



C.R.P.No.4547 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4547 of 2017
and
C.M.P.No.21428 of 2017

1.Chandra @ Chandrodayam
2.R.Natarajan

.. Petitioners

VS

1.Kaliaperumal (Died)
2.Mynavathy
3.Parameswari
4.Vijayaraj
5.Anandaraj
6.Rajeswari
*[R2 to R6 brought on record
vide order dated 03.07.2023
made in CMP 2194/21]*

.. Respondents

Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.388 of 2017 in O.S.No.4 of 2013 dated 07.08.2017 on the file of the Additional District Munsif, Mayiladuthurai.

For Petitioners : Mr.A.Muthukumar

For Respondents : R1 died (steps taken)
Mr.B.Jawahar
for R2 to R6

ORDER

In C.M.P.No.2194 of 2021, this Court permitted to bring on record the legal representatives of the sole respondent /



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Kaliyaperumal. That application having been ordered by the High Court in this proceedings. The same shall enure in favour of the parties in the suit also. Consequently, the plaint can be amended by filing a memo by the plaintiff bringing to the notice of the Court the order passed in C.M.P.No.2194 of 2021 and amending the plaint. Having granted that liberty, I now proceed on the merits of the case.

2. The defendants are the petitioners in this revision petition. The plaintiff who is the first respondent, had presented the suit for partition on several scheduled properties. He claims title to 'A' schedule property by virtue of a Will executed by his father. Insofar as 'B' schedule is concerned, it is his case that it remained unpartitioned and it belonged to his mother. Therefore, he is entitled to a share of the property on the death of his mother.

3. It is the case of the defendants that the father had executed a Will in favour of the plaintiff but would state that having a change of mind, father had cancelled the Will and executed another Will on 23.11.1993.

4. According to them, as per the Will dated 23.11.1993,



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the property devolves on the defendants. They would also project another Will dated 01.03.2002 executed by the deceased mother in favour of the first defendant.

5. In other words, the Will on the basis of which the plaintiff claims is admitted but another Will is projected to say that the first Will was cancelled and by virtue of the second Will, the property devolves on the defendants. Similarly, they would state that the mother had written a Will in favour of the first defendant and thereby the suit properties is not open for partition.

6. Pending the litigation, the plaintiff had examined himself and the matter was posted for cross-examination of DW1, who is the son of the first defendant, namely the second defendant. At that stage, the plaintiff moved an application in I.A.No.388 of 2017. This application was filed while the suit was still pending before the Additional District Munsif Court at Mayiladuthurai.

7. Mr.Muthukumar, learned counsel for the petitioner, brings to notice that due to the bifurcation of territorial jurisdiction and creation of new courts at Tharangambadi, O.S.No.4 of 2013 has been transferred to District Munsif Court, Tharangambadi and has



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been re-numbered as O.S.No.2 of 2019.

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8. Continuing the narration, I.A.No. 388 of 2017 was an application wherein the plaintiff wanted the examination of all the attesting witnesses on one particular day. He filed his application without cross examining DW1. It is a practice in this country that, where attesting witnesses are examined for a Will, all the attestors are examined on the same day so that it obviates the possibility of the attesting witness being "tutored" by the person projecting the Will and filling up the admissions that might have been made by one of the attesting witness, previously.

9. Following the said practice, the learned District Munsif had allowed I.A.No.388 of 2017 directing that all the attesting witnesses to the Will dated 23.11.1993 and 01.03.2002 be examined on the same day.

10. Against the said order, the present revision has been presented.

11. After hearing the arguments at length, I have requested learned counsel for the petitioner to find out if the attesting witness



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in both the Wills are one and the same. This is because learned counsel argued that the property covered under the 'A' Schedule and under the 'B' schedule are different properties and the manner of devolution are also different.

12. I do not agree to the submission that since the properties are different, the witnesses may be examined on different dates, because it is the testimony of the attesting witness which has been put before the Court and not the nature of the property. The examination of the attesting witnesses on the same day, as I have already pointed out, is to prevent or taint the trial, by way adopting the practice of tutoring of the witnesses.

13. Mr.Muthukumar, got instructions and filed a memo stating that the attesting witnesses for the second Will projected by the defendant is one Mr.Selvaraj and the first defendant. Similarly, for the second Will of the mother dated 01.03.2002 the attesting witnesses are the same Mr.Selvaraj and one Ramachandran. He would state that Ramachandran is currently not traceable and, therefore, is not able to get instructions as to when he can produce Ramachandran.



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14. For the purpose of proving a Will, one attesting witness alone need to be examined. Therefore, the choice of witness is absolutely the discretion of the parties and the Court need not interfere with the same. As long as Mr.Selvaraj is examined, it would suffice the requirement of law.

15. However, since Mr.Selvaraj is the common attesting witness in both the Wills and since the first defendant / Chandra @ Chandrodayam is the other attesting witness, both shall be examined on the same day. It is made clear that the plaintiff having taken the responsibility of the cross-examination of the witnesses on the same day, he shall ensure that he shall cross examine Selvaraj as well as Chandra @ Chandrodayam on the same day. He shall cross-examine Selvaraj on both the Wills dated 23.11.1993 as well as 01.03.2002. The Court shall ensure that at the time of examination of Mr.Selvaraj, Chandra @ Chandrodayam is not be present in Court and at the time of examination of Chandra@ Chandrodayam, Selvaraj is not be present in the Court.

16. Mr.Muthukumar, learned counsel for the petitioner, has also filed a memo dated 12.07.2023 giving option to the Court that witnesses will be presented on 24.07.2023 or 28.07.2023. Since the



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matter is pending for nearly six years before this Court, I am inclined to choose the latter date, for the purpose of examination of witnesses. DW1, D1 / Chandra @ Chandrodayam as well as Selvaraj, shall be present in the Court for cross-examination on 28.07.2023. The plaintiff shall first cross-examine, Mr.Selvaraj, Chandra@ Chandrodayam and thereafter DW1. The plaintiff having invited the Court to pass an order and the Court having been inclined to pass an order in favour of the plaintiff, it is made clear that the matter will not suffer an adjournment on that date on the ground that the plaintiff is not ready to cross-examine.

17. In fine, the order passed by the trial Court in I.A.No.388 of 2017 in O.S.No.4 of 2013 stands confirmed with the above directions. The civil revision petition stands dismissed. No costs. Connected miscellaneous petition is closed.

12.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To
The Additional District Munsif,
Mailaduthurai.



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V. LAKSHMINARAYANAN,J.

ssm

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