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C.R.P. No.1253 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.1253 of 2022

and CMP.No.6745 of 2022

Jeyaprakash S/o. Seenuvasan Chettiar ...Petitioner / Respondent / Respondent

Vs.

Arjunan (deceased)

1. Rajasekar S/o. Pandiveeran

2. Kalayarasi W/o. Shanmugam

3. Pandiveeran S/o. Veerasami Respondents / Respondents 2 and 3 /
Respondents.

4. Natarajan S/o. Perumal ...Respondents / Respondents / Proposed
Respondent.

PRAYER: Civil Revision Petition is filed under section 227 of the
Constitution of India, to set aside the fair and decreetal order passed by the
learned III Additional District Judge, Villupuram @ Kallakurichi dated
30.11.2021 in I.A.No.10 of 2021 in A.S.No.4 of 2020.

For Petitioner : Mrs. V. Srimathi

For Respondents : No appearance [for R1, R2 and R4]
Mr. D. Murugan [for R3]



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ORDER

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The Civil Revision Petition is filed challenging the order passed in I.A. No.10 of 2021 in O.S. No.4 of 2020 on the file of learned III Additional District Judge, Villupuram @ Kallakurichi, wherein the 1st respondent herein has filed a petition before the 1st Appellate Court to implead him as legal representative of the deceased appellant under Order XXII Rule 3 of Code of Civil Procedure and the same was allowed. As against the said order, the present Civil Revision Petition has been filed.

2. According to the petitioner herein, the 1st respondent herein has filed a petition before the Trial Court alleging that the Suit property was purchased by the appellant Arjunan through a registered Sale Deed dated 04.05.2006 from the 3rd respondent / vendor. The said vendor suppressed the very existence of ABJ proceedings over the Suit property in O.S. No.359 of 2004 on the file of District Munsif Court, Kallakurichi and sold the property for consideration of Rs.7 lakhs to the appellant. The appellant was in possession and enjoyment of the said property since the date of purchase. In the meantime, the said Suit was decreed and symbolic delivery was given in favour of the auction purchaser, but the actual possession was not taken from the appellant. While so, one Kalayarasi, the 3rd respondent herein, entered



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into an agreement sale with one Jeyaprakash, who is the petitioner herein and sold the property based on the said agreement. A suit in O.S. No.91 of 2011 was filed and the same was also decreed on 16.08.2011 and thereafter, the said Jeyaprakash initiated execution proceedings and got the sale deed and preferred delivery proceedings, which were executed in the absence of appellant / deceased Arjunan and the appellant came to know about the proceedings only through Court. The petitioner is the original resident of the Suit property. The appellant, deceased Arjunan executed a Will dated 19.03.2020 in favour of the petitioner. In the meantime, the said Arjunan died on 28.04.2020. Therefore, the said Will came into existence after the demise of said Arjunan. The said Will is denied by the revision petitioner and the property was attached through Court and brought for Court auction. Thereby, the said appellant has no right to execute the Will dated 19.03.2020. The said Will is a forged and fabricated one. The Trial Court without considering the above said facts, allowed the application. Therefore, the present Civil Revision petition is filed.

3. Before the Trial Court, no oral or documentary evidence has been adduced on either side. The Trial Court after hearing both sides, allowed the petition.



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4. The learned counsel appearing for the petitioner would contend that before the Trial Court, the 1st respondent herein, has filed a petition to implead him as legal representative of the deceased / appellant Arjunan, based on the Will. In fact, the said Will is a forged one. The said Arjunan purchased the property with encumbrance, attached by the Court and thereafter Will was executed in favour of the petitioner. Since already, the property was attached by the Court, subsequent sale is subject to adjudication. The said Arjunan has no locus standi to execute Will, since the property was attached by the Court vide order in O.S. No.359 of 2004 on the file of District Munsif Court, Kallakurichi. In fact, the respondent has filed a Suit in O.S. No.91 of 2011 and the same was decreed in favour of this petitioner and also he filed an execution petition and Sale Deed was also executed by the Court and property was also delivered in favour of the petitioner. The respondents are very well aware of the above said proceedings. Already, the said Arjunan had filed a case in the year 2016 and the same was rejected by the Sub Court, Kallakurichi and the same was challenged through C.R.P. No.170 of 2016 and the same was allowed. Thereafter, the respondent filed an application under Order VII Rule 11 of Code of Civil Procedure in I.A. No.71 of 2011. The said petition was allowed. No revision was filed as against the said order. The above said proceedings is very well known to the respondent. Therefore,



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this petition is filed only to delay the proceedings, but the Trial Court failed to consider the above said aspects and allowed the petition. Hence the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that originally, the Suit property was belonged to the deceased Arjunan and he executed a Will dated 19.03.2020 bequeathing the Suit property in favour of the 1st respondent and thereby he is the legal representative of the deceased Arjunan. Therefore, he filed an application before the Trial Court to implead him as legal representative of the said deceased Arjunan. The Trial Court after considering the fact that said Arjunan had executed a Will in favour of the 1st respondent, has correctly allowed the application. Therefore, the present revision petition is liable to be dismissed.

6. This Court heard both sides and perused all the materials available on record.

7. Before the Trial Court, the 1st respondent herein has filed an application to implead him as legal representative of the deceased Arjunan based on the Will executed by the said Arjunan, who is the appellant in the Suit. According to the petitioner, the said Arjunan executed a Will dated



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19.03.2020 and thereafter died on 28.04.2020. Therefore, he has to be impleaded as his legal representative. According to the respondents, the Will itself is a forged one and the said Arjunan has no right to execute the Will. The contention of the respondents that the Will is a forged one is to be decided by the Court concerned after examination of witnesses. The Court below also allowed the application filed by the 1st respondent to implead him as legal representative on the ground that *Regarding fabrication and other things will come into light only during trial and now this petition is filed only to add the legal representatives*. It is for the 1st respondent to prove the Will in accordance with law. Now, based on the Will, the 1st respondent has filed a petition to implead him as legal representative of the testator who is the appellant in the appeal. The genuineness of the Will is to be proved in accordance with law, in the light of evidence. Now the petition has been filed only to add the legal representative and by allowing the same, the petitioner will not be prejudiced. The Trial Court allowed the application and the same is in order. There is no infirmity or perversity in the order passed by the Trial Court.

8. In view of the above discussion, this Court is of the opinion that there is no merit in this Civil Revision Petition and hence the same is liable to



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be dismissed. It is for the Trial Court to decide that whether the Will has been proved in accordance with law or not.

9. Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To
The III Additional District Judge, Villupuram @ Kallakurichi.



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P.DHANABAL, J.,

mjs

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