the Will and contending that there is no reference to the said Will in the written statement filed by the defendants 2 and 3. The plaintiff has also denied the contention of the revision petitioners that their father, K.Karuppiyah had paid money to the respondents 1 and 5 herein/the plaintiff and the 6th defendant.

8.The 1st respondent/plaintiff would also submit that the revision petitioners herein had issued a notice dated 07.11.2020 calling upon the respondents 1 and 2 to produce the original Will. Further, the revision petitioners in paragraph No.14 of their written statement have stated that the Will executed by K.Karuppiyah was in their possession and after making such a statement, they



issued notice to the respondents 1 and 2 to produce the original Will. It is clear that the Will is nothing but a concocted one and made with intentions of ensuring that no right flows to the plaintiff.

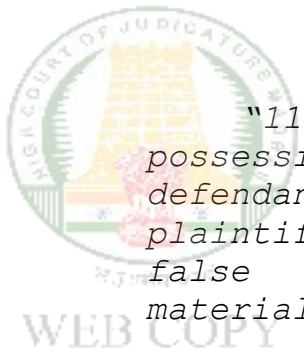
9.The learned 4th Additional District Judge, Madurai, by his order dated 08.04.2021 dismissed the said application. The learned Judge has held that there is no reference to the Will in the written statement filed by the defendants 2 and 3 and this petition is filed at the stage, when they had to cross-examine the plaintiff. The learned Judge has also stated that there was no reply to the legal notice dated 06.01.2014 issued by the plaintiff by stating that the property had been bequeathed to the defendants 2 and 3 by their father under the said Will. Further, there is no reference to the receipts dated 31.10.2007 and 10.07.2010 showing monies having been paid to the respondents 1 and 5, namely, the plaintiff and the 4th defendant. The learned Judge would observe that there was no reference in the Will and the receipts in the written statement and on this ground, had dismissed the application.

10.Heard the learned counsels on either side.

11.The application impugned has been dismissed primarily on the ground that there is no reference to the same in the written statement filed by the defendants 2 and 3. This view of the learned trial Judge is *per se* erroneous. In paragraph No.5 of the written statement, the defendants 2 and 3 have stated as follows:-

"5. Mr.K.Karuppaiah, in a sound and disposing state of mind, executed an unregistered Will, dated 25.05.2007, bequeathing his self-acquired properties in favour of his wife, the 1st defendant with life interest and without any powers to encumber or alienate the same and after her life time in favour of the defendants 2, 3 and 5 with absolute rights, as detailed in the Will. Mr.K.Karuppaiah also directed the defendants 2, 3 and 5 to pay a sum of Rs.1,50,000/- to the plaintiff jointly and also to pay another sum of Rs.1,50,000/- to the 6th defendant jointly after the life time of the 1st defendant. On 25.07.2007, Mr.K.Karuppaiah died and his Will, dated 25.05.2007 came into force and the 1st defendant became the life interest holder of the properties stated in the Will. All the parties to the suit were aware of the said Will and the Original Will was kept by the 1st respondent. Hence it is false to state that Mr.K.Karuppaiah died intestate."

12.In paragraph No.11 of the written statement, which is extracted herein below, the defendants 2 and 3 have set out that the document in question was in the possession of the 1st defendant, who now colluding with the plaintiff has suppressed the same.



"11. While the facts being so, taking advantage of the possession of the Original Will, dated 25.05.2007 by the 1st defendant, who and the 6th defendant are colluding with the plaintiff, the plaintiff has come forward with this suit with false and fraudulent allegations, suppressing several material and real facts."

13. Therefore, the observation of the learned Judge for dismissing the petition on this ground is totally erroneous.

14. The petition in question is only to receive the document, which has already been referred to in the plaint. The case of the defendants 2 and 3 are that schedules 2 and 3 of the suit property are the self-acquired property of their father and in respect of this, their father had executed a Will dated 25.05.2007, which is an unregistered one. The mother/1st defendant was in possession of the Will and the defendants 2 and 3 were in possession of only the Xerox copy of the same.

15. Mr. PT. S. Narendravasan, learned counsel for the respondents 2 to 5 would contend that the defendants 2 and 3 have in paragraph No.14 of the written statement stated that they are in possession of the Will. Having stated so, the defendants 2 and 3 are now contending that they only possess the Xerox copy of the Will. At first blush, the argument appears to have some force. However, paragraph No.14 has to be read in conjunction with paragraph No.5 and 11 of the written statement and the amended written statement, it has been clearly stated that it was only a Xerox copy, which is in possession of the plaintiff. It is needless to state that the document will be marked only subject to the proof and relevancy. The impugned petition is only to receive the said document on file.

16. In these circumstances, considering the erroneous appreciation of the learned 4th Additional District Judge in I.A.No.533 of 2020 in O.S.No.22 of 2014, the impugned order is set aside and the Civil Revision Petition stands allowed. The Xerox copy of the Will dated 25.05.2007 shall be taken on file and received as evidence subject to proof and relevancy. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

The 4th Additional District Judge,
Madurai.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-487[F]
dated 05/01/2022)

+1 CC to M/s.V.NAGENDRAN, Advocate (SR-537[F] dated 06/01/2022)

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MA (CO)

GC (09.02.2022) 5P 4C