



CRP (MD) No.391 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	03.07.2023
Pronounced on	11.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.391 of 2023

and

CMP(MD)No.1906 of 2023

T.S.Govindarajan

... Petitioner/ 1st Respondent/
1st Defendant

Vs.

1.T.S.Rengarajan

T.S.Mariappan(died)

Kokilambal (died)

2.Rukmaniammal

... Respondents 1 &2/
Petitioners 1 to 4/Plaintiffs 1 to 4

3.Somasundaram

4.Muthukannu @ Muthulakshmi

5.Shanthi

6.Vasanthi

7.Uma

8.Venkatesan

9.Shanthi

10.Kavipriya



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11.Prabu

... Respondents 3 to 11/
Respondents 2 to 10/Defendants 2 to 10

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to call for the records relating to the Fair and Decretal Order dated 14.09.2022 passed in I.A.No.07 of 2022 in O.S.No.163 of 2008, on the file of the learned III Additional District Judge, Trichirappalli and set aside the same.

For Petitioner : Mr.VR.Shanmuganathan

For R1 : Mr.T.V.Narasimman

For R5 & R8 to R11 : No appearance

ORDER

The present civil revision petition has been filed challenging the Fair and Decretal Order dated 14.09.2022 passed in I.A.No.07 of 2022 in O.S.No.163 of 2008, on the file of the learned III Additional District Judge, Trichirappalli and for setting aside the same.

2.The revision petitioner is the first defendant in the suit in O.S.No.163 of 2008. The respondents 1 and 2 as plaintiffs filed a suit in O.S.No.163 of

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2008 for partition in the suit property. During the pendency of the said suit, the respondents 1 to 2/plaintiffs have moved an interlocutory application in I.A.No.7 of 2022 under Section 74 of the Civil Rules of Practice to send for the documents from the file of the Rent Controller, Trichirappalli in RCOP No.83 of 1998.

3. The respondents 1 and 2 /plaintiffs in the said petition have stated that the first defendant has filed RCOP No.83 of 1998 along with Rajammal against the tenant one Mr.Chokkalingam based on the Will of Rajammal dated 28.11.1990. The first defendant/ revision petitioner is claiming his right based on the said Will, which is a forged document. The Will came into existence under suspicious circumstances and therefore, it is necessary to compare the signature available in the Will with the admitted signature of Rajammal available in RCOP No.83 of 1998. Hence, they filed the above petition in I.A.No.7 of 2022 to send for the documents from the file of the Rent Controller, Tiruchirappalli, in RCOP No.83 of 1998.

4. The revision petitioner/first defendant resisted the claim of the



respondents 1 to 2/plaintiffs stating that there is no necessity to compare the Will with the documents available in RCOP proceedings. It is submitted that the respondents 1 to 2 / plaintiffs can very well produce the certified copies of the said documents. Moreover, the Will was executed in the year 1990 and the RCOP proceedings were initiated only in the year 1998 and therefore, the above documents are not contemporaneous to compare with the signature. Hence, there is no necessity to send for the proposed documents.

5. The learned trial Judge, after appreciating the materials on records and the arguments advanced on both sides, allowed the application, against which, the present revision is preferred.

6. The learned counsel appearing for the revision petitioner/first defendant would submit that the suit in O.S.No.163 of 2008, after recording evidence, was posted for arguments. At that stage, the respondents 1 to 2/plaintiffs have filed two more interlocutory applications in I.A.No.411 of 2017 to reopen the case and I.A.No.171 of 2018 to recall PW1 for marking certain documents. On 13.07.2018, the above applications were allowed.



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Challenging the same, the revision petitioner herein filed CRP(MD)No.2328 of 2018 and CRP(MD) No.10 of 2019 and the same are still pending.

On 16.10.2018, interim stay was granted. In such circumstances, the respondents 1 and 2/plaintiffs have come out with another interlocutory application in I.A.No.7 of 2022, to send for the documents from the file of the learned Rent Controller, Trichy, in RCOP No.83 of 1998. The contention of the revision petitioner/first defendant is that the admitted signature of the Said Rajammal is very much available in the plaint and the vakalat in the present suit. Moreover, the certified copies of the documents intended to send for, have already been obtained. Therefore, another applications to reopen the case and to recall PW1 is not necessary and not maintainable. It is further submitted that the document in RCOP No.83 of 1998 is not the subject matter of the suit. The issue relates to the proof of Will which has to be proved by the propounder of the Will in the manner known to law as contemplated under Section 69 of the Indian Evidence Act. Therefore, comparison of the signature in the Will and the above documents will not arise. It is further submitted that the Court is not an expert to compare the signatures and come to a conclusion as to the genuineness of the documents. The present



application filed in I.A.No.07 of 2022 is only a dilatory tactic adopted by the respondents 1 and 2/plaintiffs to drag on the proceedings in the suit. The trial Court, without considering the above facts, erroneously allowed the application, which is liable to be set aside. The learned counsel for the petitioner further submitted that the applications to reopen and to recall a witness, cannot be allowed merely to fill up lacuna in evidence, when the case is posted for arguments for number of times. The respondents 1 and 2/plaintiffs 1 and 2 have come forward with such an application only to avoid final judgments. Therefore, such course should not be permitted even with the aid of Section 151 CPC. To support his contention, he has relied upon the observations made in the following decisions:-

