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C.R.P.No.2489 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2489 of 2009  
and M.P.No.1 of 2009

J.Sasikala (deceased)  
2.J.Ramesh  
3.J.Elengovan

*(Petitioners 2 and 3 brought on record  
vide order dated 09.08.2017)*

.. Petitioners

VS

1.M.Sivam (died)  
2.Thulsi  
3.Thavamani  
4.Munusamy  
5.Agathi  
6.Theiva Nayagi  
7.Vendamani  
8.Lakshmi Prasath  
*(R6 to R8 brought on record  
vide order dated 28.09.2018)*

.. Respondents

Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in IA No. 19088 of 2017 in OS No. 6758 of 2005 dated 14.07.2009 on the file of the XVI Asst. Judge, City Civil Court, Chennai.

For Petitioners : Mr.K.Mohanamurali

For Respondents : R1 Died (steps taken)  
Mr.R.Lokeshwaran  
for R2, R6 to R8  
R3 - NA  
R4, R5 - NRN



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ORDER

The claim of the plaintiffs is that the Tamil Nadu Slum Clearance Board had executed a sale deed in their favour. The first defendant / Sasikala claims that the property originally belonged to one Muniyammal, who had executed a Will in her favour after she became absolute owner of the property.

2. She states that she obtained probate in OP No. 505 of 2006 and, therefore, the present suit for declaration of title and for recovery of possession is not maintainable. On that ground an application was filed under Order 7 Rule 11 CPC to reject the plaint.

3. An application for rejection of plaint should show that the suit is barred by any one of the provisions of Order 7 Rule 11 (a) – (d) of CPC . The learned trial Judge has gone into the issue and has held that whether the sale deed has been obtained fraudulently or not is a matter to be gone into at that interlocutory stage and it can be adjudicated only at the time of trial.

4. Similarly, whether Muniyammal had title to bequeath the same by execution of a Will or not is also an issue which has to



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be gone into only at the time of trial. It is trite that a probate Court cannot give any findings on title but only certify that the Will is true and genuine. If the trial Court after recording the evidence comes to the conclusion that Muniyammal did not have title to the property, then the question of relying upon a Will executed by Muniyammal becomes unnecessary. This is a mixed question of law and fact. Therefore, the plaint cannot be rejected on that ground.

5. Hence the order of trial Court in I.A.No.19088 of 2017 in O.S.No.6788 of 2005 on the file of the XVI Assistant Judge, City Civil Court, Chennai is confirmed. The civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

6. The suit being of the year 2005, priority shall be given and the suit shall be disposed of within a period of nine months from today.

13.07.2023

Index:Yes/No  
Neutral Citation:Yes/No  
ssm

To

The XVI Asst. Judge, City Civil Court, Chennai.



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V. LAKSHMINARAYANAN,J.

ssm

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