



C.R.P. (PD) .No.3979 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3979 of 2016
and C.M.P.No.20161 of 2016

N.S.Ziaudeen Ahamed

.. Petitioner

Vs.

1.Rabiya Basheeri

2.Mahaboob Khan

3.Rabiya Banu

4.Shaheera Banu

5.Shahin Banu

6.Mohammed Ali & 101 others

.. Respondents

(RR 6 to 101 given up)

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records, set aside the fair order dated 06.06.2016 made in C.M.P.No.32 of 2016 in O.S.No.292 of 2015 by the learned Sub Court at Namakkal, allow the Civil Revision Petition by



directing the Learned Sub Court at Namakkal to hold a preliminary enquiry in respect of Offences Under Sections 191, 192, 199, 209, 416, 463 & 468 in accordance with law and to send a complaint to the Court of Magistrate having jurisdiction under Section 340 of Cr.P.C.

For Petitioner : Ms.Suriya
for M/s.A.S.Kailasam Associates

For R1 : No appearance

ORDER

This civil revision petition challenges the order of the learned Subordinate Judge at Namakkal, in C.M.P.No.32 of 2016 in O.S.No.292 of 2015, dated 06.06.2016.

2.O.S.No.292 of 2015 is a suit for declaration that the decree passed in O.S.No.351 of 1980, dated 17.08.1983 is null and void, and consequently to grant a decree for partition. It also seeks an order of injunction restraining the 90th defendant / civil revision petitioner from taking possession of the properties involved in R.E.P.No.69 of 2011 and for other consequential reliefs.



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3.The case of the plaintiffs is that their father is having a share in the property and in respect to the A, B & C schedule, they are entitled to 5/45th shares as they succeeded to the estate.

4.Prior to the present suit, a suit for partition and separate possession had been filed in O.S.No.351 of 1980, which resulted in the passing of a preliminary decree on 19.07.1983. Thereafter, an application for passing of the final decree was filed in I.A.No.564 of 2007 in O.S.No.351 of 1980. As the respondents therein had remained *exparte*, a final decree was passed on 22.10.2010.

5.On the strength of the final decree, the civil revision petitioner presented E.P.No.69 of 2011, to take possession of the properties allotted to him. At that stage, the plaintiffs herein, presented I.A.No.535 of 2014 to condone the delay of 1586 days in setting aside the *exparte* final decree. It is stated that the said application was dismissed. Thereafter, the present suit came to be filed in the year 2015.

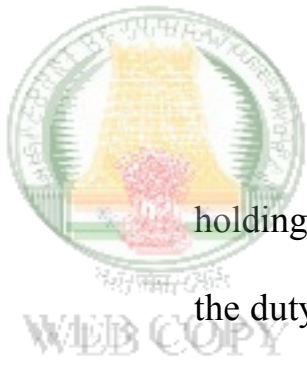


6. Pending the suit, the 90th defendant, took out an application under Section 340 of the Code of Criminal Procedure. His plea was that the 1st and the 3rd plaintiffs in the suit had fabricated the signatures of plaintiffs 2, 4 & 5 and had presented the plaint. He alleged that the vakalat, that had been executed by the counsel for the plaintiffs in O.S.No.292 of 2015, is equally fabricated. The basis for this plea being the plaintiffs 2, 4 & 5 were not even in Namakkal on the date of the alleged execution.

7. The learned Judge received this application and numbered it as C.M.P.No.32 of 2016. After taking it up for enquiry, he proceeded to dismiss the petition, on coming to the conclusion that the civil revision petitioner had not examined the Lawyer who had filed the vakalat on behalf of the plaintiffs or the Lawyer who had attested the Vakalat presented by the counsel. Aggrieved by the same, the 90th defendant is on revision before me.

8. I heard Ms.Suriya for M/s.A.S.Kailasam Associates for the civil revision petitioner.

9. Ms.Suriya, urged that when a *prima facie* case has made out for



holding an enquiry under Section 340 of the Code of Criminal Procedure, it is the duty of the Court to consider the same and order the application. He states that a preliminary enquiry had not been conducted as required under Section 340 of the Code of Criminal Procedure, as forgery, had been committed by the plaintiffs 1 & 3.

10.In terms of Section 340 of the Criminal Procedure Code, a Court may *suo motu* order for prosecution of a party, when it comes to the conclusion that an offence has been committed in terms of Section 195(1)(b) of the Code. The offence must relate to any document or evidence that is tendered in the Court. A vakalat cannot be treated as a document. It is at best, a power of attorney. executed by a party authorizing a counsel to represent him / her on his / her behalf before the Court.

11.A vakalat is never produced as an evidence in a suit. Therefore, since the twin requirement of Section 340, namely, that it should be a document or an evidence, are not satisfied, I am not inclined to interfere with the said order. Hence, the order passed by the learned Sub Judge, Namakkal, in C.M.P.No.32 of 2016 in O.S.No.292 of 2015 dated 06.06.2016, stands



confirmed.

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12. Accordingly, this Civil Revision Petition is dismissed. The dismissal of this revision will not prevent the 90th defendant from bringing it to the notice of the Court that at the time of examination of the plaintiff or himself that the plaintiffs 2, 4 & 5 were not in station on the date on which the plaint was presented. Consequently, the connected Miscellaneous Petition is closed.

No costs.

20.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Sub Court,
Namakkal.



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V.LAKSHMINARAYANAN, J.

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