(i) M/s.Bagai Construction Thr.Its Proprietor Lalith Bagai Vs M/s.Gupta Building Material Store reported in 2013 0 AIR (SC) 1849

(ii) Vadiraj Naggappa Vernekar (D) through Lrs. & others vs Sharad Chand Prabhakar Gogate reported in 2009 0 AIR(SC) 1604

(iii) S.Ramasamy Vs Perumal and others reported in 2014(3)CTC 518



7. Resisting the same, the learned counsel for the first respondent would submit that without filing an application to reopen the case and to recall the witness, the respondents 1 and 2/plaintiffs cannot establish their case and the core issue in the suit is about the genuinity of the Will, through which, the revision petitioner/first defendant is claiming his rights in the suit property. The trial Court has considered this aspect in proper prospective and has rightly allowed the application.

8. Considered the rival submissions made by both the parties and perused the entire materials available on records.

9. The admitted facts are that the respondents 1 and 2 herein as plaintiffs have filed the suit for partition. On perusal of the records, it is seen that the above suit is in the stage of arguments. At that stage, the respondents 1 and 2/plaintiffs have come out with the above interlocutory application in I.A.No.07 of 2022 to send for the documents from the file of the learned Rent Controller, Trichy in RCOP No.83 of 1998. Earlier the respondents 1 and 2/plaintiffs have moved two applications in IA.No.411 of 2017 to reopen case



and IA No.171 of 2018 to recall PW1 for marking certain documents. It is the specific stand taken by the respondents 1 and 2/plaintiffs that the revision petitioner/first defendant is claiming right in the property based on the impugned Will dated 28.11.1998 alleged to have been executed by Rajammal in his favour and RCOP No.83 of 1998 was filed by the revision petitioner/first defendant along with Rajammal against the tenant one Mr.Chokkalingam based on the said Will.

10. The respondents 1 and 2/plaintiffs would submit that the alleged Will came into existence under suspicious circumstances and therefore, it is necessary to compare the signature available in the Will with the signature of Rajammal available in RCOP No.83 of 1998. The applications for reopening the case and for recalling PW1, were already allowed. At that stage, the petition to send for the documents in RCOP No.83 of 1998 on the file of the learned Rent Controller, Tiruchirappalli was filed. The respondents 1 and 2/plaintiffs intended to send for the documents only to compare the signature found in the Will with the signature found in the above documents. The respondents 1 and 2/plaintiffs in the plaint have stated the suit properties



originally belonged to Rajammal and she has purchased the same under two sale deeds dated 28.02.1966 and 09.07.1971. She then died issueless leaving behind the defendants and plaintiffs as her legal heirs under the Hindu Succession Act. In the plaint, it is averred that the first defendant has fabricated the Will as if it was executed by Rajammal bequeathing the properties in his favour. Hence, it has become necessary to find out whether the alleged Will was executed by Rajammal for which the admitted signatures of Rajammal in the documents marked in RCOP No.83 of 1998, on the file of learned Rent Controller, Trichirapalli. Hence, the respondents/plaintiffs moved an application to send for the above documents from the file of the said Court.

11. The principles which govern the proving of a Will are well settled. The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of Indian Succession Act. The onus of proving the Will is on the propounder. Where however there are suspicious circumstances, the onus is on the propounder to explain them to



the satisfaction of the Court before the Court accept the Will as genuine. The suspicious circumstances may be as to genuineness of the signature of the testator. In such a case, the Court would naturally expect that such suspicion should be completely removed before the document is accepted as the Will of the testator. The Court has to consider the evidence of attesting witnesses and of hand writing experts or by comparison by Court itself to form an opinion whether the Will was duly executed by the testator or not. Therefore, no prejudice would be caused to the revision petitioner/first defendant in allowing the application to send for the documents. In fact, it would be helpful in deciding the genuinity of the Will. Therefore, no infirmity is found in the order of the trial Judge. Further, the decision cases relied upon by the revision petitioner/first defendant are with respect to reopen and recall the applications. In the present case, the reopen and recall petitions were already allowed. Therefore, the above decision cases are not applicable to the present facts and circumstances of the case.

12. In view of the above discussions, this Civil Revision Petition is dismissed. However, considering the stage of the case and the year of the



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suit, which was filed in the year 2008, the trial Court is directed to expedite the matter and dispose of the suit in O.S.No.163 of 2008 within a period of three months from the date of receipt of a copy of this order and to report the same. No costs. consequently, connected miscellaneous petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
The III Additional District Judge,
Trichirappalli.

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