



C.R.P.No.3673 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10..09..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3673 of 2024

and

C.M.P.No.19963 of 2024

Masayathal

..... Petitioner

-Versus-

Mylsamy Gounder (Died)

- 1.M.Mahesh Ram
- 2.M.Saravanan
- 3.M.Harshavarthini
- 4.S.Kalyanisami
- 5.M.Poongodi
- 6.S.Subramanian
- 7.N.Anguraj
- 8.N.Selvakumar
- 9.C.Vijayakumar
- 10.M.Santhi
- 11.Vrindha Iyer
- 12.M.Srinivasan
- 13.R.Muralikrishnan
- 14.K.Mylsami
- 15.V.Venkateshwari



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16.Saroja

17.Devipriya

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..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 23.07.2024 made in I.A.No.08 of 2024 in O.S.No.155 of 2009 on the file of the Subordinate Judge, Pollachi, by allowing this civil revision petition.

For Petitioner : Mr.J.Aravind

ORDER

This civil revision petition arises against an order of the learned Subordinate Judge, Pollachi, dated 23.07.2024 in I.A.No.8 of 2024 in O.S.No.155 of 2009.

2. The suit in O.S. No. 155 of 2009 is the suit for partition and separate possession filed at the instance of the civil revision petitioner.

3. It is the case of the defendants that their grandfather, one Arumugha Gounder, executed a “WILL” in their favour on 09.02.1968. They would allege that the original of the “WILL” is with the 17th defendant. They would plead that there were three attesting witnesses to the “WILL” and in order to prove the “WILL” they had taken witness summons to the attesting witnesses. All



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three summonses were returned unserved. Therefore, they filed an application in I.A.No.8 of 2024 seeking for recalling the evidence of D.W.1 to mark the unserved summons as exhibits in the court.

4. The learned trial Judge issued notice in the application and received counter from the plaintiff.

5. The plaintiff would allege that in terms of Section 68 of the Indian Evidence Act, one or two of the attesting witnesses have to be examined. If the attesting witnesses are not examined, the “WILL” has to be proved by examining the legal heirs of the said attesting witnesses, and therefore, the marking of summons is unnecessary.

6. The learned trial Judge taking into consideration the petition, affidavit, counter, and the arguments placed on either side, allowed the application. Hence, this revision is at the instance of the plaintiff.

7. Heard Mr.J.Aravind for the civil revision petitioner.

8. Mr.J.Aravind would submit that summons are court exhibits and therefore, no necessity to recall D.W.1 for the purpose of marking the documents. He would state that the appropriate procedure for proving the “WILL” is by examining one or two of the attesting witnesses, and if they are not able to do so, the marking of summons would not help the case of the defendants.



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9. I have carefully considered the submissions of Mr.J.Aravind.

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10. The manner of proof of “WILL” is set out under Section 68 of the Indian Evidence Act. Under Section 68 of the Indian Evidence Act, a propounder of the “WILL”, will have to examine one or two of the attesting witnesses. In case, the attesting witnesses are not available, then the remaining procedures under Sections 69 to 71 of the Indian Evidence Act can be followed. In order to invoke Section 69 of the Indian Evidence Act, it is the duty of the propounder to show that the attesting witnesses cannot be found. Only if this basis is laid, then they can proceed under Section 69 of the Indian Evidence Act.

11. It is not in dispute that summons were taken to the attesting witnesses and they were returned as unserved. These returned summons do not automatically become court exhibits. They are court records. They have to be exhibited like any other document. The defendants want to mark the unserved witness summons in order to substantiate the fact that the attesting witnesses are not available. This is only laying the foundation, as stated above, to proceed further in accordance with Sections 69 to 71 of the Indian Evidence Act.

12. In the light of the above, I do not find any reason to interfere with the order of the learned trial judge and the revision fails.

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



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Consequently, connected CMP is closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The District Munsif, Uthangarai, Krishnagiri District.



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V.LAKSHMINARAYANAN.J.,
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