



C.R.P(MD)No.1978 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :23.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1978 of 2015

and

M.P(MD)No.1 of 2015

Sampath @ Shanmugam

... Petitioner

Vs.

- 1.Thenmozhi
- 2.V.Thangaraj
- 3.P.Rajagopalan
- 4.V.Kannan
- 5.S.Dhanalakshmi
- 6.S.Maruthasalam
- 7.S.Dhanikasalam
- 8.Jothi
- 9.Yasodaha
- 10.Pitchamuthu @ Shanmugam
- 11.Paramasivam
- 12.Chellammal
- 13.Samboornam
- 14.Eswari
- 15.Valli
- 16.Arul
- 17.Saravanan
- 18.Rajalingam
- 19.V.Subramani
- 20.T.Raju Naicker

... Respondents



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PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 01.07.2015 in I.A.No.421 of 2014 in O.S.No.40 of 2014 on the file of the Additional Subordinate Judge, Karur.

For Petitioner : Mr.K.Govindarajan

For R-1, R-10
& R-11 : Mr.Aathimoolapandian

For R-2, R-3
R-4, R-5, R-6
R-7 & R-9 : No appearance

R-8 : Died vide memo filed
R-12 to R20 : Ex parte vide in EB

ORDER

This Civil Revision Petition is filed assailing the order passed by the Additional Subordinate Judge's Court, Karur in I.A.No.421 of 2014 in O.S.No.40 of 2014. For the sake of convenience, the parties herein are referred as arrayed in I.A.No.421 of 2014.

2. I.A.No.421 of 2014 was filed by a third party, namely, Thenmozhi, who is the respondent herein seeking to implead herself as the 20th



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defendant in the said partition suit in O.S.No.40 of 2014. The suit in O.S.No.40 of 2014 on the file of the Additional Subordinate Judge's Court, Karur was one for partition.

3. Heard the learned Counsels for the petitioner and respondents and carefully perused the materials available on record.

4. It is an admitted fact that the third party, who is seeking to implead herself as 20th defendant in the original suit is none other than the legal heir of the deceased Somasundaram, with respect to whose property the suit for partition has been filed. Though the learned Counsel for the respondents had filed a counter, vehemently objected to implead the third party as the 20th defendant.

5. The learned Additional Sub Court, Karur has passed the impugned order allowing the said I.A.No.421 of 2014. The learned Counsel for the respondents 1, 10 and 11 vehemently objected that the said third party is not entitled to be impleaded as the 20th respondent relying paragraph Nos.6, 7



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and 8 of his counter filed before the learned Additional Sub Court, Karur which is extracted as follows:

“6. On the other hand, while Somasundaram, father of the petitioner was alive and in a sound and disposing state of mind, out of his own volition, without any compulsion has executed a Registered Will dated 11.11.1996 in favour of his younger brother's son namely the respondent / plaintiff herein with regard to his in the suit properties. He died on 02.02.2001 leaving the testamentary document namely the above said Will dated 11.11.1996 and his wife Vedhambal predeceased to him and on and from the date of death of Somasundaram on 02.02.2001, the Will executed by him has come into effect and on and from 02.02.2001 the respondent / plaintiff has become entitled to the share of Somasundaram in the suit properties and other joint family properties.

7. In fact, the father of the petitioner Somasundaram has executed a registered Will dated 16.08.1995 (Document No.31/1995 Kodumudi SRO) in favour of the petitioner herein with regard to his share in the suit properties. Then on 18.08.1995 he has executed a General Power of Attorney deed (Document No.24/1995, SRO, Kodumudi) with regard to his share in the properties situated in Nagamanaickenapalayam Village, Erode Taluk and District in favour of his son-in-law



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namely C.Chandrasekaran, husband of his daughter Thenmozhi. Since the petitioner Thenmozhi and her husband C.Chandrasekaran were acting adverse interest against Somasundaram and they were not looking after Somasundaram and he has cancelled the above said Will dated 16.08.1995 by way of a registered document namely Cancellation of Will dated 30.01.1996 (Document No.4/1996, Kodumudi SRO). So also, on the very same day (i.e.) 30.01.1996 he has cancelled the General Power of Attorney deed dated 18.08.1995 executed in favour of Chandrasekaran by way of a registered document namely Cancellation of General Power Deed (Document No.3/1996, Kodumudi SRO).

8. So, the Will dated 11.11.1996 executed by Somasundaram in favour of the respondent / plaintiff is his last Will and on his death on 02.02.2001, this respondent / plaintiff alone has become entitled to his entire share in the suit properties and other joint family properties. Except this respondent / plaintiff, nobody including the petitioner herein has got any manner of right, title, interest or share over his share in the suit properties.”



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6. On perusal of the available records and after hearing the arguments of both the learned Counsels for the petitioner and the respondents at length, this Court do not find any infirmity in the order passed by the learned Additional Subordinate Judge's Court, Karur in I.A.No.421 of 2014, considering the fact that the third party, who is seeking to implead herself as the 20th defendant is none other than the legal heir of the deceased Somasundaram. All the other points which have been raised by the learned Counsel for the respondents herein are all mixed question of law and fact which has to be adjudicated before the learned Additional Subordinate Judge's Court, Karur at the time of trial.

7. Hence, this Court is inclined to dismiss this Civil Revision Petition, thereby confirming the order passed by the learned Additional Subordinate Judge's Court, Karur in I.A.No.421 of 2014 dated 01.07.2015. In the result, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.06.2023



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

To

- 1.The Additional Subordinate Judge,
Karur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
C.R.P(MD)No.1978 of 2015

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