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C.R.P.No.3264 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3264 of 2019
and CMP.No.21206 of 2019

Renugambal

.. Petitioner / Petitioner / Obstructor

Vs

K.Kamalammal (died)

1.S.Kasthuri

2.K.K.Rajendran (died)

3.K.K.Narasimalu

4.Srinivasalu Naidu

.. Respondents 1-4 / Respondents / Decree-
holders/Plaintiffs

5.Dhanakotti Rajendran

6.Lokesh Rajendran

.. Respondents 5,6

7.R.Shanmugam

.. 7th Respondent

[Respondents 5 to 7 are impleaded as LR's of the deceased
2nd respondent vide Court order dated 13.06.2023 in
CMP.Nos.7391, 7392 & 7395 of 2023 in CRP.No.3264/2019]

[Names of the respondents 5 & 6 are amended as per memo dated
30.06.2023 and vide Court order dated 30.06.2023 made in
CRP.No.3264 of 2019]



C.R.P.No.3264 of 2019

Prayer : Civil Revision Petition filed under Section 115 of CPC., praying to set aside the fair and decretal order dated 29.08.2019 passed in E.A.No.44 of 2017 in E.P.No.9 of 2016 in O.S.No.56 of 1987 on the file of Principal District Munsif, Ambur, Vellore District.

For Petitioner : Mr.PA.Sudesh Kumar
For Respondent : Mr.P.Paul Selvam
for R1 to R3, R5 to R7
R4 - Served [No appearance]

ORDER

The present revision arises out of an order dated 29.08.2019 passed in E.A.No.44 of 2017 in E.P.No.9 of 2016 in O.S.No.56 of 1987 on the file of Principal District Munsif, Ambur, Vellore District.

2. The brief facts that led to the filing of the revision is that :

- A certain Sakunthala had purchased a block of land measuring 1.36 acres in Sy.No.86, and also another property measuring 75x75sq.ft. [5,625 sq.ft.] of land plus building in Karumbur Village in Vaniyambadi Taluk respectively and they are 'B' schedule Item No.1 & 2.
- Sakunthala was married to one Perumal. Perumal pre-deceased



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Sakunthala, and that couple did not have any issue. Subsequently, Sakunthala too had passed away on 05.08.1980.

- The plaintiff is the sister of Perumal and sister-in-law of Sakunthala. She laid a suit for declaration of title for Sakunthala's properties as Class-II heir, and also for recovery of possession of the properties. The suit was laid against the parents and the brother of Sakunthala.
- The suit was resisted essentially by the third defendant, brother of Sakunthala who would plead that Sakunthala had executed Will dated 07.07.1980 bequeathing the entire Item No.1 'B' schedule property in his favour. So far as Item No.II in 'B' schedule property is concerned, this plot of land and building was sold by Sakunthala to her brother, the third defendant vide sale deed dated 09.01.1969.
- The dispute went to trial, before which, both sides adduced oral and documentary evidence. The Will alleged to have been executed by Sakunthala was marked before the trial Court as Ext.D3. The trial Court disbelieved the genuineness of the Will and decreed the suit.



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- Aggrieved by the same, the third defendant, the brother of Sakunthala preferred A.S.No.270 of 1991 before the first appellate Court. The first appellate Court believed the genuineness of Ext.D3, Will and accordingly dismissed the suit.
- This was challenged by the plaintiff in S.A.No.639 of 1993. Vide its judgment dated 27.04.2004, this Court allowed the second appeal and restored the decree of the trial Court.
- In the meantime, the plaintiff has passed away and her legal heirs have taken out E.P.No.9 of 2016 for recovery of possession.
- The delivery was obstructed by the present revision petitioner who claims title to 'B' schedule Item 1 under the sale deed dated 03.12.1984 executed by Srinivasulu Naidu. Her grounds are two-folds:
 - a) that on the date when S.A.No.639 of 1993 was disposed of, the appellant/plaintiff had already passed away. Indeed, she had passed away on 15.04.1998. Her legal heirs were not brought on record, the appeal in effect ought to have been recorded as abated, but proceeded with.



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b) the petitioner had purchased the property atleast three years prior to the institution of the suit, and in fitness of things, she should have been in the party array to defend her title.

- The Execution Court did not find merit in the said objection, and dismissed the petitioner's claim for title.

Hence, the present revision.

3. Heard both sides. Anything passed under Order XXI Rule 97 is a decree and only an appeal is maintainable. Hence, the present revision is dismissed as not maintainable, and the petitioner herein is at liberty to move the appropriate appellate forum, if she is so desirous. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index : Yes / No
Speaking Order / Non-speaking Order
ds

To:

- 1.The Principal District Munsif, Ambur, Vellore District.
- 2.The Section Officer, VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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30.06.2023