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C.R.P.No.3452 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3452 of 2015
and M.P.No.1 of 2015

1.Angathal
2.Natarajan

.. Petitioners

vs

Vijayalakshmi

.. Respondent

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.03.2015 made in I.A.No.505 of 2015 n O.S.No.434 of 2013 on the file of IV Additional District and Sessions Court, Coimbatore.

For Petitioners : Mr.K.Venkatasubban

For Respondent : No appearance

ORDER

The defendants / petitioners seek to revise the order passed in I.A.No.505 of 2014.

2. The plaintiff / respondent claims the property on account of death of her father Murugaian @ Murugaiah Gounder. Murugaian @ Murugaiah Gounder, married one Angathal, who is the first defendant. From the marriage, the plaintiff and the second defendant were born. As already premised, there is no dispute in



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the relationship between the parties.

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3. Since the relationship between the parties was admitted, the plaintiff took up the application under Order 18 Rule 1 CPC seeking the respondent to begin the trial in suit. The learned trial Judge, allowed the application on the ground that if the Will dated 04.09.1988 is proved, there is no question of going through the matter for trial. This is the case in which the Will has been projected to hold that the plaintiff does not have the share in the property.

4. Learned counsel for the petitioner rely on a judgment of this Court in the case of *K.Shanmugha Gandhi v K.Venugopal and others* [2009 SCC Online Mad 485]. A reading of the judgment does not show that the fifth defendant, who was the revision petitioner in that case was a subsequent purchaser of the share.

5. Here, the title of the property and the relationship between the parties are not in dispute and the dispute is with respect to the Will, which is true and genuine. If the Will is proved, the plaintiff is out of the Court. If the Will is not proved, the plaintiff will be entitled to the share by virtue of succession. It is



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in that circumstances, that the learned trial Judge felt that the defendants will have to enter the witness box and prove the case.

6. In any event, the exercise of discretion is under Order 18 Rule 1 CPC by learned trial Judge. It is a matter for procedure. The order is not perverse or tainted with illegality. I do not find any reason to interfere with the same in this civil revision petition.

7. Being of the year 2013, the learned IV Additional Judge, Coimbatore, is requested to take up the suit on priority basis and dispose the same within a period of six months from today. Let a report be submitted by the IV Additional Judge, Coimbatore to this Court.

8. With the above direction, this civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

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



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V. LAKSHMINARAYANAN,J.

ssm

To

The IV Additional District and Sessions Court,
Coimbatore.

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03.07.2023