



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2024

Pronounced on: 15.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. Nos.776 of 2021 & 761 of 2022
and CMP. No.6423 of 2021 & 3824 of 2022

CRP.PD. No.776 of 2021

- 1.Nithyakalyani
- 2.Peni @ Annapoorani

... Petitioners

Vs

Kandasamy Gounder (died)

- 1.Sampoornam
- 2.Paniyakkal
- 3.Ganapathy

... Respondents

Prayer: The Civil Revision Petition filed under Section Article 227 of the Constitution of India to set aside the fair and final order passed by the District Munsif Court, Rasipuram dated 03.02.2021 made in I.A. No.01 of 2020 in O.S. No.207 of 1998.

CRP.PD. No.761 of 2022

R.Kandasamy Gounder (deceased)
Sampoornam

... Petitioner

Vs

- 1.Nithyakalyani
- 2.Peni @ Annapoorani
- 3.Panniyakkal
- 4.Ganapathy

... Respondents



Prayer : The Civil Revision Petition filed under Section Article 227 of the Constitution of India to set aside the fair and final order dated 12.11.2021 made in I.A. No.4 of 2021 in O.S. No.207 of 1998 on the file of the learned District Munsif Court, Rasipuram.

For Petitioners	: Mr.B.Jawahar in CRP. No.776 of 2021/ Respondents 1 & 2 in CRP. No.761 of 2022
For Respondents	: Ms.N.Suresh-R1 in CRP. No.776 of 2021/ Petitioner in CRP. No.761 of 2022 Not Ready --R2 & R3 in CRP.No.776 of 2021 and R3 & R4 in CRP. No.761 of 2022

COMMON ORDER

CRP. No.776 of 2021 has been preferred by the defendants 1 & 2 in O.S. No.207 of 1998, aggrieved by the order in I.A. No.1 of 2020 seeking permission under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC) read with Section 151 CPC to receive the Will dated 19.11.1999 executed by the plaintiff, deceased Kanthasamy Gounder.

2. CRP. No.761 of 2022 has been filed by the second plaintiff in O.S. No.207 of 1998, aggrieved by the order of dismissal of the



Application seeking to file a reply statement to the additional written statement filed by the defendants.

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3. The Trial Court allowed the said Application in I.A. No.1 of 2020 permitting the said Will to be exhibited and at the same time, dismissed the Application in I.A. No.4 of 2021, denying permission to the plaintiffs to file a reply statement to the additional written statement filed by the defendants. Against the said orders, the respective aggrieved parties have come up by way of their separate revision petitions.

4. I have heard Mr.Jawahar, learned counsel for the revision petitioner in CRP. No.776 of 2021 and respondents 1 & 2 in CRP. No.761 of 2022 and M.N.Suresh, learned counsel for the revision petitioner in CRP. No.776 of 2021 and first respondent in CRP. No.761 of 2022.

5. The learned counsel Mr.Jawahar would submit that the Will dated 19.11.1999, which is subject matter of the present revision petition has already been exhibited before the Competent Civil Court which is now subject matter of Second Appeal pending before this Court in S.A. No.750 of 2021 against the judgment and decree passed in A.S. No.251 of 2003 on the file of the Additional District Judge, Namakkal. He



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would submit that in the said proceedings, the attesting witness have been examined and an attempt has also been made to prove due execution of the Will dated 19.11.1999. However, according to Mr.Jawahar, the Appellate Court did not give any finding with regard to the validity or genuineness of the said Will and had instead held that the Will was not necessary for deciding the suit in question before the Court.

6. In any event, he would contend that when the issues are before this Court in S.A. No.750 of 2021, it would not be proper for the Court to permit marking the very same Will in a different proceedings altogether. He would therefore pray for the revision preferred by the defendants in CRP. No.776 of 2021 to be allowed and regarding the revision filed by the second plaintiff, he would submit that there was no necessity for filing a replicate statement in view of the admitted facts and circumstances and rightly, the trial Court has dismissed the Application seeking permission to file a reply statement and the same does not warrant any interference and he would pray for dismissal of the CRP. No.761 of 2022.

7. Per contra, the learned counsel appearing for the second



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plaintiff Mr.N.Suresh, would submit that the first plaintiff, R.Kandasamy Gounder had died leaving behind a registered Will dated 19.11.1999 under which, the second plaintiff is a legatee, being the grandson through his mother (mother's father), who is none else than the first plaintiff, deceased Kandasamy. Therefore, he would submit that in a suit for partition, the legatee under the said registered Will, is a proper and necessary party and therefore, he was entitled to place reliance on the said Will and to claim the right that would have been declared in favour of the deceased Kandasamy Gounder. He would further submit that in the earlier proceedings, the Will was never subjected to scrutiny and there was no finding with regard to the truth and genuineness and therefore, since such false averments had been taken in the additional written statement, it was necessary for the plaintiff to file a reply statement. He would therefore pray for the revision filed by the second plaintiff in CRP. No.761 of 2022 being allowed and the revision filed by the defendants 2 & 3 in CRP. No.776 of 2021 being dismissed.

