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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

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THE HON'BLE MRS.JUSTICE T.V.THAMIL SELVI

CRP.Nos.4475, 4477 & 4480 of 2023

and

CMP.No.26940 of 2023

R.Vinod Kumar

... Petitioner in all CRPs.

Vs.

1. N.Venkatesan

2. Smt.Valli

... Respondents in all CRPs.

Prayer in CRP.No.4475 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.08.2023 made in I.A.No.304 of 2023 in O.S.No.30 of 2021 on the file of the III Additional District Judge, Kallakurichi.

Prayer in CRP.No.4477 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.08.2023 made in I.A.No.305 of 2023 in O.S.No.30 of 2021 on the file of the III Additional District Judge, Kallakurichi.



Prayer in CRP.No.4480 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.08.2023 made in I.A.No.306 of 2023 in O.S.No.30 of 2021 on the file of the III Additional District Judge, Kallakurichi.

For Petitioner in all CRPs : Mr.R.Bharath Kumar

For Respondents in all CRPs. : No appearance

COMMON ORDER

The petitioner has filed these petitions to set aside the fair and decreetal order dated 09.08.2023 made in I.A.No.304, 305 & 306 of 2023, respectively in O.S.No.30 of 2021 on the file of the III Additional District Judge, Kallakurichi.

2. Before the trial Court, the plaintiff has filed applications to re-open the evidence of P.W.2 and P.W.3 and for re-call the witnesses of P.W.2 and P.W.3 and for examination of Advocate cum Notary Public who attested the Will in the affidavit filed in support of the applications, but the applications were dismissed by the learned trial Judge, holding that to drag on the proceedings the same were filed. Aggrieved that the revision petitioner has filed this revision.



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3. The learned counsel for the revision petitioner submitted that P.W.2 and P.W.3 are the attester of the Will and they were examined. The important aspect in respect of the execution of the Will has not been established through the witnesses, so he wants to re-open and re-call the witnesses. But the learned trial Judge has not given any opportunity and erroneously dismissed the petitions. Hence, he prays to set aside the findings rendered by the learned trial Judge.

4. On a perusal of the records, it reveals that, now the case is posted for judgement but after completion of the evidence they filed these applications before the trial Court to re-open and re-call the evidence of P.W.2 & P.W.3, in order to examine them, in respect of the execution of the Will. Admittedly, those 2 witnesses are attestors of the Will under Section 68 of the Evidence Act, which mandates the parties to examine the witnesses. In order to prove the execution of the Will, by complying with the same, they want to examine P.W.2 and P.W.3 with regard to some important aspects, which were omitted at the first instance, with regard to the execution of the Will. If such opportunity is not given to them, their valuable right to prove the case will be defeated.



Therefore, the findings rendered by the learned trial Judge is set aside. CRP is allowed.

5. The petitioner is directed to produce PW2 and P.W.3 within a period of two weeks from the date of receipt of a copy of this order and thereafter, within a period of two weeks and the petitioner is directed to examine the witnesses and co-operate for the proceedings and he also filed I.A.No.306 of 2023, to examine one of the witnesses who is the Advocate Commissioner cum Notary Public who attested the Will. If opportunity is not given to him, his valuable right to defend the case will be defeated. Accordingly, I.A.Nos. 304, 305 & 306 of 2023, respectively in O.S.No.30 of 2021 are allowed.

6. Accordingly, these Civil Revision petitions are allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

08.12.2023

Index : Yes/No

Speaking order / Non speaking order

Neutral Citation: Yes/No

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To

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- 1.The III Additional District Judge, Kallakurichi.
- 2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMIL SELVI, J.



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