



C.R.P.(PD)(MD).No.1663 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1663 of 2018
and
C.M.P(MD) Nos.7274 and 10351 of 2018

1. Marikannu
2. Rajammal
3. Lakshmi
4. Muthusamy

... Revision Petitioners/
Petitioners/
Defendants 5 to 8

-VS-

S.Muthusamy

... Respondent/ Respondent
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the petition and order dated 17.07.2018 made in the Memo dated 16.04.2018 in O.S.No.41 of 2012 on the file of the Subordinate Court, Sivakasi.

For Petitioners : Mrs.S.Mahalakshmi

For Respondent : Mr.M.Solaisamy



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ORDER

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The present Civil Revision Petition has been filed by the petitioners against the dismissal of the notice given under Order 11 Rule 16 and Section 151 C.P.C, requesting the plaintiff to produce the Will, dated 11.07.1988.

2. It appears that the plaintiff has filed a suit for the relief of declaration as the suit property is his absolute property, as per the Will dated 11.07.1988. So, a notice was given under Order 11 Rule 16 C.P.C to the plaintiff, so as to produce the original Will dated 11.07.1988 before the Court. Whereas, the plaintiff has submitted before the trial Court that he did not have original Will, and only on that premise the learned trial Judge has negated the said notice. However, observed that when the plaintiff come forward to file a suit for declaration, based upon the Will, he could have filed the same and marked before the Court.

3. This is a peculiar case, in which, both the parties are disputing the possession of the original Will. Therefore, though there is an observation by the learned trial Judge in respect of the plaintiff, has ultimately, rightly



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dismissed the notice under Order 11 Rule 16 C.P.C., when both the parties dispute the possession of the original Will dated 11.07.1988, it is not proper for this Court to direct the respondent to produce the original Will. Hence, this Court finds no ground to interfere with the order of the trial Court.

4. In these circumstances, the instant Civil Revision Petition stands dismissed. However, liberty is given to either parties to raise all the grounds and objection in respect of the Will before the trial Court.

5. On perusal of the records, the suit is of the year 2012. Therefore, the learned trial Judge is requested to dispose of the suit in O.S.No.41 of 2012 as expeditiously as possible. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

05.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Court,
Sivakasi.

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C.KUMARAPPAN,J.

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