



C.R.P.No.3715 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12-12-2024**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD) No. 3715 of 2024

and C.M.P.No.20157 of 2024

G.Kandasamy

.... Petitioner

Vs

1. Manonmani

2. Maheshwari

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal order dated 12.04.2024 passed in I.A.No.06 of 2022 in O.S.No.423 of 2013 on the file of the learned V Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.A.Tamilarasan

For Respondent : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition arises against the order passed by the V Additional District and Sessions Judge, Coimbatore, in IA No.6 of 2022 in OS No.423 of 2013.

2. O.S.No.423 of 2013, is a suit for partition and separate possession. There is no dispute in the relationship between the parties. The



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Civil Revision Petitioner and the 1st respondent are the son and daughter of Ganapathy Gounder, respectively . The 2nd respondent/2nd plaintiff is the daughter of one Chinna Kandasamy. The Civil Revision Petitioner, 1st respondent and the Chinna Kandasamy are siblings. Ganapathy Gounder passed away on 09.02.2005. It is not in dispute, on his death, he left behind the parties to this revision to succeed to the estate. Since the demand of the plaintiffs for amicable partition of the property did not come forth, they presented the suit for partition claiming 5/12th share.

3. The defendant entered appearance and pleaded that the Ganapathy Gounder did not die intestate but had executed two registered "WILLS" on 28.02.1997 and 17.03.2004. On the death of Ganapathy Gounder, the Will came into force and he is in possession and enjoyment of the property exclusively. By the Will dated 28.02.1997, he succeeded to a possession of the property.

4. On these pleadings, the parties went for trial. The evidence of the plaintiffs is over. The defendant has entered the witness box and has deposed as DW1 and he has also marked the "WILL" as Ex.B7. In order to satisfy the requirement of section 68 of the Indian Evidence Act, he filed an application in I.A.No.4 of 2022, to summon the attesting witnesses to the "WILL" dated 28.02.1997. According to him, the "WILL" was attested by two



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persons viz., Nataraj and Durai. He stated that the attesting witness Durai is the colloquial name for Govindasamy. I.A.No.4 of 2022 came to be allowed by the Court on 04.07.2022. The said Govindasamy appeared before the Court on 04.08.2022. The learned Judge enquired the witness. On account of the fact that he entertained some doubts over the identity of the person, he did not record his evidence. Hence, 1st defendant filed I.A.No.6 of 2022 to issue summons to the said Govindasamy alias Durai along with application, he furnished some additional details.

5. The learned Trial Judge issued notice in the application and received a counter. The plaintiffs stated that the person summoned to the Court is not the attesting witness to the "WILL" and that the defendant had attempted to play impersonation of the attesting witness before the Court.

6. The learned Trial Judge, after hearing both sides, came to a conclusion that since the father's name and the address of the person in the petition and "WILL" are different, dismissed the petition. Hence, this Civil Revision Petition.

7. I heard Mr.A.Tamilarasan, for the Civil Revision petitioner and Mr.K.Govi Ganesan, for the respondent.



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8. Both the learned counsel reiterated the contention they placed before the Trial Court.

9. Mr.A.Tamilarasan, invited me to look at the sale deeds of Mr.Durai alias Govindsamy as well as his driving license and Aadhar Card in order to satisfy me that there is no attempt at impersonation. I am afraid I should not appreciate these evidences that is placed before me in revision. This is because if I were to return any findings on these documents, it will affect the right of the plaintiffs.

10. The Civil Revision petitioner, who is the propounder of the "WILL" wants to discharge his duty by examining the attesting witnesses. In case, the plaintiffs are of the view that the person who signed the "WILL" as the attesting witness, is not the person, who is deposing in the Court, then it is their look out to cross examine the said witness on his identity as well as on due execution and attestation of the "WILL". It is not the duty of the Court to conduct a roving inquiry when the witness is present before the Court in obedience to a summons issued to him. The Court can certainly verify the identity of the witness but that by itself should not result in shutting out of the evidence which a party wants to produce before the Court. As the matter is at the stage of trial, opportunity should be given to the parties to produce whatever evidence that they deem fit to produce before the Court.



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11. Since Mr.A.Tamilarasan, asserts that Durai alias Govindasamy is the same person who had attested the Will of late Ganapathy Gounder, I am inclined to set aside the order passed by the V Additional District and Sessions Judge, Coimbatore in I.A.No.6 of 2022 in O.S.No.423 of 2013 dated 12.04.2024.

12. The learned Trial Judge, shall issue summons to Govindasamy alias Durai S/o.Palanisamy, residing at No.12/9, K.G.Nagar, Sulur Taluk, Coimbatore – 641 402. The sole defendant is entitled to examine him in order to prove the "WILL" under Ex.B7.

13. Needless to add, at the time of cross examination, the plaintiffs, will be entitled to put such questions as they deem fit and necessary questioning the execution, attestation as well as the very identity of DW1. The apprehension that is placed by Mr.K.Govi Ganesan that the trial Court might not permit the plaintiffs to cross examine the summoned witness on the identity is unfounded. It is open to the party during the time of cross examination, to put such questions as they deem it necessary not only to impeach the credibility of the witness but also question the identity of the said witness. Whether the summoned witness is the attesting witness for the "WILL" or not, is a matter on which the learned Judge will have to take a



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call, at the time of marshalling the evidence before pronouncing the judgement.

14. With the above observation, this Civil Revision Petition is allowed.

The learned Trial Judge shall remember that the suit of the year 2013 and give it all the importance that it requires and dispose of the suit within a period of six months from the date of completion of the summoned examination. No costs. Consequently, connected miscellaneous petition is closed.

12-12-2024

Index : Yes/No
NC : Yes/No
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V.LAKSHMINARAYANAN, J.

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To

V Additional District and Sessions Judge, Coimbatore.

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