8. I have carefully considered the rival submissions advanced by the learned counsel on either side and I have perused the materials available on record, including the impugned orders.



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9. It is admitted on both sides, the Will dated 19.11.1999 was marked in the earlier suit proceedings which is now pending in S.A.No. 750 of 2011. It is also fairly submitted by learned counsel on either side, that there are no findings in the earlier proceedings with regard to the due execution and attestation and consequently, regarding the validity of the said Will. However, Mr.Jawahar, learned counsel would submit that the evidence is already adduced regarding the alleged due execution and attestation of the Will and it is always open to this Court sitting in Second Appeal to decide the validity of the Will and therefore it is not open to give an another opportunity to the plaintiffs to prove the Will in the present proceedings. He would further submit that there is also a risk of contradictory views being taken with regard to the validity of the Will and he would therefore pray for postponement of decision in these revisions and also requested for the revisions being posted along with the Second Appeal.

10. Per contra, Mr.N.Suresh, learned counsel would submit that when even the First Appellate Court has not gone into the evidence regarding due execution of attestation of the Will, this Court in Second Appeal, would venture to render a finding with regard to truth and



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validity of the said Will and therefore, there was no justification in the request of the learned counsel for the defendants that the revisions should await the final decision of the Second Appeal. He would further submit that in a suit for partition, it is always open to a legatee claiming under the first plaintiff to prove the Will and claim the right that would accrue to the first plaintiff. He would therefore submit that there is absolutely nothing illegal or improper about the order of the Trial Court, permitting the said Will to be marked in the present suit proceedings. At the same time, he would submit that the Court ought not to have rejected the Application seeking permission to file a reply statement.

11. Insofar as the Application seeking permission to file reply statement, I am unable to accept the findings of the Trial Court that the plaintiffs are not entitled to replicate the statement. When the defendants had filed an additional written statement and contended that the Will was relied upon and findings had been given in the earlier proceedings which according to the plaintiffs were not true, an opportunity ought to be given to the plaintiffs to file a reply statement denying the averments and allegations put forth in the additional written statement. No prejudice would be caused to the defendants if such a reply statement is filed which



would only complete the pleadings to enable the Trial Court to proceed with trial and adjudicate the issues in an effective manner.

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12. With regard to marking of the Will, no doubt, there has been an attempt to prove the very same Will in the earlier proceedings and that the said suit is now pending in the second appellate stage before this Court and it is also a matter of fact that the First Appellate Court has given a finding that the Will need not be adjudicated upon in the earlier case as it had no bearing in the determination of the *lis* in issue in the earlier proceedings. However, in the present case, the second plaintiff, grandson claims under the said Will as a legatee and therefore, he wants to mark the Will and claim his rightful interest in the subject matter of property, as legatee under the said Will.

13. Viewing the peculiar facts and circumstances of the case, I do not find any infirmity in the order of the Trial Court permitting the Will being marked. At the same time, the apprehension of Mr.Jawahar that evidence being already adduced in the earlier proceedings regarding due attestation and execution of the very same Will, the petitioners cannot improve their case by adducing additional or varying evidence in the



present proceedings as it would prejudice the accrued rights in favour of the defendants. The said contention of Mr.Jawahar merits consideration.

However at the same time, the second plaintiff cannot be denied his right to place reliance on the registered Will executed by his grandfather in the present suit for partition and claim his legitimate share and therefore in order to balance equities, I deem it fit to pass the following orders:

(i) the second plaintiff is permitted to exhibit the registered Will dated 19.11.1999 executed by deceased Kandasamy Gounder, the first plaintiff

(ii) the evidence already on record with regard to proof and due attestation of the said Will shall be relevant for deciding the truth and genuineness of the said Will in the present proceedings in O.S. No.207 of 1998 on the file of the District Munsif, Rasipuram. The second plaintiff is at liberty to adduce evidence in support and not in contradiction of the evidence already in record with regard to the due execution and attestation of the Will in earlier proceedings in O.S.No.207 of 1998. It is open to the defendants to cross examine the witnesses examined on the side of the 2nd plaintiff and also adduce oral and documentary evidence to negate the truth and validity of the Will.

(iii) In the event of the truth and validity of the said Will being



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gone into by this Court in pending Second Appeal in S.A. No.750 of 2011, the said findings would resultantly assume relevance and significance in the present proceedings as well and liberty is granted to the defendants to take out appropriate Application in the event of succeeding in the Second Appeal, especially with specific reference to the validity of the Will dated 19.11.1999.

(iv) The plaintiffs are permitted to file a reply to the additional written statement. The Trial Court shall proceed with trial and decide the suit expeditiously and in any event on or before 30.04.2025.

14. In fine, CRP No.761 of 2022 is allowed and CRP No.776 of 2021 is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

15.11.2024

Index:Yes/No

Speaking order/Non-speaking order
rkp

To

1. The District Munsif Court, Rasipuram

2. The Section Officer, VR Section,
Madras High Court, Chennai.



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CRP. PD.Nos.776 of 2021 & 761 of 2022

P.B.BALAJI, J.

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Pre-Delivery Orders in
CRP. PD. Nos.776 of 2021 & 761 of 2022
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