



CRP. No. 3618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10. 2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 3618 of 2022
& CMP No. 19188 of 2022

Papathi (died)
C.Ramani

...Petitioner

Vs.

1.Tamailselvi
2.Ponmathi
3.Chitra
4.Vanaja

....Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the Civil Revision Petition, by setting aside, the fair and decretal order dated 26.07.2022, passed in I.A No. 3 of 2022 in O.S No. 152 of 2012, on the file of the Additional District Court, Namakkal.

For Petitioner : Ms.S.Senthil

For Respondents : Mr.P.Valliappan, Senior counsel.



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ORDER

This petition has been filed to set aside the fair and decreetal order dated 26.07.2022, passed in I.A No. 3 of 2022 in O.S No. 152 of 2012, on the file of the Additional District Court, Namakkal.

2. The suit in O.S No. 152 of 2012 was filed by the petitioner herein/plaintiff for partition and the defendant 1 & 4 claiming right over the property based on the two Wills dated 07.12.2008 and 13.02..2009. Now, the Trial was begun witnesses were examined D.W.1 also examined and the alleged attestor of the Will was summoned as D.W.2 he also examined. After closure of the evidence of D.W.2 the defendants filed the application to re-call and re-open the evidence of D.W.2 in I.A No. 3 of 2022 stating that while examining the D.W.2 they failed to examine the D.W.2 about the Will dated 13.02.2019 and he was not cross examined therefore they prayed to reopen and re-call the D.W.2 and the said application was strongly objected by the plaintiff stating that sufficient opportunity was given to examine the alleged witness of D.W.2, after closing all the evidence in order



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to fill up the lacunae this application was filed. Considering the submissions on either side, the Trial Court allowed the said application stating that though the witness was summoned for giving evidence in respect of Two Wills evidence was recorded only in respect of Will dated 07.11.2008 and not in respect of another Will dated 13.02.2019. Challenging the petitioner filed this petition.

3. The learned counsel for the petitioner submits that while examining the D.W.2 he was narrated all the informations in respect of both the will. But, in order to fill up the lacunae the defendants wants to recall and reopen the D.W.2 as such is not permissible in law but the Trial Judge failed to appreciate the same and erroneously allowed the application. Hence, he prays to allow this petition.

4. The learned counsel for the respondent raised strong objection to allow this petition and also stated that the Trial Court rightly allowed the application which needs no interference.

5. On perusal of the records, it reveals that while examining the D.W.2 he was questioned only about the Will dated 07.11.2008 not about the Will dated 13.02.2019. Hence, if the opportunity is not given to the parties to prove the Will their valuable right to prove the Will be defeated



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and the same was rightly appreciated by the Trial Court which needs no interference. Further, the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

6. In the result, this Civil Revision Petition is dismissed.

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To

The Additional District Court, Namakkal.



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T.V.THAMILSELVI,J.

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