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C.R.P. No.4650

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.4650 of 2024
& CMP No.25956 of 2024

1.Ketha Chalapathi Babu
2.Mrs.Ketha Kanakavalli
3.Ketha Kiran Kumar
Petitioners

Vs

1.Ketha Lalitha
2.Ketha Tushara

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to call for records and set aside the order dated 03.10.2024 passed in IA No.4 of 2024 in OS No. 3188/2022 on the file of the 1st Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.E.J.Ayyappan

ORDER

This Civil Revision Petition challenges the order passed by the learned I Assistant Judge, City Civil Court, Chennai in I.A.No.4 of 2024 in O.S.No.3188 of 2022, dated 03.10.2024.



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2. The civil revision petitioners are the defendants in the suit. The suit seeks for the following reliefs:

(a) declaring that the recitals below

(i) In page 4 at 7th line the sentence "with exclusive right over the passage measuring 577.42 Sq.Ft

*(ii) in paragraph 3 et page 9-6th line the sentence *along with exclusive right over passage measuring 577.42 Sq. ft leading to Damodaran Street with absolute enjoyment together with water, water pipelines, liberties, privileges, advantage, right of pathway"*

(iii) In schedule description in the northern boundary the sentence "exclusive passage belong to SETTLOR Ketha Chalapathi Babu"

(iv) The nomenclature of the passage le., the word "Exclusive Passage for A and the measurements detailed in the sketch in respect of the total measurement and in respect of passage shown as "C" In the sketch attached with the Impugned Settlement Deed;



In the Impugned Settlement Deed Dt:21.04.2017 executed by 1st Defendant in favour of Defendants 2 and 3 In Doc. No. 1015 of 2017 on the file of SRO Thiagaraya Nagar as nullity and ultravires of the preliminary decree passed In A.S.No.410 and 411 of 2013 on the file of the High Court of Judicature at Andhra Pradesh and not binding on the Plaintiffs, and

(b) for a permanent Injunction, restraining the defendants, their men, agents, servants or anybody claiming through them from In any manner interfering or disturbing the plaintiff's peaceful possession and enjoyment of the common passage morefully described in the Plaint B. Schedule property situate on the eastern side and rear side of the Plaintiff building at Door No. No.8 (New No.15), Damodaran Street, T. Nagar, T. Nagar, Chennai-600 017;

(c) for a permanent Injunction, restraining the defendants, their men, agents, servants or anybody claiming through them from in any manner alienation or encumbering the common passage morefully described in the Plaint B Schedule property situate on the eastern side and rear side of the Plaintiff building at Door No. No.8 (New No.15), Damodaran Street, T.Nagar, T.Nagar, Chennai-600 017;

3.The defendants have filed a written statement ascertaining their right over the property, as well as, their right to execute a Settlement Deed which is impugned in



the suit. Pending the suit, the plaintiff has examined herself. It is now the turn of the defendants to tender evidence.

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4. During the course of evidence, the defendants took out an application in I.A.No.4 of 2024 under Order VII Rule 1A(3) of CPC., seeking the leave of the Court to produce certain documents. One amongst the documents sought to be produced was a “WILL” said to have been executed by the mother-in-law of the 1st plaintiff and the mother of the 1st defendant. The learned Trial Judge dismissed the petition after receipt of the counter from the plaintiffs on the ground that as the “WILL” has not yet got the approval of the Probate Court, it cannot be received as evidence. Challenging the same, the present revision.

5. I heard Mr.E.J.Ayyappan, for the civil revision petitioners.

6. Mr.E.J.Ayyappan, points out that the learned Judge has received the photocopies of the Municipal Building Plan, Property Tax receipts, photographs subject to relevancy and proof. It is only with respect to the “WILL” dated 06.04.2000 that it has been rejected. He contends that the “WILL” is a subject matter of probate on the original side of this Court. He adds the plaintiffs have admitted to the “WILL” during the course of evidence. Hence, he urges the defendants are entitled to produce the document before the Court.



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7.I have carefully considered the submissions of the Mr.E.J.Ayyappan, for the civil revision petitioners and have gone through the records.

8.There is no dispute that the testator was the resident of Chennai and the property also is situated in Chennai. This immediately brings into operation Schedule III of the Indian Succession Act. This is by virtue of Section 57A of the Indian Succession Act. In terms of Section 213 of the said Act, no right as a legatee or an executor can be established in any Court of justice, unless, a probate has been granted to the said “WILL”. The 1st defendant claims right under the “WILL” as a legatee. When Section 213 of the Indian Succession Act bars making claim by virtue of the “WILL”. See, *Hem Nolini Judah vs. Isolyne Sarojbashini Bose and others*, AIR 1962 SC 1471. Hence, I am not in a position to disagree with the view taken by the learned I Assistant Judge, City Civil Court, Chennai in I.A.No.4 of 2024 in O.S.No.3188 of 2022, dated 03.10.2024.

9.In the light of the above discussion, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

21.11.2024

Index : Yes/No

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Neutral Citation : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

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V. LAKSHMINARAYANAN, J.

SSR

To

The 1st Assistant Judge, City Civil Court, Chennai.

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