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C.R.P(PD)(MD).No.1986 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2023

Pronounced on : 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.1986 of 2018

and

C.M.P(MD)No.8748 of 2018

Manthira Nadar (died)

1.Thangavel Nadar

2.Sivasubramaniam Pillai

3.Ganesa Pillai

4.Ayyamperumal Pillai

5.Arumuga Nadar

... Petitioners/Defendants

Vs.

Sundaralingam (died)

Shanmugam

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.03.2018 passed in I.A.No.55 of 2018 in O.S.No.12 of 2009 on the file of the District Munsif Court, Tiruchendur.

For Petitioners : Mr.M.C.Samy

For Respondent : Mr.M.P.Senthil



ORDER

This Civil Revision Petition is filed against the order dated 14.03.2018 passed in I.A.No.55 of 2018 in O.S.No.12 of 2009 on the file of the District Munsif Court, Tiruchendur.

2. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.12 of 2009 on the file of the District Munsif Court, Tiruchendur. Originally the suit was filed by the deceased 1st plaintiff for bare injunction in respect of the suit property mentioned therein. During pendency of the suit he was died on 14.12.2017. The present revision respondent has filed a petition in I.A.No.55 of 2018 in O.S.No.12 of 2009 to implead him as 2nd plaintiff, on the basis of Will dated 02.03.2009 executed by the deceased plaintiff in his favour. The revision petitioners, who are respondent in that petition, objected to allow the impleading petition. The Trial Court has allowed the said petition by passing the impugned order. Aggrieved by the order of the Trial Court, the revision petitioners/defendants moved this Court by way of this Civil Revision Petition.

3. Heard both side and perusal the records in this Civil Revision

Petition.



4. The learned counsel appearing for the revision petitioners has submitted that the suit property is a temple and in respect of temple the deceased plaintiff could not execute any Will in favour of any one. The alleged Will produced by the respondent is not a genuine one. Further, without proving or probating Will the legatee cannot claim any right under the Will. As such the respondent has no right over the property and he could not be impleaded as a party to the suit without proving the same. The Trial Court has also observed in the impugned order that the Will can be decided only on trial. But, contrary to its observation, the Trial Court has passed the impugned order which needs to be interfered. Hence, the order may be set aside and this Civil Revision Petition may be allowed.

5. Per contra, the learned counsel for the respondent has vehemently contended that the deceased plaintiff executed the Will in favour of this respondent. The legatee under the Will is a 'Legal Representative' as per definition in Section 2(11) of Civil Procedure Code and it is also the settled principle of law by the Hon'ble Supreme Court. The respondent is ready to prove the Will during trial of the suit. The revision petitioners have no right over the suit property. The suit is only for bare injunction and even in the absence of impleadment, the



revision respondent can file another suit for injunction. In order to avoid the multiplicity of the proceedings, the respondent has right to conduct the existing suit on behalf of the deceased 1st plaintiff. No prejudice would be caused to the revision petitioners. Hence, the Trial Court has correctly passed the impugned order and the same need not be set aside. In support of his arguments, the learned counsel for the respondent has relied on the following decisions:

- 1. 2001 (1) CTC 708 (Valliammal /v/ S.Arumugha Gounder & Anr)**
- 2. 2009-2 Law Weekly 636 (S.Ganesan /v/ S. Kuppusway & Anr)**
- 3. 2014(3) MWN (Civil) 156 (Lakshmi Narayanan @Harri /v/ Thulasimani & Ors.)**

6. On hearing both and on perusal of records, it is clear that the revision petitioners are the defendants in O.S.No.12 of 2009 on the file of the District Munsif Court, Tiruchendur and the suit is filed for permanent injunction. During the trial, the 1st plaintiff, who laid the suit, died. The revision respondent has filed a petition to implead him in the suit on the basis of Will executed by the deceased plaintiff in his favour. The main contention of the revision petitioners is that once a party claim right under Will the said Will has to be probated or proved, then only the



legatee will derive right under the Will. But, the Trial Court has allowed the petition for impleadment in the absence of proof of Will. Now, it is settled principle of law that a legatee under a Will is legal representative as he is an intermeddler with the estate of the deceased, as rightly argued by the learned counsel for the respondent relying on the decision of this court reported in **2014(3) MWN (Civil) 156**. The Hon'ble Supreme Court held in various decisions that the legatee will be a legal representative within the meaning of the provision under Section 2(11) of Civil Procedure Code and the question of proving the Will at the stage of impleadment will not arise. Admittedly the suit is for bare injunction and the respondent is always entitled to file another suit for bare injunction on the basis of Will. In order to avoid multiplicity of proceedings, the respondent can be allowed to proceed the suit further. It is always open to the parties to the suit proceeding to prove or disprove the Will. If the respondent proves the Will he will get the relief. Mere impleading the respondent as legal representative of the deceased plaintiff, the revision petitioners would not be prejudiced. Therefore, considering the above facts and circumstances of the case the impugned order need not be interfered by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.



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7. In the result, this Civil Revision Petition is dismissed.

Since the suit is pending from the year 2009, the learned District Munsif, Tiruchendur is directed to dispose the suit in O.S.No.12 of 2009 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

19.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

vsd

To

1.The District Munsif Court,
Tiruchendur.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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Pre - Delivery Order made in
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