



C.R.P.(PD) No.469 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.469 of 2021
and C.M.P.No.4144 of 2021

V.Vasanthi

...Petitioner

vs.

1.Subramaniyan

2.Palaniyammal

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal Order passed in I.A.No.4 of 2020 in O.S.No.612 of 2010 dated 07.01.2021 on the file of the Additional District Munsif Court at Namakkal.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Ms.Elizabeth Ravi for R1



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ORDER

WEB COPY This Civil Revision Petition has been filed to set aside the Fair and Decretal Order passed in I.A.No.4 of 2020 in O.S.No.612 of 2010 dated 07.01.2021 on the file of the Additional District Munsif Court at Namakkal.

2.The case of the petitioner is that one Mrs.Kaliyammal wrote the Will dated 24.08.2005 to and in favour of the petitioner, which is an unregistered document. The Original Petition No.612 of 2010 has been filed by the petitioner. Thereafter, I.A.No.4 of 2020 has been filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure.

(i)By order dated 07.01.2021, the learned Additional Judge has held that as mentioned in the Will that the petitioner attaining age of 30 years or till she get married she will be under the care of Palaniyammal, it seems that at the time of filing the Original Petition age of the petitioner was 31 and also she got married. It is not stated on which date the proposed party objected to the petitioner in the suit property, there is no question arising as against the proposed party. The address of the petitioner and the proposed party are one and the same. Since the



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petitioner filed the interlocutory application by suppressing the fact, the proposed party in the proceedings is neither an important nor necessary party. This petition has not been filed with good intention. Hence, the learned Additional Judge had dismissed the Interlocutory Application filed by the petitioner. Aggrieved by the same, the petitioner has filed this present Revision Petition.

3.Learned counsel for the petitioner submitted that the Court below ought to have seen that the petitioner is absolute owner of the suit schedule properties since the petitioner had acquired the properties by way of Will dated 24.08.2005. He submitted that the Court below ought to have seen that the petitioner is in peaceful possession and enjoyment of the suit schedule properties. He further submitted that the order passed by the Court below is against the settled principles of law and against the elementary principles of civil jurisprudence.

4.Learned counsel for the respondent has filed a counter in I.A.No.4 of 2020, wherein it has been stated that the application filed by the petitioner is not at all sustainable and maintainable in law. He also submitted that in C.R.P.No.4059 of 2013 this Court had directed to



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complete the case within a period of six months. Though very well aware of the case, the petitioner was not interested to come forward for trial and had filed this Revision Petition.

5.Heard learned counsel for the petitioner and learned counsel for the first respondent.

6.On going through the typed set of papers, it is seen that the petitioner's grandmother wrote the Will dated 24.08.2005 to and in favour of the petitioner on attaining age of 30 years or after her marriage she is entitled to have rights over the said property. Till such time, the said property shall be with the care of Palaniyammal and Palaniyammal shall not make any encumbrance or sell the property. If so, she does, the same shall not be valid. This Court is of the view that she is the guardian till the minor attains majority as per Will dated 24.08.2005. As there is no material available to show that she was acting against the welfare of the minor and also there is no cause of action arises as on date for filing petition to implead the proposed party as second respondent in the proceedings.



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7.Considering the facts and circumstances of the case and the submission made by the learned counsel appearing on either side and as there is no merit in this Civil Revision Petition and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

03.03.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
pam

To

The Additional District Munsif Court at Namakkal.



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V.BHAVANI SUBBAROYAN, J.

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