



CRP. NPD.No.1271 of 2023

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. NPD. No.1271 of 2023**  
**and CMP. No.8589 of 2023**

Balasubramanian

... Petitioner

Vs

1.M.Samathal  
2.Vennila  
3.Venkatachalam  
4.Thenmozhi

... Respondents

**Prayer:** The Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order dated 03.02.2023 passed in I.A. No.1 of 2022 in I.A. No.10 of 2021 in A.S. No.38 of 2018 on the file of Principal Subordinate Judge, Tiruppur.

For Petitioner : Mr.S.Kaithamalaikumaran

For Respondents : Ms.R.Reshma for  
Mr.K.Vasanthanayagam.

**ORDER**

I have heard Mr.S.Kaithamalaikumaran, learned counsel for the petitioner and Ms.R.Reshma learned counsel for Mr.K.Vasanathanayagam, learned counsel for the respondents.



2. This Civil Revision Petition is at the instance of the plaintiff in a suit for declaration that a settlement deed is null and void and not binding upon the plaintiff. The suit was dismissed by the District Munsif, Tiruppur as against which A.S. No.38 of 2018 was filed by the plaintiff against one Rayappa Gounder, who died pending the Appeal, on 05.03.2020. The legal representatives of the deceased Rayappa Gounder sought to implead themselves as legal heirs in I.A.No.10 of 2021. The case of the respondents herein is that due to oversight, the Will was not marked in the impleading Application and therefore, they took out the Application in I.A. No.1 of 2022 to mark the Will in the said I.A. No.10 of 2021.

2. The said Application was opposed by the respondent/plaintiff, the present revision petitioner on the ground that the issue in the suit is only regarding the validity of the cancellation of the settlement deed and the Will was totally irrelevant to the cause of action.

3. The Trial Court allowed the Application on costs of Rs.3,000/- and held that no prejudice would be caused if the petition was allowed.



4. The learned counsel for the revision petitioner would submit that the suit being one for declaration seeking only cancellation of the settlement deed executed by Rayappa Gounder on the ground that it was null and void, the respondents herein could not project a Will claiming that it was executed by Rayappa Gounder in their favour. He would further submit that the Rayappa Gounder himself did not speak about the execution of the alleged Will at any point of time before the Trial Court and therefore, the Application to adduce evidence regarding proof of Will was unnecessary and irrelevant. He would further submit that the Application was filed only to drag the Appeal proceedings.

5. Per contra, learned counsel for the respondents, Ms.R.Reshma for Mr.K.Vasanthanayagam would submit that the Appellate Court had rightly allowed the Application, finding that no prejudice would be caused to the revision petitioner and had even put the respondents herein on terms for allowing the Application to re-open the impleading Application, to mark the Will.

6. I have carefully considered the rival submissions advanced on either side and also perused the impugned order passed by the Trial



Court.

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7. No doubt, as rightly contended by Mr.S.Kaithamalaikumaran, learned counsel for the revision petitioner, the suit is only for declaration to declare the cancellation of the settlement deed dated 14.03.2005 by Rayappa Gounder as null and void and not binding upon him.

8. However, it is to be noted that even though, the respondents herein claimed under an unregistered Will executed by Rayappa Gounder, they had sought to implead themselves in the pending Appeal as legatees of the sole respondent/defendant Rayappa Gounder. When the respondents had claimed right and interest through an unregistered Will said to have been executed by Rayappa Gounder and on the death of Rayappa Gounder, the cause of action also survives, it is only just and proper that his legal heirs as legatees are to be impleaded and given an opportunity to contest the Appeal Suit.

9. Of course, it is for the respondents to prove the due execution and attestation of the Will in a manner known to law, before claiming any right as legatees under the said unregistered Will of Rayappa



CRP. NPD.No.1271 of 2023

Gounder. At the same time, the Application cannot be thrown out at this juncture without giving an opportunity to the legatees to prove the Will.

Therefore, I do not find any infirmity in the order of the Appellate Court allowing the Application on payment of cost of Rs.3,000/-. The Civil Revision Petition lacks merit and deserves to be dismissed.

10. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

**15.11.2024**

Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1.The Principal Subordinate Judge, Tiruppur

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



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CRP. NPD.No.1271 of 2023

**P.B.BALAJI, J.**

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**Pre-Delivery Order in  
CRP. NPD. No.1271 of 2023  
and CMP. No.8589 of 2023**

**15.11.2024**