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C.R.P.No.1665 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition.No.1665 of 2019

and

C.M.P.No.10775 of 2019

J.Nithyaanand

... Petitioner

Vs.

1.E.Mohammed Abubaker

2.S.Ansari Ali

3.S.Mohammed Hussain

Padmavathy (Died)

4.P.A.Mohammed Ibrahim

5.The Assistant Commissioner Police,
West Tambaram, Police Station,
Kancheepuram.

6.The Inspector of Police,
West Tambaram, Police Station,
Kancheepuram.

7.The District Collector,
Kancheepuram District.



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8.The District Registrar's Office,
(South Chennai 15)

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 23.01.2019 in I.A.No.87 of 2017 in O.S.No.135 of 2012 on the file of the District Muns if Court, Tambaram.

For Petitioner : M/s.Gayathri
for Mr.P.B.Ramanujam

For Respondents : Mr.R.Shankarakuttralingam for R1
Mr.B.Tamil Nidhi for R5 to R8
Government Advocate.

ORDER

The suit had been presented by the respondents 1 to 3. The relief is not to interfere with the possession by way of permanent injunction.

2. One Mrs.Padmavathy was admittedly the owner of the property. Mrs.Padmavathy died on 20.12.2014. Prior to her death, she had executed a Will on 10.02.2010, bequeathing the suit schedule mentioned property in favour of her grandson, Mr.J.Nithyaanand. In order to continue the suit on the death of Mrs.Padmavathy, Mr.J.Nithyaanand, on the strength of the Will,



filed an application to implead himself as the seventh defendant to the suit.

The application was numbered as I.A.No.87 of 2017. The said application was dismissed on the ground that the suit for injunction dies with the death of the first defendant. That is an extremely surprising proposition of law. The *actio personalis moritur cum persona*, a principle which does not apply to injunction suits. It is not a suit falling within the scope of Section 306 of the Indian Succession Act. Therefore, the cause of action survives on the legal representative of the deceased Mrs.Padmavathy.

3. The definition of legal representative is given under Section 2(11), of the C.P.C., which reads as follows:

*“(11) "legal representative" means a person who in law represents the estate of a deceased person, and **includes any person who intermeddles with the estate of the deceased** and where a party sues or issued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;”*

4. By virtue of the Will, the petitioner claims he become the owner of the property. In the natural line of succession, the petitioner will not be legal heir. A Will is written only for the purpose of deviating from the natural line



of succession. Therefore, the petitioner claiming a right from the property as a owner, has higher status than a intermeddler. Therefore, he is entitled to be impleaded as a party to the suit.

5. The learned counsel for the respondents would submit that the death certificate, the legal heirship certificate and the Will have not been given to him, in order to get instructions from his client.

6. Ms.Gayathri, the learned counsel for the petitioner has handed over a copy of the Will to Mr.R.Shankarakutralingam and she would state that the death certificate has also been filed before the Trial Court. Therefore, this satisfies the requirement of Order 22 to enable the petitioner to be impleaded as a party in the suit.

7. Having said this, the petitioner would have to produce the original of the Will before the Court. It is made clear that the original need not be retained but can be produced before the Court for satisfying Judicial Officer that the petitioner in fact who is in possession of the original Will dated 10.02.2010. After such production before the Court, the Court below can permit the petitioner to substitute the original, by way of a certified copy.



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The petitioner should also undertake to produce the original at the time of trial, if so called upon.

8. The order of the Court below is therefore set aside and I.A.No.87 of 2017 is allowed. The petitioner will be impleaded as a legal representative of the deceased's first defendant Mrs.Padmavathy.

9. The suit is pending from the year 2012, the Court shall give priority and ensure the same is disposed of within a period of six months from the date receipt of copy of this order. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

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Index: Yes/No

Speaking Order: Yes/No



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V. LAKSHMINARAYANAN

jai

To

1. The District Munsiff Court, Tambaram.
2. The Assistant Commissioner Police,
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Kancheepuram.
3. The Inspector of Police,
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