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C.R.P(PD)(MD).Nos.845 and 846 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.06.2023

Pronounced on : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).Nos.845 and 846 of 2018

and

C.M.P(MD)No.3705 of 2018

The President,
Sri Bhagavatha Thithiyaradhanai Committee,
Venugopala Ramanuja Koodam,
Thirukkurungudi,
Nanguneri Taluk,
Tirunelveli District.

...Petitioner/Plaintiff
in both CRPs

Vs.

Jeeyar,
Jeeyar Mutt,
Thirukkurungudi Village,
Nanguneri Taluk,
Tirunelveli District.

... Respondent/Defendant
in both CRPs

PRAYER in C.R.P(PD)(MD).No.845 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.132 of 2018 in O.S.No.92 of 2015 dated 21.03.2018 on the file of the Additional District Munsif Court, Nanguneri by allowing this Civil Revision Petition.

PRAYER in C.R.P(PD)(MD).No.846 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair



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and decreetal order passed in I.A.No.133 of 2018 in O.S.No.92 of 2015 dated 21.03.2018 on the file of the Additional District Munsif Court, Nanguneri by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Arumugam in both CRPs

For Respondent : Mr.H.Lakshmishankar in both CRPs.

COMMON ORDER

These Civil Revision Petitions are filed against the fair order and decreetal order dated 21.03.2018 passed in I.A.Nos.132 of 2018 and 133 of 2018 in O.S.No.92 of 2015 on the file of the Additional District Munsif Court, Nanguneri.

2. The plaintiff in O.S.No.92 of 2015 is the revision petitioner in these two Civil Revision Petitions.

3. The brief facts of the case:

The revision petitioner filed the suit in O.S.No.92 of 2015 on the file of the Additional District Munsif Court, Nanguneri against the revision respondent for the reliefs of permanent injunction. The revision respondent filed a written statement and both side adduced their respective oral and documentary evidence and the suit is pending for



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argument. At the stage of argument, the revision petitioner has filed a petition in I.A.No.132 of 2018 to reopen the case and the petition in I.A.No.133 of 2018 to send for documents from the Sub Registrar. The respondent resisted both applications. After hearing both sides, the Trial Court has dismissed both the petitions on 21.03.2018. Aggrieved by the orders of the Trial Court, the plaintiff has approached this Court by way of these respective Civil Revision Petitions.

4. Heard both side and perused the records in these Civil Revision Petitions.

5. The learned counsel appearing for the revision petitioner has argued that the suit property belonged to Venugopala Ramanuja Dass and he had constructed “Sri Venugopala Ramanuja Koodam” to perform Bhajans and to provide food and shelter during festivals by forming Sri Bhagavatha Thithiyaradhanai Committee. After his demise on 09.06.1966, the said committee continued the charities. The suit property is under the possession of the plaintiff. Since the defendant interfered with possession, the plaintiff filed the suit. The defendant claimed right over the suit property by virtue of Will dated 07.06.1966 allegedly executed by Venugopala Ramanuja Dass in his favour and Will was



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permitted to be received as per order in I.A.No.1202 of 2017. The plaintiff contended that the said Venugopal could not execute any Will and it might be forged one. The said Venugopal has already executed a mortgage deed under Document No.3362/60 and the mortgage receipt in the year 1961. The signature found in Will belonged to testator or not would be ascertained by sending the document to handwriting expert. Therefore, those documents along with Will have to be sent from the concerned Registrar and the same have to be sent for obtaining expert opinion. The Trial Court without considering the facts has passed erroneous order and these Civil Revision Petitions may be allowed. In support of his argument the learned counsel for the petitioner has relied on the citation reported in **(2019) 11 Supreme Court Cases 415 (Rama Avatar Soni Vs. Mahanta Laxmidhar Das and Ors.)**

6. Per contra, the learned counsel for the respondent has vehemently argued that the said Venugopal Ramanuja Dass executed the Will in favour of the defendant and he died in the year 1966. The Will was probated in the year 1968 as per order passed in O.P.No.31 of 1968 by the Court of law. So the Will cannot be questioned now and the same need not be proved again. The probate would bind all the parties. The original Will was also marked as Ex.D.1 in the suit. Moreover, the suit



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was filed only for permanent injunction and the suit is now pending for argument stage after adducing both side oral and documentary evidence.

Having thought that the plaintiff has no valid case, he has filed the present petitions to drag on the proceedings. The Trial Court has correctly passed the impugned order, which warrants no interference by way of these Civil Revision Petitions. In support of his contention, the learned counsel for the respondent has relied on the judgement of the **Hon'ble Supreme Court** delivered in **Civil Appeal No.2307 of 1979** dated **13.09.1984**.

7. On perusal of records, it is clear that the revision petitioner filed the main suit against the respondent for the reliefs of permanent injunction in respect of the suit property. The suit property originally belonged to Venugopala Ramanuja Dass, who constructed a mutt for providing shelter and food during the festival and also formed a plaintiff committee to administer it. The revision respondent contended that the said Venugopala Ramanuja Dass executed the Will in his favour 50 years back and after demise of Venugopala Ramanuja Dass, the Will was probated before the Court of law in O.P.No.31 of 1968. The plaintiff has not denied it. The plaintiff has not contended that the probate was revoked. Therefore, since the Will was probated, it would bind all the



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parties. There is no dispute that the suit is pending for argument stage after adducing both side evidences. As the suit is reached the final stage, the plaintiff has filed the petitions to reopen for sending the Will to signature expert as the Will could not be executed by the Venugopala Ramanuja Dass, which is not acceptable one. Once the Will was probated, it cannot be questioned unless it is revoked by Appellate Forum or through subsequent proceedings. It is pertinent to note here that the main suit is only for permanent injunction. It is not filed for claiming title over the suit property. Therefore, the observation of the Trial Court that the plaintiff filed the present petitions to further drag on the suit properties is upheld and the impugned orders of the Trial Court do not warrant interference. Thus, the Civil Revision Petitions fail and the same are liable to be dismissed.

8. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently connected Miscellaneous Petition is also dismissed.

10.07.2023

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

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



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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and
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