



C.R.P.(MD)No.3218 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Pronounced on : 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3218 of 2023

and

C.M.P.(MD)No.16586 of 2023

1. Vibula Rani

2. Subburam

3. A.Babu

4. Subbulakshmi

5. Sargunam

... Petitioners

Vs.

Rengammal (Died)

Subbammal (Died)

1. R.Balaji

S.Azhagarsami Naidu (Died)

S.Rengasamy Naidu (Died)

Gomathiammal (Died)



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R.Thilagam (Died)

2. S.Rohini Devi

3. S.Rathi Devi

R.Anitha (Died)

4. Minor.Mangal Sree
represented by her father and natural guardian
Mathavan

5. Minor.Yuvasree
represented by her father and natural guardian
Mathavan

6. Mathavan

... Respondents

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 06.11.2023 in I.A.No.4 of 2023 in I.A.No.390 of 2004 in O.S.No.57 of 1996 on the file of the learned District Munsif cum Judicial Magistrate No.1, Srivilliputtur.

For Petitioners : Mr.V.R.Shanmuganathan

For R1 : Mr.M.Vallinayagam, Senior Counsel
for Mr.D.Nallathambi

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.04 of 2023 in I.A.No.390 of 2004 in O.S.No.57 of 1996 dated



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06.11.2023 on the file of the District Munsif cum Judicial Magistrate
No.1, Srivilliputtur.

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2. Originally, the deceased plaintiff Rengammal has filed the suit in O.S.No.57 of 1996 to declare that the suit property is belonging to her and for other reliefs. Pending suit, the said Rengammal had died and her only daughter Subbammal, as per the order passed in I.A.No.920 of 1993, got herself transposed as second plaintiff and prosecuted the suit.

3. It is evident from the records that preliminary decree was passed on 06.10.2003 and challenging the same, both the sides have preferred appeals and after the dismissal of the same, two second appeals came to be filed in S.A.(MD)Nos.681 of 2010 and 167 of 2012 and that after the disposal of the same, the legal heirs of the first defendant Alagarsamy Naidu have preferred Special Leave Petitions before the Hon'ble Supreme Court in S.L.P.Nos.15267 and 15268 of 2022 and the same were ordered to be dismissed.

4. When the final decree application in I.A.No.390 of 2004 is pending, the second plaintiff Subbammal had died and the first



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respondent/10th defendant has filed the present application in I.A.No.04 of 2023 under Order 23 Rule 1(A) C.P.C. seeking orders to transpose him as third petitioner in the final decree application. The revision petitioners/defendants 3, 5, 6, 12 and 13 have filed counter statement raising objections. The learned District Munsif, after enquiry, has passed the impugned order dated 06.11.2023 allowing the application and thereby permitting the first respondent/10th defendant to transpose himself as third petitioner in the final decree application. Aggrieved by the impugned order, the defendants 3, 5, 6, 12 and 13 have preferred the present revision.

5. The case of the first respondent/10th defendant is that the deceased second plaintiff Subbammal, who is none other than his maternal grandmother, has executed a Will dated 06.11.2020 in his favour, that his mother deceased seventh defendant Thilagam has executed a Will dated 02.08.2020 bequeathing her 1/6th share in his favour, that the respondents 4 to 6/defendants 13 to 15 have executed a registered release deed dated 20.10.2022 and thereby relinquishing their 1/16th share in his favour and therefore, he is entitled to get 9/16th shares, that the respondents 2 and 3/defendants 8 and 9-his sisters are entitled to get 1/16th share each and that



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since the deceased second plaintiff Subbammal died on 26.12.2022 and his mother deceased seventh defendant Thilagam died on 12.09.2020, he has to be transposed as third petitioner to prosecute the final decree application.

6. The revision petitioners/defendants 3, 5, 6, 12 and 13 have disputed the genuineness of the Wills and according to them, the Wills were created fraudulently for the purpose of the case.

7. The learned counsel appearing for the revision petitioners would submit that the first respondent/10th defendant has claimed to transpose himself as plaintiff on the basis of the Wills executed by the deceased second plaintiff Subbammal and the deceased seventh defendant Thilagam in his favour, which are under challenge and the same needs to be proved in the manner known to law, that the learned District Munsif ought to have seen that when the Wills are under dispute, the same needs to be proved as per Section 68 of the Indian Evidence Act, that the Court cannot presume the Wills as genuine and proved and proceed to hear the final decree application based on the Wills and that therefore, the impugned order is legally unsustainable.



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8. The learned Senior Counsel appearing for the first respondent would submit that the revision petitioners/defendants 3, 5, 6, 12 and 13 are, admittedly, not the legal heirs of the deceased second plaintiff Subbammal or the deceased seventh defendant Thilagam and as such, they have no *locus standi* to challenge the Wills executed by them in favour of the first respondent/10th defendant and that the learned District Munsif, by observing that the objections raised by the revision petitioners/defendants 3, 5, 6, 12 and 13 cannot be gone into at this stage, has rightly allowed the application.

9. The learned Senior Counsel appearing for the first respondent has relied on the judgment of this Court in ***S.Ganesan Vs. S.Kuppuswamy and another*** reported in **2009 2 L.W. 636**, wherein, a learned Judge of this Court by relying on the judgment of the Hon'ble Supreme Court in ***Krishna Kumar Birla Vs. Rajendra Singh Lodha and others*** reported in **(2008) 4 SCC 300** has specifically held that when a person having no cavetable interest or in any way related to the testator cannot insist upon the Will being proved strictly in accordance with Section 68 of the Indian Evidence Act. In the case on hand, admittedly, the revision petitioners/



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defendants 3, 5, 6, 12 and 13 are not the legal heirs of the deceased second plaintiff Subbammal and as such, they have no *locus standi* to dispute the genuineness of the Will, through which the first respondent/10th defendant has claimed his shares.

10. It is not in dispute that the deceased second plaintiff Subbammal has filed a revision in C.R.P.(MD)No.1794 of 2023 seeking early disposal of the final decree application in I.A.No.390 of 2004 and during the pendency of the revision, the second plaintiff Subbammal had died and at that time, the first respondent/10th defendant got himself impleaded in the revision and prosecuted the same.

11. As rightly contended by the learned Senior Counsel appearing for the first respondent, this Court, vide order dated 31.07.2023, directed the Principal District Munsif Court, Srivilliputtur, to dispose of the final decree application in I.A.No.390 of 2004 within a period of three months from the date of receipt of a copy of that order.

12. The learned Senior Counsel appearing for the first respondent



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would further submit that though the preliminary decree came to be passed on 06.10.2003, the decree holders are unable to realize the fruits of the decree and already the original plaintiff Rengammal and her daughter-second plaintiff Subbammal, who got herself transposed as second plaintiff, were already dead.

13. As rightly observed by the learned District Munsif, whether the Wills alleged are valid and their evidentiary value cannot be gone into in the present application. Considering the entire facts and circumstances, the impugned order transposing the first respondent/10th defendant as third petitioner in the final decree application cannot be found fault with.

14. No doubt, the revision petitioners are at liberty to raise their other objections in the final decree application before the trial Court. But as already pointed out, they have no locus standi to challenge the genuineness and validity of the Wills. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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

Consequently, connected Miscellaneous Petition is closed. No costs.

20.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif cum Judicial Magistrate No.1,
Srivilliputtur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.3218 of 2023
and
C.M.P.(MD)No.16586 of 2023

Dated :20.12.2023