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C.R.P.(PD)No.4843 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4843 of 2024
and C.M.P.No.27069 of 2024

M.Vajravel

.. Petitioner

Vs

1.M.Thangavel

2. Vijayalakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.10.2024 in I.A.No.9 of 2024 in O.S.No.23 of 2024 on the file of the Subordinate Court at Kodumudi, Erode District.

For Petitioner : Mr.A.Sundara Vadhanan

For R1 : Mr.N.Manokaran, caveator

ORDER



C.R.P.(PD)No.4843 of 2024

WEB COPY

This civil revision petition arises out of the order passed by the learned Subordinate Judge at Kodumudi, Erode District in I.A.No.9 of 2024 in O.S.No.23 of 2024 dated 21.10.2024.

2. The civil revision petitioner is the 2nd defendant in the suit. O.S.No.23 of 2024 was originally presented before the learned I Additional Subordinate Judge at Erode as O.S.No.676 of 2017. Subsequently, with the formation of the Subordinate Court at Kodumudi, the suit stood transferred to that Court.

3. O.S.No.676 of 2017 is a suit for declaration that the plaintiff/1st respondent is the owner of the suit schedule property, by virtue of a “WILL” dated 05.05.2017 and for consequential relief of permanent injunction.

4. It is the case of the plaintiff that the property originally belonged to two sisters, Kumarayammal and Ramayeeammal. They had obtained the property by way of a partition deed dated 12.11.1983. Subsequently, Kumarayammal passed away and therefore, Ramayeeammal became the absolute owner of the property. She had executed a “WILL” in favour of



C.R.P.(PD)No.4843 of 2024

the 1st defendant on 30.10.2009. Subsequently, she cancelled the “WILL” on 03.04.2017. The plaintiff pleaded on 05.05.2017, Ramayeeammal executed another “WILL” in his favour. Ramayeeammal passed away on 02.06.2017. As the plaintiff has been in exclusive possession and enjoyment of the property, from the date of death of Ramayeeammal and when an attempt for his dispossession was made on 15.09.2017, he came forward with the suit for the aforesaid reliefs.

5. The 1st defendant filed a written statement pleading that the cancellation of a “WILL” dated 03.04.2017 was obtained, without Ramayeeammal, even knowing about the contents of the said document. She pleaded that the document and signatures of Ramayeeammal were forged. She added that, without knowing affixing her thumb impression on a document of cancellation, Ramayeeammal had executed the same. The defendant pleaded that one Rajendran, a document writer at Kodumudi, had played a fraud on Ramayeeammal and obtained her mark. She pleaded that, Ramayeeammal was in a semi-conscious state, when she allegedly executed the “WILL” dated 05.05.2017. She pleaded that the two attesting witnesses for the “WILL” dated 05.05.2017 are very close associates of the plaintiff. Hence, it is her clear and categorical



C.R.P.(PD)No.4843 of 2024

case that the “WILL” said to have been executed on 05.05.2017, does not bear the actual mark of Ramayeeammal in all the pages. She also denied the execution, stating that the signatures found in the “WILL” are not the signatures of Ramayeeammal and in any event, she was in semi conscious state of mind and suffering from several health issues. On further aspects on the execution and attestation, she denied the “WILL”.

6. On the strength of the first “WILL” executed in the year 2009, the 1st defendant has already presented a suit before the District Munsif Court at Kodumudi in O.S.No.67 of 2017. This suit has been re-numbered as O.S.No.212 of 2024 and is being tried jointly with O.S.No.23 of 2024 (the present suit).

7. The 2nd defendant/civil revision petitioner filed a separate written statement, wherein he pleaded that both the “WILL” dated 30.09.2009 as well as the “WILL” dated 05.05.2017, are not true, genuine or valid. In so far as the “WILL” on the basis of which the suit had been filed, he pleaded that the attesting witnesses are close associates of the plaintiff. He added, the attesting witnesses and the advocate, who notarised the “WILL” dated 05.05.2017, had colluded and fabricated the



C.R.P.(PD)No.4843 of 2024

“WILL”. On these pleadings, issues were framed and the parties have gone for trial.

8. The plaintiff has examined himself as P.W.1, an attesting witness as P.W.2, and the Advocate, who notarised the “WILL”, as P.W.3. Since it is sufficient that one attesting witness is examined, the plaintiff did not examine the other attesting witness.

9. Before the evidence commenced on the side of the defendants, the 2nd defendant took out an application to summon one Ramalingam, the other attesting witness to both the cancellation document as well as to the “WILL” dated 05.05.2017, as a witness to the suit. This was stoutly opposed by the 1st defendant, pleading that there is no necessity to examine the witness, as he has already complied with the requirements of the Indian Evidence Act and Indian Succession Act. The plea raised by the 1st defendant found acceptance by the learned Subordinate Judge, Kodumudi and therefore, he dismissed the petition. Hence, this revision.

10. I heard Mr.A.Sundara Vadhanan for the civil revision petitioner and Mr.N.Manokaran for the 1st respondent.



C.R.P.(PD)No.4843 of 2024

WEB COPY

11. The 2nd respondent had remained *exparte* in the application and hence, notice on the 2nd respondent is dispensed with.

12. Learned counsel appearing on either side reiterated the contentions they placed before the learned Subordinate Judge at Kodumudi.

13. I have carefully considered the submissions of both sides. I have gone through the entire records.

14. The issue in the suit relates to the execution of a “WILL” dated 05.05.2017. The learned Subordinate Judge is right that it is the duty of the plaintiff/propounder of the “WILL” to prove the said document. In discharge whereof, he has already examined the Notary public/P.W.3 and the attesting witness/P.W.2.

15. A reading of the written statements filed by the 1st and 2nd defendants goes to show that both the defendants are pleading that the



C.R.P.(PD)No.4843 of 2024

attesting witnesses have colluded along with the plaintiff in order to bring about the “WILL”. When a plea of collusion is being raised, the burden is on the defendants to prove the same. By the mere fact that one of the attesting witnesses has been examined and cross-examined, the 2nd defendant feels, it is not sufficient to establish his case. There is no bar under law for examination of the other attesting witness. The plaintiff feels comfortable with the evidence that he has let in so far. It is on account of the requirement to examine only one attesting witness. The 2nd defendant wants to take as many steps as is possible, within his powers to disprove, the case of the plaintiff. Hence, I feel, by summoning the other attesting witness, who has not only stood as a witness for the cancellation of the previous “WILL” of the year 2009, but has also acted as an attesting witness for the subsequent “WILL” dated 05.05.2017, no prejudice would be caused to the plaintiff.

16. Mr.N.Manokaran points out that the examination of the second attesting witness might lead to confusion in evidence. Where two sets of the evidence are available before the Court, it is the duty of the Trial Court to find out which of those evidence inspires confidence and which evidence excites suspicion. That need not be gone into at this stage. A



C.R.P.(PD)No.4843 of 2024

party must be given full opportunity to bring forth whatever evidence he wants to bring forth before the Court, lest he pleads in appeal, that sufficient opportunity had not been granted to him.

17. In the light of the above discussions, the order of the learned Subordinate Judge at Kodumudi, Erode District in I.A.No.9 of 2024 in O.S.No.23 of 2024 dated 21.10.2024 is set side. I.A.No.9 of 2024 will stand allowed. The civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

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To

The Subordinate Judge at Kodumudi,
Erode District.

V. LAKSHMINARAYANAN,J.



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