



CRP.No. 388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

Civil Revision Petition No. 388 of 2023

and

Civil Miscellaneous Petition No. 3218 of 2023

- 1.Thirugnanasambandam
- 2.Samidurai @ Samikannu
- 3.Shanmuga Sundaram @ Sankar
- 4.Mohan
- 5.Ramesh
- 6.Backiyalakshmi
- 7.Chakra Devi
- 8.Sundarajan

...Petitioners

versus

Jeyalakshmi

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal Order dated October 17, 2022 in I.A.No. 8 of 2022 in O.S.No. 21 of 2020 on the file of the District Court (FAC), Karaikkal.



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For Petitioners : Mr.P. Venkataraman

For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed against the Order dated October 17, 2022 passed in I.A.No.8 of 2022 in O.S.No.21 of 2020 on the file of the District Court (FAC), Karaikkal, [hereinafter for short “Trial Court”].

2. The revision petitioners herein are the defendants and the respondent herein is the plaintiff in the original suit in O.S.No.21 of 2020 on the file of the Trial Court.

3. The respondent/plaintiff is none other than the elder sister of the first defendant. The respondent/plaintiff has filed the Suit for partition, declaration and other consequential reliefs.



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4. The case of the revision petitioners/defendants in the original suit is that the grand-father of the first defendant, namely, Rathinavelu, Nayakar had executed a registered Will, dated July 01, 1970 on the file of the Sub Registrar, Neravy/T.R.Pattinam, in respect of Item Nos.1 to 4 and 6 of the Suit properties to in favour of D2 to D5 and appointed D1 as their guardian for them. The said Rathinavelu Nayakar had executed an another registered Will in favour of the first defendant in respect of Item Nos.7 and 8 of the Suit properties on the same day. The said Rathinavelu Nayakar died on February 28, 1979. After his demise, the Wills said to have been executed by Rathinavelu Nayakar came into force. Subsequently, the revision petitioners/defendants have filed a petition in I.A.No. 8 of 2022 under Section 151 of Code of Civil Procedure, 1908 seeking to issue summons to the attesting Witness Nos. 1 to 5 in the said Wills. The Trial Court after hearing both sides, allowed the petition in part and ordered summons to the Witness Nos. 3 to 5, who are said to be attesting witnesses



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in the said Wills and dismissed the petition against the Witness Nos.1 and 2 who are the Sub-Registrars. Feeling aggrieved with the Order passed by the Trial Court, the revision petitioners/defendants have filed this Civil Revision Petition.

5. This Court ordered notice to the respondent/plaintiff and the same was returned with an endorsement made as “unclaimed”. Notice sent to the learned Counsel on record for the respondent, namely, R.Vetriselvan, was received. Hence, this Court holds that service is sufficient for the respondent. However, there is no appearance.

6. Mr.P.Venkataraman, learned Counsel for the revision petitioners/defendants submits that the revision petitioners have mentioned the Witness Nos.1 and 2 who are the Sub-Registrars as they are very much essential to prove the defendants' case. The Trial Court without



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considering the other aspects, partly allowed the petition and dismissed the petition against the Witness Nos.1 & 2 and refused to pass an order to issue summons to the Sub-Registrars. Accordingly, he prayed to allow this Civil Revision Petition.

7. This Court has considered the submissions made by the learned Counsel for the revision petitioners and perused the materials available on record.

8. Perusal of the records reveals that the respondent/plaintiff has filed the Suit for partition only. The revision petitioners/defendants filed Written Statement stating that the grand-father of the first defendant, namely, Rathinavelu Nayakar had executed registered Wills, dated July 01, 1970 in favour of the defendants. After perusing the records, the Trial Court partly allowed the petition to issue summons to the attesting



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witnesses in the said Wills. In the facts and circumstances of case the then Sub-Registrars, Neravy/T.R.Pattinam, now have no role to play with regard to the alleged Wills. Hence, this Court does not find any illegality or irregularity in the Order passed by the Trial Court. Hence, there is no merit in this Civil Revision Petition and the same is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed.

Considering the relationship between the revision petitioners and the respondent and also the nature of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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MSM

To

District Court (FAC), Karaikkal.



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R. SAKTHIVEL, J

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