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C.R.P.(PD)No.2061 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD)No.2061 of 2019

Annapoorani

... Petitioner

VS

1.Selvaraj

2.Palanathal

3.Kuppusamy

.. Respondents

Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.1263 of 2016 in O.S.No.93 of 2015 dated 14.02.2017, on the file of the Second Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.E.K.Kumaresan

For Respondents : Mr.P.M.Duraiswamy (for R2 & R3)

No Appearance (for R1)

ORDER

This revision arises against an order passed by the learned II Additional District and Sessions Judge, Tiruppur dismissing I.A.No.1263 of 2016 in O.S.No.93 of 2015. There is no dispute between either parties



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that the property originally belongs to one Valliammal and Palanisamy.

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2. According to the plaintiff, Valliammal and Palanisamy died intestate and therefore, as their legal heir, she has a share in the property. Hence, she filed a suit for partition.

3. The case projected in the written statement is that Palanisamy and Valliammal during their life time had executed a Will for substantial portion in favour of the respondents and in addition, they had also executed a sale deed for a smaller extent with respect to the suit schedule mentioned property. A reply statement denying the sale deed as well as the Will has also been filed by the plaintiff.

4. The matter was posted for framing of issues. At that stage, the plaintiff took out an application that the defendants must be examined first in terms of Order 18 Rule 1 of the CPC. The said application was dismissed. Against which, the present revision.

5. I heard Mr.E.K.Kumaresan, learned counsel appearing for the petitioner and Mr.P.M.Duraisamy, learned counsel appearing for the respondents 2 and 3. I have perused the records.

6. The case as projected by the defendants is not solely predicated on the “WILL”. Had the defendants placed their case only on the basis of the Will in order to defeat the interest of the plaintiff, I would have



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directed the defendants to enter the witness box first in order to prove the Will. Because, the only issue have been whether the property of Palanisamy and Valliammal had devolved on the basis of the Will or devolves intestate as per Hindu Succession Act. If the Will is disproved, all the parties would get a share.

7.Unfortunately for the plaintiff, in addition to the Will, the defendants have also projected a sale deed, which has been executed during the life time of the deceased persons. That makes all the difference between the case where only a “Will” is projected and where plea has been taken that title has been transferred, even during the life time of the deceased person for whose estate, the present suit has been filed.

8.Therefore, the order of the learned II Additional District and Sessions Judge, Tiruppur does not require any interference. This civil revision petition is dismissed. No costs.

02.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Second Additional District and Sessions Judge,
Tiruppur.



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V. LAKSHMINARAYANAN,J.

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