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C.R.P.(PD).Nos.2226 and 2227 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.2226 and 2227 of 2021
and CMP.No.16924 of 2021

CRP.No.2226 of 2021:

Saraswathi (died)

1.Veerakumar

2.Kannammal

... Petitioners

vs.

1.Thangavel

2.Sabapathi

3.A.Anbazzhagan

4.Vijayalakshmi

Kanthasamy Gounder (died)

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the orders of the learned IV Additional District and Sessions Judge of Coimbatore, dated 10.11.2020 in I.A.No.1 of 2019 in A.S.No.41 of 2018 and allow the above Civil Revision Petition.

For Petitioners : Mr.V.Nicholas

For Respondents : Mr.C.R.Prasanan
for R1 and R2
R3-No appearance
R4-left



C.R.P.(PD).Nos.2226 and 2227 of 2021

CRP.No.2227 of 2021:

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Saraswathi (died)

1.Veerakumar

2.Kannammal

... Petitioners

vs.

1.Thangavel

2.Sabapathi

3.A.Anbazhagan

4.Vijayalakshmi

Kanthasamy Gounder (died)

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, praying to set aside the orders of the learned IV Additional District and Sessions Judge of Coimbatore, dated 10.11.2020 in I.A.No.2 of 2019 in A.S.No.41 of 2018 and allow the above Civil Revision Petition.

For Petitioners : Mr.V.Nicholas

For Respondents : Mr.C.R.Prasanan
for R1 and R2
R3-No appearance
R4-left



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COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the First Appellate Court allowing the applications filed by the petitioners to produce additional evidence under Order 41 Rule 27 of CPC and lead oral evidence by examining legal representatives of attestors to Will dated 19.07.1966.

2. The petitioners herein filed a suit for partition against the respondents. The respondents 1 and 2 who were arrayed as defendants 3 and 4 filed their written statement and resisted the suit *inter alia* by relying on the Will executed by Subbaiya Gounder dated 22.07.1965 in favour of their mother Kuppathal. A certified copy of the Will was marked as Ex.B3 before the trial Court. However, the original Will was not marked and the attestors to the Will were also not examined. The Trial Court decreed the suit by observing that the Will relied on by the petitioners could not be taken into consideration in the absence of production of original Will and examination of attestors to the Will.



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3. Aggrieved by the judgment and decree passed by the trial Court, the petitioners preferred First Appeal in A.S.No.41 of 2018 on the file of the IV Additional District and Sessions Judge, Coimbatore. Pending First Appeal, the petitioners filed two applications under Order 41 Rule 27 and 28 of CPC in I.A.Nos.1 and 2 of 2019. The I.A.No.2 of 2019 was filed for production of original Will dated 19.07.1966 which was already in the custody of the trial Court and xerox copy of the said Will attested by State Bank of India. The I.A.No.1 of 2019 was filed for examining the legal representatives of the attestors of the Will who are no more. The said applications were opposed by the petitioners on the ground that the respondents 1 and 2 cannot be allowed to fill up lacuna by resorting to applications under Order 41 Rule 27 and 28 of CPC. The First Appellate Court on consideration of the rival submissions came to the conclusion that the original Will was already in the custody of the Court and hence in the interest of justice and to have effective and complete adjudication, the petition for production of additional evidence filed by the respondents 1 and 2 shall be allowed.



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4. The learned counsel appearing for the petitioners submitted that the respondents 1 and 2 failed to mark the original Will before the trial Court by examining the attestor and hence they cannot be allowed to fill up the lacuna in evidence by resorting to applications under Order 41 Rule 27 and 28 of CPC.

5. The learned counsel appearing for the petitioners submitted that the Will relied on by the respondents 1 and 2 were referred to in the written statements and at the relevant point of time, the original Will was not available with the respondents 1 and 2 and the same was deposited in State Bank of India and hence it could not be marked at the time of trial. The learned counsel further submitted that on applications filed by the respondents 1 and 2, the original Will was sent to the Court and the same was in the custody of the Court. However, it was not marked as exhibit.

6. The suit for partition was filed by the petitioners and the same was resisted by the respondents 1 and 2 by relying on the Will dated



19.07.1966. The certified copy of the Will was marked as Ex.B3. On application filed by petitioners, the original Will was produced by the State Bank of India before the trial Court and the same is already in the custody of the Court. In such circumstances, in order to have complete adjudication of the lis in a more effective way, the production of original Will and examination of attestor or a person acquainted with the handwriting of the attestor are absolutely necessary. The allowing of petition filed by the respondents 1 and 2 for production of additional evidence namely the original Will and examination of legal representatives of attestor will certainly enable the First Appellate Court to effectively adjudicate the controversy involved in the appeal.

7. It is seen from the records, the First Appeal was taken up for hearing by the First Appellate Court along with applications filed by the respondents 1 and 2 for production of additional evidence in I.A.Nos.1 and 2 of 2019. After hearing the submissions, the First Appellate Court, came to the conclusion that the applications for production of additional evidence shall be allowed and hence the matter is now adjourned for the purpose of



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examining the legal representatives of attestors to the Will.

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8. I do not find any error in the order impugned in this revision allowing the petitions for production of additional evidence, accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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To

The IV Additional District and Sessions Judge,
Coimbatore.



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S.SOUNTHAR, J.

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