



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2022**

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD)No.1751 of 2015

and

M.P (MD)No.1 of 2015

Murugesan

... Petitioner/Petitioner/
1st Defendant

Vs.

1.Muthulakshmi
2.Thangaselvi

... Respondents1, 2/
Respondents1, 2/
Plaintiffs

3.Aathimoolathammal (Died)
4.Vijaya

... Respondents 3, 4/
Respondents 3, 4/
Defendants 2, 3

(Memo presented in Court on 03.09.2018 and recorded as petitioner and other respondents are the legal heirs of the deceased R3 vide Court order, dated 03.09.2018 in C.R.P(MD) No.1751 of 2015)

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, as against the order, dated 16.03.2015 passed in I.A.No.80 of 2014 in O.S.No.25 of 2007 on the file of the III Additional District Judge, Tirunelveli.

For Petitioner : Mr.R.J.Karthick

For R-1 & R-2 : Mr.J.David Ganesan
for M/s.Jayapaul Associates

For R-3 : Died

For R-4 : No appearance

ORDER

The respondents 1 and 2 in the revision petition have filed O.S.No.25 of 2007 before the III Additional District Court, Tirunelveli for the relief of partition and separate possession of the 2/5th share. The first defendant had filed a written statement claiming that all the suit schedule properties have been bequeathed



in his favour by way of a registered Will said to have been executed by his father on 18.05.1995. The respondents 1 and 2 herein (plaintiffs in the suit) filed I.A.No.232 of 2012 to amend the plaint, so as to include some properties. Thereafter, the first defendant filed applications to recall, reopen and mark a power deed, dated 06.04.1993. The said applications were dismissed by the trial Court. The first defendant had filed C.R.P(MD)Nos.1303 and 1304 of 2013, before this Court. This Court by its order, dated 19.11.2013 had dismissed the said revision petitions, after holding the said power deed, dated 06.04.1993 cannot be received in evidence, since there is no recital with regard to the power deed in Exhibit A14 sale deed.

2. Thereafter, the first defendant has chosen to file I.A.No.80 of 2014, seeking permission of the Court to file an additional written statement on the ground that the plaint has been amended by the plaintiffs in view of the order passed in I.A.No.232 Of 2012. No doubt the defendant would be entitled to file an additional written statement as a matter of right whenever the plaint is amended by the plaintiffs. However, in the present case, there is a reference about the power deed, dated 06.04.1993 in the additional written statement. The trial Court has found that the first defendant is attempting to get over the orders passed in C.R.P(MD)Nos.1303 and 1304 of 2013 and trying to introduce the pleadings with regard to the power deed, dated 06.04.1993. On the said ground that the application under Order 8, Rule 9 has been dismissed by the trial Court. The said order is under challenge in the revision petition.

3. The learned Counsel for the petitioner has contended that the power deed, dated 06.04.1993 is a registered document and hence, the same has been pleaded in the additional written statement and the order passed by this Court in C.R.P(MD)Nos.1303 and 1304 of 2013 cannot come in his way to make a plea with regard to the power deed, dated 06.04.1993.

4. Per contra, the learned Counsel for the respondent have contended that the first plaintiff is attempting to protract the proceedings. The suit is of the year 2007 and so far the trial could not be completed in view of the repeated applications filed by the first defendant.

5. I have considered the submissions on either side.

6. The first defendant as a matter of right is entitled to file an additional written statement, whenever the plaint is amended. But in the present case, in the proposed additional written statement, the first defendant has pleaded about a power deed, dated 06.04.1993. This Court in C.R.P(MD)Nos.1303 and 1304 of 2013 has already held that the said power deed cannot be received in evidence. Hence, the order passed by the trial Court rejecting the additional written statement is set aside. The trial Court is



directed to receive the additional written statement. However, the first defendant shall not be entitled to mark the power deed, dated 06.04.1993.

7. With the above said observation, the revision petition stands allowed. The trial Court is directed to complete the trial on or before 31.12.2022 and report the same with the Registry. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The III Additional District Judge,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Judicial Posting Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P (MD) No.1751 of 2015
08.04.2022

RK(29/04/2022) 3P 5C