



C.R.P.No.4099 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4099 of 2019 and

C.M.P.No.26798 of 2019

1.Chinnia Gounder @ Palanisamy
2.Ramasamy
3.Shanmughasundaram

... Petitioners

Vs.

1.Kovai N.Ravishankar
2. Ramathal
3.M.Jayachandran
4.M.Rajeshwari

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 07.01.2019 made in I.A.No.831 of 2017 in O.S.No.962 of 2013 on the file of the III Additional Sub-Court, Coimbatore.

For Petitioners

: MrR.Krishna Prasad
for M/s. Sarvabhauman Associates

For Respondent 1

: No appearance

For Respondents 2 to 4

: M/S.M.Saravana Kumar



ORDER

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Aggrieved by the order allowing the application filed by the 1st respondent/plaintiff seeking permission of the Court to mark the certified copy of Will dated 07.01.2008 registered as Document No.1 of 2008, the petitioners/defendants 4 to 6 have come by way of this Civil Revision Petition.

2. The 1st respondent filed a suit for partition against the petitioners and other respondents in O.S.No.565 of 2008 on the file of learned Principal Sub-Ordinate Judge, Coimbatore. The 1st respondent claimed right over the suit properties under the Will executed by one Karunai Ammal dated 07.01.2008 bequeathing 30 cents out of 1/3rd share in the suit property allotted to respondents 2 to 4/defendants 1 to 3. It is the case of the 1st respondent that the original Will of Karunai Ammal is in the custody of the respondents 2 to 4 and he issued a notice to produce the original Will and the said notice was returned. Therefore, they are not in a position to produce the original Will before the Court and sought for permission of the Court to mark the certified copy of the Will.



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3. The said application was resisted by the petitioners herein on the ground that 1st respondent filed a similar application earlier and the same was dismissed. The petitioners also denied the averments found in the 1st respondent's affidavit as if the Will was in the custody of respondents 2 to 4.

4. The Court below rejected the objection raised by the petitioners on the ground that earlier similar application filed by the 1st respondent was dismissed as not pressed but it was not dismissed on merits. When the earlier application filed by the 1st respondent was not disposed of on merits, the dismissal of the same as not pressed would not come in the way of 1st respondent maintaining the present application. Therefore, the conclusion of the Court below with regard to the said point need not be interfered with.

5. It is also seen from the impugned order that 1st respondent issued a notice to produce the original Will to the respondents 2 to 4 and the said notice was filed along with the memo filed in the interlocutory application. Since the 1st respondent already had taken necessary steps for procuring the original Will



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from the custody of respondents 2 to 4, the condition under Section 65(a) of Evidence Act is satisfied and as a consequence, the 1st respondent is entitled to mark the certified copy of the Will.

6. In fact, the Court below, while allowing the application filed by the 1st respondent clearly mentioned that the petitioners herein are entitled to raise all their objections with regard to the marking of certified copy at the time of actual marking of document. The certified copy of the Will may be marked subject to the objection of the petitioner herein and proof. The objection raised by petitioner may be considered at the time of final disposal. When the rights of the revision petitioners are protected by the impugned order, I do not find anything to interfere with the order passed by the Court below.

7. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

04.01.2024

Index : Yes / No
Internet : Yes / No
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C.R.P.No.4099 of 2017

To

The learned III Additional Sub-Court, Coimbatore.



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S.SOUNTHAR, J.

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04.01.2024