



C.R.P.No.429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.429 of 2023
and C.M.P.No.3618 of 2023

K.Krishnamurthy

... Petitioner

-Vs-

1.K.P.Rajan
2.Rajammal
3.Arukkani
4.Kannammal
5.Poopathy

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.05 of 2021 in O.S.No.09 of 2012 dated 24.11.2012 on the file of the District Judge, Nilgiris.

For Petitioner : Mr.K.Suresh

For Respondents : Mr.S.Thirumavalavan-for R1
No appearance - for R2 to R5

ORDER

This Civil Revision Petition has been filed by the sixth defendant against the order dated 24.11.2012 passed in I.A.No.5 of 2021 in O.S.No.9 of 2012.

For the sake of convenience, the parties will be referred as per their rank in the original suit.



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2. The first respondent / plaintiff has initiated O.S.No.9 of 2012 seeking for the relief of partition and separate possession. Pending the suit, the first defendant had passed away and the legal representatives are defendants 2 to 4. The matter was posted on 09.04.2021 for the evidence of the sixth defendant. In the meantime, the sixth defendant took out an application to amend the plaint alleging certain properties of the joint family had been left out and also wanted the comparison of the signature of the deceased testator along with the admitted signature of the testator in terms of Rule 74 of the Civil Rules of Practice read with Section 151 of the Civil Procedure Code.

3. When these applications were pending numbering, evidence continued in the suit. The petitions which had been filed above had been returned by the Court and at the same time, the evidence of the sixth defendant was closed on 09.04.2021. Therefore, in order to reopen the evidence of the sixth defendant, to examine the attesting witnesses and to let in additional evidence, he took I.A.No.5 of 2021.

4. A detailed counter was filed by the contesting respondent / plaintiff stating that the evidence of the third defendant had been completed as early as in 2019 and by making one representation after another, the proceedings were being dragged on for over a period of two years and since the Court was left with no other



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option, it closed the evidence on 09.04.2021. They sought for dismissal of the application.

5. The learned Judge came to a conclusion that since the matter was posted for arguments on the conclusion of the evidence of the defendants and since the civil revision petitioner had also been dragging on the proceedings, he dismissed the petition. Against this order the present civil revision petition has been filed.

6. I heard Mr.K.Suresh and Mr.S.Thirumavalavan for the respective parties.

7. It cannot be disputed that during the relevant time when the case was listed before the learned Subordinate Judge for evidence, the country was reeling due to COVID-19. On 09.04.2021, when the matter was listed for evidence of the sixth defendant, a plea seems to have been made that the sixth defendant's counsel had been hospitalized since he was afflicted with COVID-19 and after his discharge from the hospital, he had to quarantine himself for a period of 15 days. In a litigation, though the parties can give instructions to a counsel, they would not be in a position to cross examine or examine an attesting witness without the assistance of a counsel. The demand that since no medical records had been produced to show that the advocate was suffering from COVID-19 and that the petition deserves dismissal for the same is a stand, I feel is pretty harsh on a litigant.



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8. Be that as it may, in order to substantiate that one of the counsels had been suffering from COVID-19, a document had been filed under Ex.P.1. On this record being produced, Mr.Thirumavalavan's counterpart seems to have argued that RT-PCR report has not been produced and therefore in all probabilities, Ex.P.1 is a fabricated document. The point remains, a Certificate has been issued by a competent hospital in Ooty viz., Vijaya Hospital and Government Hospital, Ooty and I do not find any reason to doubt a certificate given by a competent medical professional.

9. The sixth defendant seeks to defeat the claim of the plaintiff on the basis of a document which had been executed by the deceased in his favour. As per the relevant provisions of the Indian Evidence Act read with Indian Succession Act, it is the duty of the party projecting a will or a settlement deed to examine the attesting witnesses thereof to the document. In case such witnesses are not examined, the sheet anchor of the case of the sixth defendant cannot be substantiated. At the same time, I cannot lose sight of the fact that the plaintiff has been knocking at the doors of the Court over 12 years and has been patiently waiting to obtain a decree for partition suit on the basis of his claim.

10. Balancing the interest of the plaintiff as well as the sixth defendant, I feel if a time bound direction is given to the learned District Judge at Nilgiris, it will serve the ends of justice. Consequently, the following orders are passed:



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(a) The order dated 24.11.2022 passed in I.A.No.5 of 2021 in O.S.No.09 of 2012 by the learned District Judge, Nilgiris is set aside.

(b) Mr.K.Suresh would submit that he will file proof affidavit of both the attesting witnesses on 01.07.2024. He will produce the first attesting witness before the Court on that date.

(c) Mr.Thirumavalavan agrees that he will examine the first attesting witness on 01.07.2024.

(d) Learned District Judge, Nilgiris is requested to be cautious and not to allow the second attesting witness who is sought to be examined by Mr.K.Suresh to be present in Court at the time of examination of the first attesting witness.

(e) On completion of the evidence of the first attesting witness, Mr.Thirumavalavan will cross examine the second attesting witness and in any event close the examination by 05.07.2024.



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(f) The arguments on either side should be completed on or before 19.07.2024 and the judgment should be pronounced by 29.07.2024.

(g) A report of compliance on the said order shall be presented to this Court on 31.07.2024.

11. With the above directions, the civil revision petition is allowed. No costs. Costs. Consequently, connected miscellaneous petition is closed.

10.06.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The District Judge
Nilgiris.



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V. LAKSHMINARAYANAN, J.

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