



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.08.2023**

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.2043, 2049 & 2054 of 2019
and C.M.P.Nos.13244, 13285 & 13273 of 2019

S.Vaidhyanathan

... Petitioner in all the C.R.Ps

Vs

1.Thirunavukarasu

2.Marimuthu

... Respondents in all the C.R.Ps

COMMON PRAYER:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India against fair and decreetal order dated 08.04.2019 passed in I.A.NoS.418, 417 & 419 of 2019 in O.S.No.91 of 2014 by the learned District Munsif, Sirkali.

For Petitioner : Mr.A.R.Sakthivel

For Respondents : Ms.M.Meenatchi
for Mr.P.Anbarasan



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ORDER

Three Revisions arise out of a common order passed in I.A.Nos.417, 418 and 419 of 2019 in O.S.No.91 of 2014.

2. The suit was presented before the Subordinate Court at Sirkali for declaration of title and for recovery of possession from the first defendant and consequential reliefs. The plaintiff and defendants are siblings.

3. The case of the plaintiff is that the property originally belongs to one Muthaiya Padayatchi, who had executed a “WILL” in favour of the plaintiff on 06.11.1975. According to the plaintiff, Muthaiya Padayatchi died on 15.12.1975 and thereafter, he became the owner of the property. Originally when the plaintiff was examined, he marked a certified copy of the “WILL” but did not examine any of the two attesting witnesses. When the matter was posted for arguments, the aforesaid three applications were presented.



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4. It is the argument of the learned counsel for the petitioner that an opportunity be granted to the petitioner to prove his case. He would add that even at the time when the certified copy of the original “WILL” was presented, one of the attesting witnesses was already dead and the other witness was 84 years old and he was ailing.

5. Ms.M.Meenatchi, learned counsel appearing for the respondents would state that it is an attempt to fill the lacunae in the case. She would vehemently contend that it was the case of the plaintiff that the original “WILL” was said to have been available with the brothers namely, the defendants and no explanation has been given as to why all of a sudden, the original document was surfaced with the plaintiff.

6. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.



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7. The suit is one for declaration of title and for recovery of possession. The entire case of the plaintiff is based on the “WILL” dated 06.11.1975. If the plaintiff proves the “WILL”, he succeeds. If he does not, then he fails and the suit will have to be dismissed. It is no doubt true as pointed out by Ms.M.Meenatchi, in her usual vehemence, that it is the case of the plaintiff that he suspects that the document was available with the plaintiff. I do not want to throw out the case solely on that ground. It is always open to the respondents/defendants to cross-examine on the execution, registration as well as the circumstances under which, the document came to be in possession of the plaintiff. All those aspects regarding the “WILL” falls within the fold of appreciation of evidence.

8. At the present stage, I do not want to deny an opportunity to the plaintiff to let-in evidence. If he is capable of proving his original “WILL”, then he succeeds. Order XVIII and Rule 17 of Civil Procedure Code is not a tool for imposing punishment on the plaintiff. The Court is not a Headmaster and the parties are not pupils to be punished for not doing their



job at the proper time.
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9. However, considering the fact that the defendants have been put to prejudice, while giving an opportunity to the plaintiff to let-in evidence, in order to balance the interest of the defendants, I am inclined to impose heavy costs. Accordingly, I.A.Nos.4017, 418 & 419 of 2019 are allowed on payment of cost of Rs.5,000/- in each applications, by the plaintiff to the defendants, before the trial Court within a period of six weeks from today ie., on or before 19.09.2023. On such payment of cost, these applications are allowed. In case, the cost is not paid, these applications stand dismissed.

10. The Trial Court is requested to complete the evidence on or before 31.10.2023 and make it earnest efforts to dispose of the suit on or before 31.12.2023. The trial Court is requested to submit a report to this Court on completion of the proceedings.



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11. With the above terms and conditions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

08.08.2023

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Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To

The District Munsif Court, Sirkali.

Note: Issue order copy on 09.08.2023.



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V. LAKSHMINARAYANAN

Gba

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