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C.R.P.(PD).No.2583 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD). No.2583 of 2023 &
C.M.P.No.15953 of 2023

1.A.K.Venkatachalam
2.V.Shanthi ... Petitioners

-Versus-

Sri Swetambar Sthanak Vasi Jain Sangh,
Aynavaram,
Rep. by its Secretary & Managing Trustee,
No.309, Konnur High Road,
Ayanavaram,
Chennai – 600 023 ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.04.2023 passed in I.A.No.4 of 2023 in O.S.No.5469 of 2019 on the file of XVI Additional City Civil Court at Chennai.

For Petitioner : Mr.A.R.Pradeep

For Respondent : Mr.M.Sunikumar

ORDER

This civil revision petition arises against the order passed by the learned XVI Additional City Civil Court at Chennai in I.A.No.4 of 2023 in



O.S.No.5469 of 2019.

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2. O.S.No.5469 of 2019 was originally presented as C.S.No.544 of 2011.

In the said suit, the plaintiff, who is the respondent herein, had sought for the following reliefs:

“ a) For Decalaration deciding the settlement deed dated 09.10.2000 registered as Document No.2999 of 2000 in the office of SRO Anna Nagar, Chennai executed by the 1st defendant to and in favour of the 2nd defendant as Null and Void abinitio.

b) For Declaration declaring the settlement deed dated 12.10.2000 registered as Document No.3052 of 2000 in the office of SRO Anna Nagar, Chennai executed by the 1st defendant to and in favour of the 2nd defendant as Null and Void abinitio.

c) Direct the defendants 1 and 2 to vacate and hand over vacant possession of item No.1 of the suit schedule mentioned property to the plaintiff trust.

d) Direct the defendants 1 and 2 to vacate and hand over vacant possession of the item No.2 of the suit schedule mentioned property to the plaintiff trust.

e) To direct the defendants to pay damaged @ Rs.500 per day for the illegal occupation and possession of the item No.1 and 2 of the suit schedule mentioned



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property from the date of plaint till the date of handling over vacant possession of the suit schedule mentioned property's to the plaintiff trust.

f) For permanent injunction restraining the defendants 1 and 2 their men, agents, or any person claiming through them from in any manner selling or conveying or further encumbering the suit schedule mentioned property to any third party.”

3. There is no dispute between either parties that the property originally belonged to one Nemichand Golecha. On 21.02.1989, he had executed a registered Will in favour of the respondent namely Sri Swetambar Sthanak Vasi Jain Sangh, Aynavaram. The respondent, on the death of Nemichand Golecha on 18.04.1998, moved this court for grant of probate of the Will. The probate was also granted on 30.04.2004.

4. After obtaining the probate, the plaintiff presented the suit for the aforesaid reliefs on coming to know that the first civil revision petitioner had executed a settlement deed in favour of the second civil revision petitioner. The plaintiff pleaded that since the property was bequeathed in its name, it filed a suit for recovery of possession.



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5. The written statement had been presented by the defendants. The trial court framed the issues and thereafter, the parties went for trial.

6. On the side of the plaintiff, examination has been completed, and it was the turn of the defendants to enter the witness box and mark their documents.

7. During the course of examination, the civil revision petitioners filed a document namely, cancellation of the Will, dated 21.03.1989, on the basis of which the suit had been presented. This was received as Ex.B5. Stating that it is an unprobated document and since the probate has already been granted to their “Will” the plaintiff wanted to eschew/reject the said document. This application was received as I.A.No.4 of 2023.

8. Notice was issued to the plaintiff/civil revision petitioner, and thereafter, the learned Judge allowed the application, against which the present civil revision petition.



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9. I have heard Mr.A.R.Pradeep and Mr.M.Sunil Kumar for the respective parties.

10. It is pertinent to point out that on the previous occasion, another person in occupation of a property, which belonged to Nemichand Golecha, came up with the very same cancellation deed dated 04.04.1991. In that proceedings, an application was filed to reopen the evidence to mark the document, which was challenged by the respondent herein in CRP.No.3124 of 2019. Dealing with the said revision, this Court came to a conclusion that as long as the probate stands, the question of filing a document allegedly cancelling the Will does not arise. On that basis, the revision was allowed on 01.03.2023.

11. Mr.A.R.Pradeep would submit that the order passed in CRP.No.3124 of 2019 dated 01.03.2023 is an exparte order, to which the civil revision petitioner was not a party, and therefore, it cannot be treated as binding on his clients.

12. Keeping the judgment in CRP.No.3124 of 2019 aside for a moment,



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in terms of Section 41 of the Indian Evidence Act, an order granted in matrimonial, probate, insolvency and admiralty jurisdiction is an order in rem and is binding on both parties as well as non-parties. It is not in dispute that this Court granted probate in O.P.No.471 of 2001 on 30.04.2004. As long as the certificate of the probate stands, it is binding not only on the plaintiff but also on the defendants. If the cancellation deed is permitted to be marked, then it would amount to interfering with the order of probate granted by this Court.

13. As per Order XIII Rule 3 of the Code of Civil Procedure, a court has the power to reject a document, which is inadmissible, at any stage of the proceedings. The learned Judge, taking cognizance of the fact that the Court of competent jurisdiction, namely this Court, has granted probate, has rejected the said document sought to be produced by the defendants questioning the probate.

14. I do not find any error, since as pointed out above, the order of probate is one in rem and will bind even non-parties to the proceedings. In light of the above discussion, I do not find any merits in the revision. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected



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miscellaneous petition is closed.

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Index : Yes/No

Speaking Order/Non-speaking order

Neutral Citation : yes/No

To

1.The XVI Additional City Civil Court at Chennai.



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V.LAKSHMINARAYANAN, J.

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