



C.R.P.Nos.883 and 914 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.883 and 914 of 2024

and

C.M.P.Nos.4365 and 4568 of 2024

1.Dhanabagiyam

2.Maheswari

... Petitioners in
both C.R.Ps.

Vs.

1.N.Selvaraj

2.N.Kandhakumar (Died)

3.K.Sivakami

4.K.Mounika

5.K.Kiruthika

[RR3 to 5 are brought on record as LR's of the
deceased R2, vide Court order dated 11.06.2024
made in C.M.P.Nos.11894 & 11895/2024
in C.R.P.Nos.914 & 883 of 2024]

... Respondents in
both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 19.09.2023 passed in I.A.Nos.10 & 11/2023 in O.S.No.112/2011 on the file of I Additional District Judge, Coimbatore.



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For Petitioners : Mr.P.Tamilavel
in both C.R.Ps.

For Respondent-1 : Mr.C.R.Prasanan
in both C.R.Ps.

COMMON ORDER

These Civil Revision Petitions have been filed challenging the order dated 19.09.2023 passed in I.A.Nos.10 & 11 of 2023 in O.S.No.112 of 2011 on the file of I Additional District Court, Coimbatore.

2. I.A.No.10 of 2023 was filed by the petitioners to reopen the case of the plaintiffs. I.A.No.11 of 2023 was filed by the petitioners to take out summons to the District Registrar, Coimbatore to cause production of the relevant documents in respect of the Will cancellation deed under Document No.376 of 2009 dated 08.10.2009. Both I.As. were dismissed by order dated 19.09.2023, against which, the present revisions have been filed.



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3.Since the revisions arising out of the same issue, both the revisions are taken up together and disposed of by way of a common order.

4.The petitioners are plaintiffs in the suit in O.S.No.112 of 2011. The suit is filed for partition, declaration and permanent injunction. The suit was posted on 24.07.2023 for arguments. When the respondents/defendants took steps to examine one of the attesting and identifying witnesses, namely, A.Palraj, son of Alagarsamy, the petitioners were prevented from examining him with regard to the cancellation of earlier Will dated 23.03.2001 through Document No.138 of 2001, which was cancelled through Document N.376 of 2009 dated 08.10.2009. Both are registered on the file of District Registrar, Coimbatore. To prove the same and to enable the petitioners to take steps to summon the District Registrar, Coimbatore to cause production of relevant documents, the above revisions filed.



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5.The contention of the learned counsel for petitioners is that in the amended written statement filed by the first respondent/first defendant it is stated that in respect of the property referred in Schedule “A” of the suit property “the Late. Nachimuthu during his life time, voluntarily and on his own volition, fit state of mind executed a registered testament dated 23.03.2001 bequeathing the western part of “A” schedule property to this defendant. The first defendant's father, Nachimuthu died on 27.05.2010 and Will came into force and the first defendant become the absolute owner of the western part of the “A” schedule of the suit property and he is in possession and enjoyment of the said property by virtue of Will dated 23.03.2001”. Thus the specific stand of the first defendant is that he came into possession and enjoyment of “A” schedule property by virtue of Will of Nachimuthu dated 23.03.2001.



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6.The case of the petitioner is that the cancellation deed thereafter executed, was not disclosed. The cancellation deed Document No.376 of 2009 dated 08.10.2009 is to be produced to prove that the Will with regard to “A” schedule property has been cancelled and hence the defendant has got no right over the property and they cannot have any objection for the injunction sought for by the plaintiffs. For this purpose examination of the witnesses and production of document is necessary.

7.The learned counsel for respondents opposed the same stating that it is not the case of the petitioner neither in the plaint nor in the affidavit. It is not a listed document along with the plaint. For the additional written statement there is no reply statement filed. Now taking such a stand is nothing but, to fill up the lacuna, which is not permissible. He further submitted that in this case provisions of Section 65 and 68 of Indian Evidence Act not followed. The petitioners/plaintiffs attempting to mark the certified copy not the original. Whether the originals available or not, the petitioners



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not given any reason. In such circumstances, marking of the document, though it is a registered one, will serve no purpose.

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8.Considering the submissions made and on perusal of the material it is seen that the limited prayer of the petitioners is to examine the Registrar and to mark the registered cancellation deed. With regard to the admissibility, reliability and relevancy of the same, it is for the concerned Court to decide.

9.In view of the above, the order dated 19.09.2023 passed in I.A.Nos.10 and 11 of 2023 in O.S.No.112 of 2011 by the I Additional District Judge, Coimbatore are set aside and the Civil Revision Petitions are accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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Note: Issue order copy on 18.07.2024.



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To
The I Additional District Judge,
Coimbatore.



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M.NIRMAL KUMAR, J.

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