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C.R.P.(PD).No.4586 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4586 of 2024
and
C.M.P.No.25630 of 2024

Eeswari

... Petitioner

..Vs..

1.Ponnusamy
2.Palaniammal
3.P.Basakaran
4.Deivanai
Subramani (Died)
5.Samynathan
6.Rathinam

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.08.2024 passed in I.A.No.975 of 2022 in O.S.No.121 of 2016 on the file of the District Munsif Court, Kangayam, Thirupur District and allow the same.

For Petitioner : Mr.V.Regunathan



C.R.P.(PD).No.4586 of 2024

ORDER

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This Civil Revision Petition arises against the order of the learned District Munsif at Kangeyam in I.A.No.975 of 2022 in O.S.No.121 of 2016 dated 23.08.2024.

2. The respondents presented O.S.No.121 of 2016, on the file of the District Munsif Court at Kangeyam seeking for declaration that they are entitled to the suit property, on the basis of a “WILL” executed on 05.03.2012. They also sought for relief of injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the property.

3. This suit was resisted by filing detailed written statements.

4. Issues were framed. Evidence has also commenced and the affidavit discloses P.W.1 to P.W.3 were examined. P.W.1 is the plaintiff. P.W.2 is the Scribe. P.W.3 is the attesting witness of the aforesaid “WILL”. Thereafter, an application was taken out by the plaintiffs to recall P.W.1 to P.W.3 on



C.R.P.(PD).No.4586 of 2024

account of the fact that it came to his knowledge that, what was filed before the Court, was not the original of the “WILL” dated 05.03.2012, but a colour Photostat copy of the same. Hence, they sought to recall the three witnesses for deposition on the basis of original.

5. This application was received as I.A.No.975 of 2022. The said application was opposed by the first defendant pleading that all of them had, at the time of cross examination, deposed that the document that has been presented is the original. Therefore, the requisition for recalling the witnesses is unnecessary. The learned Trial Judge, by his order dated 23.08.2024, allowed the said application. Hence the Civil Revision Petition at the instance of the first defendant.

6. I heard Mr.V.Regunathan, for the civil revision petitioner.

7. Mr.V.Regunathan argues that the concerned document under Ex.A3 was put to the Scribe, namely an Advocate-P.W.2. He had deposed that the document was prepared by him. Having deposed on the Photostat copy, he



argues, it is now not open to the plaintiffs to substitute Ex.A3 with the original. Therefore, he urges that the order impugned, deserves to be revised.

8. I have carefully considered submissions of Mr.V.Regunathan.

9. The narration of the aforesaid facts would shows that the plaintiffs, who base their claim to the suit property, according to a “WILL” dated 05.03.2012, have not produced the original, but only a colour Photostat copy. Unless and until a party gives sufficient explanation in terms of Section 65 of the Indian Evidence Act, he/she is not entitled to produce the secondary evidence before the Court. A Photostat copy, whether it is a colour copy or a black and white copy, is secondary evidence. In case, the respondents are prevented from producing the original, that by itself, would affect the merits of the case. Technical issues should not be permitted to defeat the rightful claim of the parties.

10. It is always open to the parties to produce the original, especially, when he pleads that by over-sight, the original had not been produced before the Court. The learned Trial Judge, who had the benefit of seeing the



witnesses deposing before him, has exercised his discretion and permitted the parties to produce the original of the “WILL”. In case, a testament is sought to be proved, the original of the testament necessarily has to be produced before the Court. When, that being the position of law, I do not find any grave error committed by the learned Judge in permitting the parties to produce the original, thereby, substituting it with the colour Photostat copy.

11. At this stage, Mr.V.Regunathan, argues that it is sufficient that P.W.1 alone had been examined. There is no necessity for recalling the evidence of all the three witnesses.

12. I have to point out that the evidence of P.W.1 to P.W.3, is inextricably mixed on the “WILL” filed as Ex.A3. Therefore, the evidence of all the three would have to be recorded by the Court.

13. The fear of Mr.V.Regunathan that P.W.1 to P.W.3 might change their evidence or withdraw the admissions made by them in the previous round of depositions, is unfounded.

14. I am sure, the learned District Munsif at Kangeyam will not permit



C.R.P.(PD).No.4586 of 2024

P.W.1 to P.W.3 to tender any evidence, which might be in the nature of withdrawing admissions as already stated earlier. As the Court has decided to exercise the discretion, I am not inclined to interfere with the said order.

15. With the above observations, as regards the content and nature of evidence that can be deposed by P.W.1 to P.W.3, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition stands closed.

18.11.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation Case: Yes/No

V.LAKSHMINARAYANAN, J.

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C.R.P.(PD).No.4586 of 2024

C.R.P.(PD).No.4586 of 2024

18.11.2024