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C.R.P. No. 3692 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3692 of 2024

and

C.M.P. No. 20032 of 2024

Thaslim Fathima

... Petitioner / 1st Respondent /
1st Respondent / 1st Defendant

Vs.

Mahaboob John (Died)

1. S.Abdul Wahab Azher

2. A.Sheik Shahul Hameed

...Respondents 1 & 2 / Petitioners 2 & 3/
Proposed Parties

3. Beer Mohaideen

4. Seesain

5. Lopas Piyaz

6. The Commissioner
Avadi Municipal Office
Thiruvallur District
Chennai.

7. The Director
Combat Vehicles Research and Development Establishment
CVRDE, Avadi, Thiruvallur District, Chennai.

8. The District Collector



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Collectorate Office
Thiruvallur District
Chennai.

9. The Thasildhar,
Taluk Office,
Poonthamalli,
Chennai.

10. The Village Administrative Officer,
Main Road, Avadi, Chennai.

11. Anwar Basha

12. Sathagathulla

13. Rahamathulla

... Respondents 3 to 13 /
Respondents 2 to 12 /
Respondents 2 to 12 /
Defendants 2 to 12

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.02.2024 passed in I.A. No. 1 of 2022 in I.A. No. 388 of 2015 in O.S. No. 774 of 2009 passed by the learned II Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr. S.Kingston Jerold

For Respondents 8 to 10 : Mr. C.Sathish



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ORDER

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2. O.S. No. 774 of 2009 was filed by the deceased sole plaintiff seeking for the relief of partition and separate possession. The suit was decreed on 30.09.2023. She initiated final decree proceedings in I.A. No. 388 of 2015. In the said proceeding, an Advocate Commissioner was appointed and he also visited the suit properties. Item 3 to 5 of the suit items were not permitted to be inspected and hence the plaintiff took out an application for police protection for the Advocate Commissioner to break open the locks and to inspect the properties. The said application is said to be pending. Unfortunately, the plaintiff died on 10.05.2021. She does not have any legal heirs. Yet, she had, pending the proceedings, executed a 'WILL' on 21.06.2017 bequeathing the properties that she would get under the decree in favour of the respondents 1 and 2. Hence, the said respondents filed an application under order XXII Rule 10 of the Code of Civil Procedure to bring themselves on record as petitioners nos. 2 and 3.



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3. This application was numbered as I.A. No. 1 of 2022 and notice was ordered to the respondents. The respondents filed a detailed counter pleading that as per Islamic law, the plaintiff is not entitled to execute a 'WILL' for more than one third of her share. They would state that the 'WILL' pertaining to the whole of the properties in favour of the respondents 1 and 2 is bad and, in addition, they would plead that even if such a 'WILL' had been written, the plaintiff was not in a condition to execute a 'WILL' nor was she in a sound state of mind to execute the same. On these pleadings, they would say that the 'WILL' is void and would not give any right to respondents 1 and 2.

4. The learned Judge allowed the application holding that the question of whether the 'WILL' is true and genuine can be decided at the time of enquiry in final decree proceedings and permitted the respondents 1 and 2 to come on record. Aggrieved by the same, the present revision.

5. Heard Mr. S.Kingston Jerold for the civil revision petitioner.

6. Mr. S.Kingston Jerold would submit that the plaintiff having died pending the final decree applications, she did not have any subsisting right over the property to transfer the same in favour of respondents 1 and 2. He



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would add that as per Islamic law, a testator cannot execute more than one third of the share that comes to the person by way of a 'WILL' in favour of a third party. Hence, he would explain that as the right of the plaintiff had not yet been concluded, the execution of the 'WILL' itself is void and consequently the order impugned should be revised.

7. I have carefully considered the argument of Mr. S.Kingston Jerold.

8. There is no dispute that the deceased sole plaintiff did not have any legal heirs. All legal heirs are legal representatives, but all legal representatives need not be legal heirs. In terms of Section 2(11) of the Code of Civil Procedure, any person who has an interest in continuation of the proceedings is entitled to come on record. This not only includes a legal heir, but it is wide enough to include even an intermeddler of the property which belongs to the deceased party. By virtue of the 'WILL', the respondents 1 and 2 claiming that they are the legal representatives of the deceased plaintiff are entitled to come on record. The fact that they have come on record, it does not mean that they are entitled to succeed to the estate. All that the Court has done is permitted respondents 1 and 2 to continue the proceedings in order to reach a logical conclusion.



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9. Insofar as the argument that only a preliminary decree has been passed and no final decree has been declared and therefore, the plaintiff did not have a right to execute the 'WILL', even on this plea I am afraid I am not with Mr. S.Kingston Jerold.

10. By virtue of the decree having been passed in favour of the plaintiff, the Court has declared a crystallized share of the plaintiff in the suit property. She is certainly entitled to alienate this share in favour of any person whom she chooses. In the facts of this case, she has chosen the respondents 1 and 2. Devolution of interest in a pending proceeding is governed in terms of Section 146 read with Order XXII Rule 10 of the Code of Civil Procedure. It is wide enough to include the respondents 1 and 2. Furthermore, insofar as the proof of 'WILL' is concerned, the learned Judge has reserved the same for disposal at the time of enquiry in the final decree proceedings. In the light of the above discussion, I do not find any merits in the revision.



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11. In the result, the civil revision petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

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To

The II Additional District and Sessions Judge, Tiruppur.



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V.LAKSHMINARAYANAN, J.,

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