



C.R.P(MD).No.337 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.337 of 2024

and

C.M.P(MD)No.1559 of 2024

1.Vijayalakshmi

2.Padma

3.Gobi Kannan

4.Saroja

... Petitioners / Defendants 1 to 4

Vs

1.Annathai @ Annathayammal

... 1st Respondent / Plaintiff

2.The Tahsildar, Aruppukottai,
having his office in Pandalkudi Road,
Aruppukottai.

... 2nd Respondent / 5th Defendant

3.Devaki

4.Ponmalar,

5.Anandhan

6.Latha

7.Kannan

8.Rajan

... 3 to 8 Respondents / 6 to 11 Defendants

1/8



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Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned Additional District Court, Virudhunagar, in I.A.No.3 of 2023 in O.S.No.40 of 2021 dated 09.11.2023 and allow this Civil Revision Petition.

For Petitioner : Mr.S.V.Nagarajan

For R2 : Mr.J.Ashok
Additional Government Pleader

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed by the learned Additional District Court, Virudhunagar, in I.A.No.3 of 2023 in O.S.No.40 of 2021 dated 09.11.2023 and allow this Civil Revision Petition.

2. The facts in brief is that a suit in O.S.No.40 of 2021 is filed by one Annathai @ Annathayammal, against the revision petitioners seeking the relief of partition and separate possession. The defendants appeared and filed their written statement also. Pending the trial process, a



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petition in I.A.No.3 of 2023 was filed by the first respondent herein/ plaintiff under Order 11 Rule 12 and 14 of CPC for directing the petitioners herein/ Defendants 1 to 4, to produce the Will dated 25.01.2011 with the following averments: In the written statement filed by the petitioners herein, it is stated that one Alagarsamy executed a Will on 25.01.2011. On the basis of the Will, the defendants 1 to 4 become the absolute owner of the properties. But the revision petitioners have not filed or produced the Will either before the revenue authorities during the patta proceedings or before the trial Court. Unless the document is produced, no evidence can be let in by the plaintiff. That was resisted by the revision petitioners stating that it is the duty of the plaintiff to prove her case and she cannot compel the petitioner herein / defendants to produce the document. Now P.W.1 was already cross examined and posted for further evidence. So the matter has become infructuous.

3. The trial Court allowed the petition stating that if the Will is proved by the defendants, then the plaintiff is not entitled for any partition. If it is not proved then, the plaintiff is entitled for share in the



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properties. So by invoking the power under Order 11 Rule 12 and 14 of C.P.C, the direction was issued. Against which this revision has been preferred.

4. Heard the petitioners.

5. This Court is completely at loss to understand or appreciate the grievance of the revision petitioners. There is a specific pleading in the written statement to the effect that Alagarsamy executed a Will dated 25.01.2011 in favour of the petitioners herein, it has been rightly appreciated by the trial Court that if the revision petitioners are able to prove the Will, then the plaintiff will be non-suited. If not, she is entitled for share. So it is the duty of the defendants to produce the document along with the written statement. But they did not. Even now they are hesitating to produce the Will, stating that they are not making any counter claim over the property or that they cannot be compelled to produce the document.



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6. When this Court put a question to the learned counsel for the petitioners as to whether they intend to produce the document atleast at the time of their evidence, there was no response. Necessarily an issue must be framed regarding the Will. Then only, the matter can be disposed of finally.

7. I find absolutely no reason to entertain this petition, simply because these petitioners do not want to produce the document, they cannot be permitted to say that they are not willing to produce the document. Such a course is not available.

8. Order 11 Rule 12 of C.P.C., reads as under:

12.Application for discovery of documents - Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally



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or limited to certain classes of documents, as may, in its discretion, be thought fit:

9. Order 11 Rule 16 of C.P.C., reads as under:

16. Notice to produce.- Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No.7 in Appendix C, with such variations as circumstances may require.

10. Order 11 Rule 21 of C.P.C., deals about the non compliance of the order of discretion, which reads as under :

21. Non-compliance with order for discovery - (1). Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.



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(2).Where an order is made under Sub-rule(1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

11. All those provisions have been made only with a view to find out the relevant documents. If the petitioners willingly refuse to produce the document, then they have to face the consequences. Therefore, I find absolutely no reason to entertain this petition.

12. Accordingly, this Civil Revision Petition is dismissed even at the admission stage itself. No costs. Consequently, connected miscellaneous petition stands closed.

13.02.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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G.ILANGOVAN, J.

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To

- 1.The Additional District Court, Virudhunagar.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD) No.337 of 2024

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