



C.R.P.No.4144 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

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

C.R.P.No.4144 of 2023

and

C.M.P.No.25282 of 2023

Ambika

... Petitioner

-Vs-

1.Palanisamy

Sundarambal (dead)

2.K.Rasumani @ Thangavel

Govindammal (Died)

3.Subbathal

4.Balamani

5.Thangadurai

5.Special District Revenue Officer

No.3, Sabari Muthu Chettiar Street

Red Beat, Puliankulam, Ramanathapuram

Post, Coimbatore.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order



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dated 14.09.2023 passed in I.A. No.1776 of 2018 in O.S. No.774 of 2012

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on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.K.Govi Ganesan

ORDER

Challenging the impugned order passed in I.A.No.1776 of 2018 in O.S.No.774 of 2012 passed by the learned District Munsif, Avinashi, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 774 of 2012 against the defendants 1 to 9 for the relief of declaration to declare the Will dated 08.01.1990 as valid and to declare another Will dated 25.03.2009 as invalid and other consequential relief. On receipt of notice, the defendants appeared and filed their written statement. Now, the suit is ripe for trial. At that stage, the plaintiff filed



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an application in I.A.No.1776 of 2018 praying to examine attestor of the Will through Advocate Commissioner, since because the witness viz., Nataraj, who is aged about 80 years. That application was objected by the defendants stating that 3rd defendant was known to the said witness, but he was threatened by the plaintiff and also the witness is hale and healthy, so, he need not be examined through a commissioner. On hearing both sides, the trial judge concludes that the said witness was known to both parties as they belonged to the same native village and there is possibility of threatening witness by the plaintiff and the medical proof was also not produced for the witness, who suffered with illness, thereby it was dismissed. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that before commencement of trial, in the year of 2018 itself, she filed an application to examine the attestor of the Will through advocate commissioner as the said attestor Nataraj is aged about 80 years. But, the trial judge concludes that the said witness is hale and health and no medical proof is shown to prove his illness, as such is erroneous one and the same is liable to be set aside. Hence, he prayed to set aside the



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findings of the trial judge.

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5. On perusal of entire records, it reveals that the Revision Petitioner filed a suit in the year of 2012 to declare one Will as valid and another Will as invalid. Now, to prove the execution of Will, she wanted to examine one of the attesor of the Will viz., Nataraj, who is aged about 80 years through advocate commissioner and that application was filed in the year of 2018. Now, P.W.1 evidence was completed. So, the necessity arose for the plaintiff to examine one of the attesor, as the Will is to be proved under Sec.68 of Indian Evidence Act, which mandates to adduce evidence by the witness. If proper opportunity is not given to the Revision Petitioner/plaintiff, her valuable right to defend the case will be defeated. But, the trial judge failed to take note of such legal proposition and erroneously concludes that no medical proof is attached. Even though there is no medical proof for the illness of witness, who is aged more than 80 years, the trial judge ought to have allowed the application to examine him through advocate commissioner, instead of that, the trial judge dismissed the application, which itself shows his non-application of judicious mind. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.1776 of 2018 in



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O.S.No.774 of 2012 is set aside and the said application is ordered to be allowed. The trial judge is directed to appoint an advocate commissioner within a week from the date of receipt of copy of this order and dispose the case as early as possible within a period of three months thereafter. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

The District Munsif Court, Avinashi.



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T.V.THAMILSELVI, J.

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