



C.R.P(MD)No.2470 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2470 of 2022

and

C.M.P.(MD)No.12122 of 2022

1.P.Varatharajammal

2.Vanitha

...Petitioners

Vs.

1.Lakshaya

2.V.Seetharaman

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order dated the fair and final order dated 15.10.2022 passed in I.A.No.187 of 2022 in O.S.No.80 of 2021 on the file of the Additional District Court, Virudhunagar.

For Petitioners : Mr.A.Sivaji

For 1st Respondent : Mr.R.V.Rajkumar

ORDER

I have considered the arguments of the learned counsel for the petitioners and the learned counsel for the respondents.



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2.This petition has been filed to set aside the order passed in I.A.No.187 of 2022 in O.S.No.80 of 2021 dated 15.10.2022, on the file of the Additional District Court, Virudhunagar.

3.Relevant portion of the impugned order reads as follows:-

“The present petitioners herein are the defendants 1 & 2 in O.S.No.80 of 2021. The first respondent filed the above suit for partition of the properties owned by the deceased father Rajasekar. The petitioners/defendants filed written statement and admitted that the properties were originally owned by 1st respondent's father Rajasekar. But it is seen that these petitioners claim title over the property by way of alleged Will dated 09.02.2016. As if deceased Rajasekar bequeathed his property in favour of the 1st petitioner herein. So, in this case, there is no dispute to the fact that the property originally belonged to Rajasekar and first respondent is the daughter of said Rajasekar. If the petitioners proved the Will, the first respondent will not be entitled for the relief of partition. So, to the facts of the case, it is the pleadings of defendants that since Rajasekar executed the Will, the plaintiff is not entitled for partition. In the case, as per Order XVIII Rule 1 of CPC the petitioners/defendants have to begin evidence and this Court on 10.08.2022 posted the case for trial and in the



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case, the defendants directed to commence the evidence. Subsequently, the petitioners filed this petition. The reason stated in this petition is that the petitioners have not received the copy of the order. Now, it is seen from records that the petitioners have already received the copy of this order and so there is no need to stay further proceedings in this case.”

4.The petitioners are the defendants 1 and 2 in O.S.No.80 of 2021 before the Additional District Court, Virudhunagar. The above suit has been filed by the first respondent herein for partition of the suit schedule properties into two equal parts by metes and bounds and to hand over one share to her and to pass a final decree and also to declare that the gift settlement dated 12.01.2016, gift settlement deeds dated 11.01.2017, with respect to ½ share of the respondent, as null and void. The suit schedule properties, which were said to have been purchased by the respondent's father late Rajasekar, son of the first petitioner and the brother of the second petitioner.

5.In the written statement filed by the petitioners, the petitioners have also admitted that the properties are self acquired property of late Rajasekar. However, it is claimed that late Rajasekar had executed a Will



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in favour of the first petitioner on 09.02.2016.

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6.Considering the above, the Court had directed the petitioners to commence the trial in terms of Order 18 Rule 1 of CPC, to which the respondents have filed I.A.No.187 of 2022 to stay the proceedings of the impugned order, which the Court has rejected the application.

7.The Court records indicate that on 10.08.2022, the trial Court directed the petitioners herein who are the defendants in the suit to commence the trial by letting in evidence. It is under these circumstances, the petitioners filed I.A.No.187 of 2022 seeking to stay all further proceedings in O.S.No.80 of 2021.

8.By the impugned order dated 15.10.2022, the said application was dismissed. Hence, the suit was to be called on 26.10.2022. On the said date, a memo was filed by the petitioners on 26.10.2022 stating that C.R.P.(MD)No.SR65955 of 2022 was pending against the docket order.

9.On 26.10.2022, the Court below adjourned the suit to 08.11.2022. Thereafter, the Court below adjourned the suit for



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examination of the petitioners/defendants 1 and 2 and the second respondent/third defendant stating that no further adjournment should be given. Thereafter, I.A.No.214 of 2022 was filed seeking adjournment. The said application was also dismissed on 08.11.2022. The evidence on behalf of the petitioners was closed by the Court below on 08.11.2022 and the suit was posted for first respondent's side evidence by 16.11.2022.

10.On the said date, the first respondent was absent and therefore, the case was adjourned to 23.11.2022. On the said date, the first respondent was present and proof affidavit was filed and through P.W.1, Exs.A.1 to A.6 were marked. The suit was posted to 02.12.2022 for cross-examined of P.W.1 and the cross-examination was done in part and for continuation, it was adjourned to 22.12.2022.

11.It is the specific case of the petitioners that the procedure adopted by the Court below was irregular not valid in law.

12.There is no merits in the Civil Revision Petition challenging the order of rejecting the request of the petitioner to stay the proceedings.



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The first respondent, who is the plaintiff, has filed the suit, cannot made to endlessly wait as admittedly the properties are self acquired properties of late Rajasekar, the father of the first respondent and the son of the first petitioner and the brother of the second petitioner. The 1st petitioner has claimed that late Rajasekar had expected a Will in her favour. Therefore, it is for the 1st petitioner to prove the execution of Will by commencing the trial in terms of Order 18 Rule 1 of CPC.

13. Therefore, the Civil Revision Petition is liable to be dismissed. It is accordingly, dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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



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To

- 1.The Principal District Judge, Dindigul.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Mrn

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