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C.R.P.(PD).No.283 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.283 of 2023 &
C.M.P.No.2364 of 2023

1.Saraswathi
2.Kavitha
3.Indhumathi

... Petitioners

-Versus-

K.Appavu (Died)
1.K.Sivasamy
2.K.S.Rajkumar

... Respondents

Revision filed under Article 227 of the Constitution of India to set aside the fair and final order of the learned 2nd Additional Subordinate Judge, Coimbatore made in I.A.No.350 of 2002 in I.A.No.332 of 2000 in O.S.No.579 of 1998 dated 18.07.2022.

For Petitioners : Mr.M.R.Thangavel

*For Respondents : Mr.A.Sriram for
Mr.L.Mouli*

ORDER

This civil revision petition arises against the order passed by the learned



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II Additional Subordinate Judge at Coimbatore in I.A.No.350 of 2002 in I.A.No.332 of 2000 in O.S.No.579 of 1998, whereby the court had recognised one K.S.Rajkumar as the legal representative of the first respondent/K.Appavu.

2. O.S.No.579 of 1998 is a suit for partition. The said suit was decreed on 03.01.2000. Thereafter, the plaintiff took out an application for passing a final decree in I.A.No.332 of 2000. By order dated 20.12.2000, an Advocate Commissioner was appointed to divide the suit schedule mentioned property. Pending the application for final decree, K.Appavu/the first defendant passed away. Thereafter, K.Sivasami, the plaintiff took out an application in I.A.No.350 of 2002 under Order I Rule 10(2) of the Code of Civil Procedure to implead K.S.Rajkumar, his son as the legal representative of K.Appavu. The impleading application was filed on the basis of the Will said to have been executed by Appavu in favour of K.S.Rajkumar on 03.04.1998. The application was resisted by the defendants pleading that the Will is not true and genuine. During the course of enquiry in the application, the applicant examined one Vellingiri, the attesting witness and also one Vijayakumar. They marked the Will as Ex.P1 and the Death Certificate of K.Appavu as Ex.P2.



3. On the basis of the evidence that had been tendered before the learned Additional Subordinate Judge, he came to the conclusion that the Will has been proved by K.S.Rajkumar and consequently, impleaded him as a legal representative of the deceased K.Appavu. This order was put in challenge before me.

4. Heard Mr.M.R.Thangavel for the petitioners and Mr.Sriram for Mr.L.Mouli for the respondents.

5. Mr.M.R.Thangavel took me to the evidence of the attesting witnesses.

6. A perusal of the same shows that insofar as the civil revision petitioners who are the respondents 5 to 7 in the application are concerned, there is not even a suggestion put to the attesting witnesses that the attesting witness had not attested the document, per contra, the suggestion that the document had been fabricated by the attesting witness along with the others. Insofar as evidence of PW2 during the course of cross examination by the respondents 2 to 4 is concerned, the attesting witness has given a clear and categorical statement that the deceased Appavu, testator had signed the



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document first and thereafter, he had attested the same. The evidence of PW2 has found acceptance by the trial court, which had the benefit of viewing the demeanour of the attesting witnesses.

7. I have also gone through the evidence and do not find that the evidence has been shaken, even a little bit, by the respondents or by the civil revision petitioners during the cross examination.

8. Under the Code of Civil Procedure, a person, even an interloper, can be impleaded as a legal representative. He merely represents the estate of the deceased for the purpose of continuation of the proceedings. The fact that Appavu has share in the property has already been declared by the learned II Additional Subordinate Judge. All that the trial court has done with the application is that it had permitted K.S.Rajkumar to continue the proceedings representing the estate of the deceased Appavu. It is on the basis of the Will, which has been proved by examination of the attesting witnesses as required by the Indian Evidence Act and Indian Succession Act.

9. Mr.M.R.Thangavel would submit that on the date on which the Will



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was written by Appavu, his mother and wife were alive. Therefore, he would state that this is suspicious circumstances for the purpose of rejecting the Will.

10. The principle behind writing a will is that it excludes the person in the normal role of succession from succeeding to the property. The mere fact that the natural legal heirs are excluded does not mean that the Will itself is suspicious. The Will itself is written only for the purpose of exclusion. In such circumstances, the examination of attesting witnesses becomes crucial.

11. It is pertinent to point out that the eighth defendant, who is the wife of Appavu, has not entered the witness box and apart from that in her cross examination of PW2 has not even taken any stand against the Will. As pointed out above, when the evidence of the witness on a crucial aspect has not been cross examined, the court will have to take it as deemed to have been admitted. In such situation, I do not find any reason to take a different view from the view taken by the trial court. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.06.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The II Additional Subordinate Judge, Coimbatore



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V.LAKSHMINARAYANAN, J.

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