



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Civil Miscellaneous Petition' ['CMP' for the sake of brevity] has been taken out by the appellant in the main appeal i.e., A.S.No.410 of 2023.

2. Mr.S.Vasudevan, learned counsel on record for petitioner/appellant and Mr.S.Saravana Kumar, learned counsel on record for lone respondent/ respondent are before us.

3. Captioned CMP and appeal were listed before this Court for the first time on 04.01.2024 and the following proceedings were made:

'Mr.S.Vasudevan, learned counsel requested for a short accommodation. Request acceded to.

List in the Motion List on Monday. List on 08.01.2024.'

4. In the *interregnum*, the lone respondent / respondent has filed vakalatnama vide SR.No.787/2024 [05.01.2024].



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

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5. Factual matrix in a nutshell and trajectory of the matter thus far is that the petitioner/ appellant on 30.04.2014 filed a suit in O.S.No.57 of 2014 on the file of 'Additional District Judge's Court, Namakkal' [hereinafter 'said trial Court' for the sake of convenience and clarity] *inter alia* claiming partition and separate possession of two items of properties being the estate of his father late Thiru.V.V.Ramasamy Chettiar; that in this suit, blood brother of petitioner/appellant Thiru.Natarajan was arrayed as lone defendant; that subsequently, Ms.Leelavathy impleaded herself as second defendant on the ground that she is the second wife of Thiru.V.V.Ramasamy Chettiar; that pending suit, Ms.Leelavathy died; that the partition suit was predicated *inter alia* on a testament i.e., a Will dated 18.06.1992 [Ex.A6] executed by Late Thiru.V.V.Ramasamy Chettiar and it was subjected to contestation on the basis of another testament being a Will dated 05.04.2016 [Ex.B1] executed by Late Thiru.V.V.Ramasamy Chettiar, which was also subjected to contestation; that both testaments were subjected to disputation / contestation in the trial Court; that after full contest, the said trial Court in and by a judgment and decree dated 16.09.2022 [hereinafter 'impugned judgment' for the sake of convenience and clarity] believed



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

Ex.B1, disbelieved Ex.A6 and sustained the argument of Late Ms.Leelavathy (D2) predicated on Section 14 of Hindu Succession Act, 1956 (Act No.30 of 1956) that suit properties (to be noted, two items of immovable properties constitute suit properties) have become her absolute property, as such properties devolving even by way of inheritance vide explanation to sub-section (1) of Section 14 of Hindu Succession Act, 1956 become her absolute property and dismissed the suit vide impugned judgment; that the non-suited plaintiff is on appeal before us by way of a regular first appeal *inter alia* under Section 96 of 'Code of Civil Procedure, 1908' ['CPC' for the sake of brevity]; that captioned CMP has been taken out with an interim injunction prayer seeking to restrain the respondent from alienating suit properties pending appeal; that as already alluded to in this narrative, two items of immovable properties are collectively referred to as 'suit properties'; that Item No.1 is immovable property in the form of 35 cents or thereabouts land and superstructure thereon and Item No.2 is 5 cents of land and superstructure thereon; that captioned CMP is before us.

6. As already alluded to supra, learned counsel on either side are before us. The fair stand taken by learned counsel for respondent /



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

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respondent [to be noted, stand on instructions] has made the task of disposal of captioned CMP fairly simple. Learned counsel for respondent/respondent, on instructions, submitted that the respondent will not alienate, encumber or create any third party rights in the suit properties [two items of immovable properties] pending main appeal i.e., A.S.No.410 of 2023. It is submitted that this stated position of respondent may please be recorded as an undertaking. This undertaking is recorded.

7. Both sides submit (without any disagreement) that respondent is in possession of the suit properties.

8. Be that as it may, learned counsel for respondent / respondent drew the attention of this Court to paragraphs 4 and 5 of the support affidavit qua captioned CMP, which read as follows:

'4. I submit that the said Leelavathy had filed a written statement in the above suit and she pleaded that neither me nor the respondent herein paid her a sum of Rs.500/- as found in the Will of my Late father Ramasamy Chettiar dated 18.06.1992 and therefore, she had let out the suit property for rent and she was staying there and therefore, she took up a plea that under Section 14(1) of the Hindu Succession Act, she has become the absolute owner of the property, which is not maintainable either in law nor



WEB COPY



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

on facts.'

'5. I submit that in fact, she had even suppressed the fact that she had executed a Will on 03.08.2012 by claiming the suit property as her absolute property and she had bequeathed the same in favour of the respondent herein. In fact, it is very interesting to see that she has written the Will that the respondent herein has been taking care of her property and also maintaining her, which is contrary to the averments found in the written statement filed by her in the suit. I further submit that the matter went up for a trial and the learned Additional District Judge, Namakkal, without understanding the scope of Section 14(1) of the Hindu Succession Act, had dismissed the suit for partition by holding that the suit property has vested with the said Leelavathy, who in turn had executed a Will dated 03.08.2012 giving the entire property to the respondent herein and therefore, the suit for partition is not maintainable by giving a complete go-by the Will of my father dated 18.06.1992, who was the absolute owner of the suit property. Thus, the last wish of my father was not at all taken into consideration and on an erroneous interpretation of law and facts, dismissed the suit against which, I have preferred the present regular First Appeal. The Memorandum of Grounds of Appeal may also be read as part and parcel of the present affidavit for better and proper appreciation of the facts of the case.'



WEB COPY



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

WEB COPY

9. Adverting to the aforesaid two paragraphs, learned counsel submitted that the aforementioned averments/allegations are seriously disputed and the respondent vehemently denies the same.

10. We make it clear that the aforementioned two paragraphs shall now be read as an integral part and parcel of memorandum of grounds of appeal in the main appeal A.S.No.410 of 2023 and the respondent/respondent will obviously have the rights to dispute / contest the averments when the main appeal is taken up. We remind ourselves that the regular first appeal under Section 96 of CPC will continue to be on facts and law. Therefore, this course is being adopted.

11. In the light of the narrative thus far, it is not necessary to dilate any further on the interim prayer. It will suffice that the aforementioned stated position of the respondent / respondent [stated position in the form of an undertaking] is recorded and this will suffice to give a closure to the captioned CMP.



C.M.P.No.14360 of 2023
in A.S.No.410 of 2023

WEB COPY

12. Captioned CMP disposed of as closed recording the aforementioned undertaking of the respondent/respondent albeit with a rider that paragraphs 4 and 5 of the support affidavit qua captioned CMP (extracted and reproduced supra) shall now be part of grounds of appeal in main First Appeal and the same shall be tested in the Section 96 legal drill. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
08.01.2024
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C.M.P.No.14360 of 2023
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C.M.P.No.14360 of 2023
in
A.S.No.410 of 2023

08.01.2024
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