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C.R.P. (PD) .No. 4253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4253 of 2024

&

C.M.P.No. 23650 of 2024

T.Sundararajan

...Petitioner

Vs.

1.Varadan

2.Danakoti

3.Udayakumar

4.Nandhagopal

5.Mohana

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 09.09.2024 in I.A.No.2 of 2024 in O.S.No.889 of 2012 on the file of the Principal District Munsif, Alandur.



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For Petitioner : Mr. M.Thangadurai.

ORDER

This Civil Revision Petition arises at the instance of the plaintiff. He has filed a suit for permanent injunction restraining the defendants from interfering with his peaceful possession or in any manner trespassing into the suit property.

2. The claim of the plaintiff is that one Sottu Sahib sold the suit property to his mother as early as on 02.09.1957 and his mother was in possession and enjoyment of the same till her death on 16.06.2009. In and about 02.04.1980, the plaintiff's mother had executed a “WILL” in favour of the plaintiff. According to the plaintiff, on the death of his mother, he became the owner of the suit property. As the defendants were trying to encroach upon the 4 feet vacant set back space in the western side of the suit property, he came forth with the suit.



3. The defendants entered appearance and filed a written statement admitting to the possession and enjoyment of the plaintiff but disputed only the extent as claimed in the plaint. According to them, they got the property by way of partition deed which their family entered into on 15.02.1986. The 4 feet passage which is claimed by the plaintiff fell in the eastern side of the defendants' property and the defendants have right over the same. In other words, the defendants have conceded with the plaintiff's ownership over the suit property and have not disputed either the "WILL" or the purchase of the suit property by the plaintiff's mother from Sottu Sahib in the year 1957.

4. On these pleadings, the parties went for trial. The plaintiff examined himself on 02.09.2023. His evidence was closed on 05.01.2024. Thereafter, the defendants' side evidence closed on 27.06.2024. The suit is now at the stage of arguments. At that stage, the plaintiff moved an application to re-open his evidence in order to examine the attesting witness of the "WILL" dated 02.04.1980.



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5. The learned Trial Judge after receipt of a counter, dismissed the said petition. Hence, the revision.

6. Heard Mr. M.Thangadurai for the civil revision petitioner. Mr.Thangadurai submits that unless and until the plaintiff proves the "WILL", he cannot succeed in the suit. Hence, if an opportunity is granted to the petitioner to mark the "WILL" through attesting witness and prove his case, he would be in a position to substantiate his pleadings in the suit.

7. I have carefully considered the arguments of Mr.Thangadurai and gone through the records.

8. The narration of the above facts show that the defendants have not disputed the title of the plaintiff's mother. They concede that the plaintiff's mother had purchased the property from one Sottu Sahib on 02.09.1957. It is not in dispute that the plaintiff's mother died on



16.06.2009 and this has been substantiated by the death certificate marked before the Trial Court.

9. The question of proof of "WILL" arise in the case when the defendant denies the title of the plaintiff. Per contra, a reading of paragraph No.3 of the written statement shows the following statement:

“The plaintiff is owner of the suit property, except the extent. However, the plaintiff is in possession and enjoyment of the present extent as his mother was in possession and enjoyment the same till her death”.

10. This makes it clear that it is the extent alone which is in dispute. For the purpose of proving the extent of his possession, the examination of attesting witness is absolutely unnecessary. The "WILL" is not a document of title. It only records the last wish of the testator and as to how the property should devolve after his / her demise. For the mere fact that the attesting witnesses are not examined, it cannot be held against the plaintiff, especially in light of the clear



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pleadings in paragraph No.3 of the written statement.

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11. It is the duty of the plaintiff to prove the extent of his possession in the property and seek for permanent injunction. As pointed out by the learned Trial Judge, the examination of attesting witness is not going to improve the case of the plaintiff.

12. I do not find any reason to differ from the order passed by the learned Trial Judge. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Principal District Munsif,
Alandur.



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V.LAKSHMINARAYANAN, J.

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