



C.R.P(MD)No.1472 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1472 of 2022

and

C.M.P(MD)No.6089 of 2022

1.N.Porselvi
2.V.Vijayalakshmi
3.S.Latha Maheswari

... Petitioners/Respondents/
Defendants

-VS-

1.R.Udhayachandrika
2.R.Ranjithkumar
3.Minor R.Saktheeshkumar
(Rep by through his natural
guardian of 1st Respondent)

... Respondent-1/Petitioner-1/
1st Plaintiff

... Respondents 2-3/
Petitioners2-3/Plaintiffs2-3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 20.04.2022 and made in I.A.No.3 of 2021 in O.S.No.56 of 2017 on the file of the learned Additional District Judge, Sivagangai, set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.S.Srinivasaraghavan
For R2&R3 : Mr.Sarvagan Prabhu



WEB COPY

C.R.P(MD)No.1472 of 2022

ORDER

The petitioners are the plaintiffs in O.S.No.56 of 2017 on the file of the Additional District Court, Sivagangai.

2.The suit has been filed by the petitioners for partition. It is submitted that the property stood in the name of the petitioners' father. The husband of the first respondent and the father of the second and third respondents (defendants therein) viz., Ravichandran, was the brother of the petitioners. In the aforesaid suit, the respondents herein had filed an application under Order 16 Rule 6 r/w. Section 151 of C.P.C., to summon the Deputy Sub-Registrar, Karaikudi to give evidence regarding the execution and genuineness of the Will. The said petition was allowed. Aggrieved by the same, the present Civil Revision petition has been filed by the petitioners.

3.The learned counsel appearing for the petitioners would submit that the trial Court has committed a grave error in allowing the application filed by the respondents/defendants to summon the Deputy Sub-Registrar, Karaikudi, to give evidence regarding the genuineness and execution of the Will. It is submitted that



C.R.P(MD)No.1472 of 2022

WEB COPY

the alleged Will has been executed on 16.08.2004 which is allegedly witnessed by the husband of the second and third petitioners. Therefore, they could be summoned to give evidence in terms of Section 68 of the Indian Evidence Act, 1872. It is further submitted that though the date of alleged Will is 16.08.2004, it was registered just one day prior to the death of the petitioners' father, ie., the petitioners' father died on 02.10.2004 and the said Will was registered on 01.10.2004.

4. The learned counsel appearing for the respondents would submit that the order of the trial Court is just and reasonable and need not be interfered with.

5. It is submitted that the attesting witnesses are the husbands of the 2 and 3 petitioners and therefore, it cannot be expected that these attesting witnesses will come forward to depose proper and unbiased evidence before the Trial Court.

6. I have considered the arguments advanced by the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.



C.R.P(MD)No.1472 of 2022

WEB COPY

7. In my considered view that the trial Court has committed an error in summoning the Deputy Sub-Registrar -II, Karaikudi, to give evidence regarding the execution of the Will and its genuinity. Admittedly, the Will was not executed in front of the said Officer viz., Deputy Sub-Registrar -II, Karaikudi, as it was purportedly executed on 16.08.2004. The said Will was purportedly produced for registration on 01.10.2004 and thereafter, the attestor viz., Mr.Thiyagarajan @ Narayanan died on 02.10.2004. Therefore, there is no merit in the impugned order passed by the learned Additional District Judge, Sivagangai, in I.A.No.3 of 2021. Hence, the impugned order is set aside and the Civil Revision Petition is allowed. The learned Additional District Judge, Sivagangai, is directed to dispose of the case on merits after completion of trial, as expeditiously as possible, preferably within a period of twelve(12) months. It is needless to state that the respondents can send the signatures of two witnesses in the Will for examination by an expert. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

4/6



C.R.P(MD)No.1472 of 2022

WEB COPY

To:

- 1.The Additional District Judge,
Sivagangai
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.1472 of 2022

C.SARAVANAN, J.

Ns

Order made in
C.R.P(MD)No.1472 of 2022
and
C.M.P(MD)No.6089 of 2022

Dated:
28.03.2023