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CRP No.3406 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

CRP No.3406 of 2019
and C.M.P.No.22360 of 2019

- 1.Dhiraj Vinod Jain
 - 2.Manav Vinod Jain
 - 3.Vinit Vinod Jain
 - 4.Sneha Siddarth Parekh
- (P.3 is permitted to represent P.4 as
Power of Attorney vide Court order
dated 27.09.2019 made in CMP No.
21103/2019 in CRPSR No.113976/2016)

... Petitioners

Vs

- 1.Kanchan Sampath Jain (died)
 - 2.Jayantilal Jain
 - 3.Leela J.Jain
 - 4.Naresh Kumar Sampathraj Jain
 - 5.Ashok Sampathraj Jain
 - 6.Sanjay Sampathraj Jain
 - 7.Siddhant Sushil Bhandari
- (Respondents 4 to 7 brought on record as
LRs of the deceased 1st respondent vide
Court order dated 19.04.2023 made in
CMP Nos.5511, 5513 and 5514 of 2023)

... Respondents

(Cause Title accepted vide court order dated
04.10.2019 made in CMP No.21101 of 2019
in CRP SR No.113976/2019)



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 02.08.2019 made in I.A.No.2 of 2019 in O.S.No.218 of 2007 on the file of IV Additional District and Sessions Judge, Coimabtoe.

For Petitioners : Mr.S.Mukunthan
Senior Counsel for
Mr.N.Krishna Kumar

For Respondents : Mr.R.Subramanian
For RR2 and 3
R.1 – died
RR 4 to 7 – Not ready in notice

ORDER

A suit was filed for declaration that the power of attorney executed by the original plaintiff in favour of one Gunavathi dated 28.03.2005 and the consequential settlement deed executed by Gunavathi in favour of the mother of the plaintiff dated 26.08.2005 and the power of attorney executed by the third defendant in favour of the defendants 1 and 2 are not true and genuine, in any event, not binding on the plaintiffs.

2. In the suit, the original plaintiff died and his mother was impleaded as a legal representative of the plaintiff. She was not brought on record in her own capacity, but only in the capacity of a legal representative. She



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filed detailed written statement and pursuance thereof, took out an application to examine the power of attorney, attesting witnesses as well as the agent as per the document dated 02.06.2005.

3. Mr.S.Mukunthan, learned Senior Counsel appearing for the revision petitioners would submit that this Court had already held in CRP Nos.172 and 173 of 2014 that the plaintiffs will not be entitled to let in any further evidence and therefore, the order of the trial Court in allowing the application amounts to re-litigation.

4. Mr.R.Subramanian, learned counsel for the respondents would submit that the persons who are sought to be examined are those inextricably connected to the documents impugned in the suit and the evidence is vital to the case. He would submit that the order directing Vinod Sampatraj Jain @ S.Vinodhkumar, who was the original plaintiff, could not be held against the mother because Vinod Sampatraj Jain @ S.Vinodhkumar, himself passed away and the mother was brought on record as his legal representative.



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5. I have carefully gone through the records and heard the submissions on either side.

6. Here is a case where the registered documents are impugned. The plaintiff had filed an application to cross examine D.W.1 to mark certain original documents. That process was completed. However, he passed away pending the *lis*. Therefore, the mother came on record as one of his legal representatives.

7. The mother filed an independent written statement as she was impleaded as third defendant. As to whether the legal representative can take a higher defence is a matter which has to be gone through at the time of trial. Nonetheless, the written statement has been received. In support of her submission, she wanted to examine those connected with the proceedings. The suit was initiated some time in the year 2007 and is still languishing even after 16 years.

8. The processual jurisprudence has taken away the vitality of the



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substantive reliefs which the parties would have otherwise obtained by now.

9. I do not want to keep the proceedings pending or snuff out the opportunity to the parties to bring in evidence before the Court. After all, the matter is not pending at the stage of appeal, but, is still at the stage of trial. Therefore, the question of filling up lacuna in the evidence already recorded would not arise. Nonetheless, I have to take into consideration the prejudice that would be caused to the petitioners on account of the delay in the proceedings.

10. Therefore I asked Mr.R.Subramanian as to the date on which he will produce the witnesses so as to enable the plaintiffs to cross examine them. He states that the evidence can be opened on 21.08.2023. Accordingly, the evidence can be opened on 21.08.2023 and evidence should be closed after cross examination on 25.08.2023. If the witnesses are not present, the Court will not wait for them and the evidence will be closed. Judgment must be pronounced in the suit on or before 30.09.2023. Thereafter, the learned IV Additional District and Sessions Judge at



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V.LAKSHMINARAYANAN,J.,

sr

Coimbatore is directed to submit a Report before this Court regarding the disposal of the suit in O.S.No.218 of 2007.

11. With the above findings and observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. .

18.07.2023

Index:Yes/No

Speaking order/Non-speaking order

sr

To

The IV Additional District and Sessions Judge, Coimbatore.

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