



CRP.No.95 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.95 of 2024

&

CMP.No.488 of 2024

D.Devaki

...

Petitioner

/vs/

1.G.Nagammal

2.G.Ragunathan @ Ragu

3.N.Bikash Ch Bera

4.N.TutunBera

5.D.Nithyanandan

...

Respondents

PRAYER : This civil revision petition has been filed under Article 227 of Constitution of India against the fair and final order dated 05.10.2023 passed in I.A.No.03 of 2023 in O.S.No.455 of 2010 on the file of the 2nd Additional Subordinate Court of Coimbatore to issue witness summon to the witnesses mentioned in the accompanying petition and permit the petitioner to adduce the evidence to prove the genuineness of will document and further to prove illegal dispossession and demolition of property without following the due process of law.

Petitioner

... Ms.D.Devaki
(party-in-person)



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ORDER

WEB COPY This civil revision petition has been filed against the fair and final order dated 05.10.2023 passed in I.A.No.03 of 2023 in O.S.No.455 of 2010 on the file of the 2nd Additional Subordinate Court, Coimbatore to issue witness summon to the witnesses mentioned in the accompanying petition and permit the petitioner to adduce the evidence to prove the genuineness of will document and further to prove illegal dispossession and demolition of property without following the due process of law.

2.The petitioner appeared in person and argued the case and contended that the suit in O.S.No.455 of 2010 is filed to declare the 5th defendant's title to the suit property under the last Will dated 04.06.2003 executed by one Gopalasamy and for consequential to declare the plaintiff's rights over the property and permanent injunction against the defendants and for delivery of possession of the suit property to the plaintiff. Pending trial, after examination of witnesses, the petitioner filed I.A.No.3 of 2023 in O.S.No.455 of 2010 sought to summon the following persons with following documents:



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LIST OF WITNESSES

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1.Mr.Marimuthu, Assistant to Village Administrative officer of Coimbatore town to produce the relevant records of town survey No.1487, Ward number 7 and block number 26 of Coimbatore Corporation.

2.The Manager, Bank of Maharashtra, to produce the account opening application of the attesting witness Mr.Prakash nair and identify his signature in the Will document.

3.Mrs.Prema, Then, The Signing authority for commissioner of police for the complaint filed before the Chief Minister's Special Cell with respect to illegal dispossession and demolition of the suit property.

4.Mrs.Chandrababha, Then, The Assistant Engineer, Tamil Nadu electricity board along with the relevant records for dismantling the Electricity connections and meters for the connection number 139 and 147, stands in the name of the plaintiff mother D.Vijayalakshmi on 13.03.2010.



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5.Mr.Mohan Raj, Then, The Line Man, Tamil Nadu Electricity board along with the relevant records for dismantling the Electricity connections and meters for the connection number 139 and 147, stands in the name of the plaintiff mother D.Vijayalakshmi on 13.03.2010.

6.Mr.Ramamoorthy, then, The Inspector of Police, Variety hall road police station, Law and order, Coimbatore for giving police aid for E.P.16 of 2004 on 13.03.2010.

7.Mrs.Poovaataal, then, The Sub Inspector of Police, Variety hall road police station, Law and order, Coimbatore for giving police aid for E.P.No.16 of 2004 on 13.03.2010.

8.Mr.Chandra Sekar, then, The Police Constable, Variety hall road police station, law and order, Coimbatore for giving police aid for E.P. 16 of 2004 on 13.03.2010.

9.Mr.S.Vivekanandan, Advocate Commissioner appointed in E.A.67/2010 in E.P.16/2004 in RCOP 96/1983.



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10.The Assistant Registrar, Office of the Hon'ble High Court of Madras, to produce the entire records in ROC 15/2014-B3 pertaining to the complaint filed by the plaintiff's mother with respect to illegal dispossession and demolition of the suit property without following the due process of law.

The trial Court, after considering the contention of the petitioner, dismissed the petition on the ground that to prove the Will dated 04.06.2003, summoning of the petition mentioned witnesses are not warranted.

3.I have considered the matter in the light of the submission made by the petitioner.

4.On perusal of the impugned order, it is noticed that the suit in O.S.No.455 of 2010 is filed to declare the 5th defendant's title to the suit property under the last Will dated 04.06.2003 executed by one Gopalasamy and for consequential to declare the plaintiff's rights over the property and permanent injunction against the defendants and for delivery of possession



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of the suit property to the plaintiff. Pending trial, after examination of witnesses, the petitioner filed I.A.No.3 of 2023 in O.S.No.455 of 2010 sought to summon the abovementioned witnesses. The trial Court, after considering the contention of the petitioner, dismissed the petition on the ground that to prove the Will dated 04.06.2003, summoning of the petition mentioned witnesses is not warranted.

5.Considering the facts that the abovementioned persons are neither attestors nor known the signature of the attestors, summoning the abovementioned persons is unwarranted to establish the Will. Therefore, the trial Court rightly dismissed the petition and there is no infirmity or irregularity in the impugned order. Accordingly, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

10.01.2024

Internet : Yes/No

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To

The 2nd Additional Subordinate Court,
Coimbatore.



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V.SIVAGNANAM ,J.

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