



WEB COPY



C.R.P.No.4172 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2023

PRONOUNCED ON : 12 .12.2023

CORAM:

**THE HONOURABLE Dr. JUSTICE D. NAGARJUN**

Civil Revision Petition.No.4172 of 2022  
and C.M.P.No.21831 of 2022

Logambal (Died)

1.P.Dhanapal

... Petitioner

Vs.

1.Kittusamy

2.Sivasubramaniam

3.Rajalakshmi

4.Neelavathi

5.Lakshmi

6.Sumathi

7.Udhayakumar

8.S.Subramaniam

... Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 30.09.2022 made in I.A.No.328 of 2021 in O.S.No.247 of 2017 on the file of the Court of the Subordinate Judge at Kangayam.



C.R.P.No.4172 of 2022

For Petitioner : Mr.T.Dhansekaran

For Respondents : M/s.P.Navaneetha Krishnan for R1

WEB COPY

### **ORDER**

This Civil Revision Petition is filed aggrieved by the orders passed in I.A.No.328 of 2021, dated 30.09.2022 on the file of Sub Court, Kangeyam, Tiruppur District.

2. The facts in brief as per the record that first plaintiff has filed a suit in O.S.NO.247 of 2017 seeking for partition and separate possession of the schedule of properties. During the pendency of the suit, first plaintiff passed away, thereby, second plaintiff came on record. The first respondent has filed a written statement allegedly admitting the suit claim stating that as per the will dated 16.05.1985 one Deivasigamani Gounder executed a will.

3. The plaintiff has filed a I.A.No.328 of 2021 on the file of Subordinate Court, Kangayam, under Order 18 Rule 1 C.P.C., seeking for a direction to the defendant to begin the trial. The respondents have filed a detailed counter opposing the same and on hearing both sides, the Trial Court has dismissed the application. Aggrieved by the same, the petitioner is



before this Court by way of this Civil Revision Petition.

WEB COPY

4. Heard both sides and carefully perused the materials placed on record.

5. Basing on the pleadings, the Trial Court has framed the following issues:

1. Whether those exists a joint family and plaintiff is in joint possessionwith defendants?
2. Whether the 1<sup>st</sup> Defendant has got right on the basis of a Will dated 16.05.1985?
3. Whether the plaintiff has any right or share in the suit properties, ifso, entitled to partition separate possession of the same?
4. Whether the two brothers of plaintiff, Dhandapani and Nataraj are to be declared civil dead as prayer?
5. To what other relief?

7. In order to invoke Order 18 Rule 1 and to give a direction to the defendants to start trial, at the first place, it has to be established that the defendants have admitted the facts alleged by the plaintiff and that the defendant should have contended some more aspects either in respect of the



WEB COURT

facts or in respect of the point of law. In such situation, the defendants can be asked to initiate the trial.

8. Though the second plaintiff has stated in the affidavit that the first defendant has admitted the case of the plaintiffs, on going through the contents of the written statement filed by the defendants, there is nothing to show that first defendant has filed a written statement admitting the claim of the plaintiffs. On perusal of the issues framed, it is clear that there is no issue which indicates that the first respondent has admitted the claim of the plaintiffs. Out of four issues that are framed, issues No.1, 3 and 4 have to be proved by the plaintiffs. However, in respect of the issue No.2, with regard to the Will, which was allegedly executed on 16.05.2018, the burden lies on the defendants. Unless the plaintiffs make out their case, basing on the issues 1, 3 and 4, the question of the defendants initiating their evidence in respect of the Will may not arise. Therefore, on considering the pleadings and the issues framed, it is clear that the burden lies on the defendants to prove issue No.2 alone thereby it cannot be said that the defendants have to be initiate the trial.

9. Even otherwise, Order 18 Rule 1 is an enabling provision and thereby, it cannot be pressed into service for a direction to the defendants to



initiate the trial. Even if the burden of the majority of the issues are on the defendants, still the right to begin the trial lies on the plaintiffs. Therefore, Order 18 Rule 1 cannot be interpreted to direct the defendant to open the trial.

10. Learned counsel for the petitioner has cited the judgment of the High Court of Delhi at New Delhi, in **Poonam Bhanot vs. Virender Sharma and others** reported in 2022 SCC OnLine Del 2156, wherein it was observed as under:

*“23. In view of the aforesaid, it is clear that the defendants have set up a case, which if proved, would decide the issues raised in the suit itself. The present suit is a suit for partition filed by one of the sisters. The defendant no. 1 being the brother has denied the share of the plaintiff as well as other defendants who are his sisters on the basis of an unregistered Will dated 12.07.2016. If the defendant no. 1 proves his case regarding the execution of unregistered Will dated 12.07.2016 by the father of the parties, by which properties have been bequeathed in his name, then the case of the plaintiff for partition of suit properties in her favour, would be completely demolished.”*



C.R.P.No.4172 of 2022

This Court, while considering C.R.P.No.641 of 2017, in **Periyasamy**

**vs. Soliammal**, observed as under:

*“13. Thus, while considering the Application under Order 18 Rule 1 CPC, the court has to consider the plaint and written statement in its entirety and it is not a case where the revision petitioner/defendant placed reliance on the Will alone. Since several other defences are taken in the written statement, the Trial Court was not correct in directing him to lead evidence at the first instance. This court is, therefore, of the view that the impugned order is liable to be set aside. Accordingly, the civil revision petition is allowed. The order passed by the Trial Court is set aside. No costs. The connected Miscellaneous Petition is closed.”*

11. In the case on hand, the defendants have never admitted the case of the plaintiff expect the execution of Will. Thereby, a direction to the defendants to initiate the trial under Order 18 Rule 1 of C.P.C cannot be given. Accordingly, the order dated 30.09.2022 made in I.A.No.328 of 2021 in O.S.No.247 of 2017 on the file of Sub Court, Kangeyam cannot be interfered with and thereby the same is confirmed.



C.R.P.No.4172 of 2022

12. In the result, this Civil Revision Petition is dismissed. No costs.

WEB C Consequently, connected miscellaneous petition is closed.

12.12.2023

Index : Yes / No  
Internet : Yes/ No  
Speaking/Non-speaking Order  
Neutral Citation: Yes/No  
jai

To

1.The Subordinate Judge,  
Kangayam.



WEB COPY



C.R.P.No.4172 of 2022

**Dr.D.NAGARJUN, J.**  
jai

C.R.P.No.4172 of 2022

12.12.2023