



C.R.P.(MD) No.1371 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.06.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD) No.1371 of 2019

Meenachi Achi (Died)

CT.S.Sivakumaran

... Petitioner/Petitioner/
33rd Respondent

Vs

CT.Rajeswari Achi (Died)

1.M.Periya Karuppan

Udappi (Died)

2.Udappan

S.Savithri Achi (Died)

3.A.Periyakaruppan Chettiar

4.S.V.S.Chinnakaruppan Chettiar

A.Vairavan Chettiar (Died)

A.CT.Vairavan Chettiar (Died)

V.Shanmugam Chettiar (Died)

S.Sivasubramanian Chettiar (Died)

A.Alagu Chettiar (Died)



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- 5.M.A.Arunachalam Chettiar
- 6.Alingammal
- 7.M.Ambalam
- 8.A.Mokkai
- 9.A.Karuppanan
- 10.Alagu alias Alagappan
- 11.V.Viswanathan
- 12.V.Chidambaram
- 13.V.Ramanathan
- 14.V.Janaki Achi
- 15.V.Ramanathan
- 16.V.Chidambaram
- 17.V.Shyamala
- 18.S.Gnanasoundari
- 19.S.Rasu alias Chidambaram
- 20.S.Chandrasekar
- 21.S.Ganagadevi
- 22.S.Chandra
- 23.S.Devaki alias Girija
- 24.S.Meenakshi
- 25.S.Pushpakala
- 26.A.Akalya



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27.S.Suryaprabha

28.S.Vasumathi

29.A.Renuka

30.Revathi

Kanagambigai Achi (Died)

31.Umadevi Achi

32.P.Sethu Chettiar

33.S.Sridharan

34.S.Ragunathan

35.S.Suganthi

36.S.Prakalathan

37.S.Karthikeyan

38.Prabhu

39.Sasirekha

40.Kumarappan

... Respondents/Respondents/
Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.49 of 2008 in I.A.No.521 of 2004 in O.S.No.289 of 2004 on the file of the District Munsif Court, Melur.

For Petitioner : Mr.S.Ramesh

For R-31 : Mr.K.Abiya

For RR6 & 30 : No appearance



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RR1 to 5, 7 to 29 &
32 to 40 : Set ex-parte (vide EB)

ORDER

The present revision petition has been filed by the 33rd respondent in I.A.No.521 of 2004 in O.S.No.289 of 2004 on the file of the District Munsif Court, Melur.

2. One Meenachi Achi, minor Revathi, Kanagambigai Achi and Umadevi Achi have filed O.S.No.510 of 1970 on the file of the Sub Court, Madurai for the relief of partition and separate possession. The suit was decreed and a preliminary decree was passed on 30.04.1977. A final decree application came to be filed in I.A.No.342 of 1988. When the final decree application was pending, the suit was transferred to the District Munsif Court, Melur and was renumbered as O.S.No.289 of 2004. The final decree application was renumbered as I.A.No.521 of 2004.



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3. While the final decree application was pending, the 11th defendant has passed away and the present revision petitioner was impleaded as the 33rd respondent in the final decree proceedings as legal heir of the deceased 11th defendant.

4. The 1st plaintiff viz., Meenachi Achi is said to have passed away on 29.09.2006. The 33rd respondent in the final decree proceedings claims that the said Meenachi Achi has executed a registered Will on 13.04.2005 bequeathing her share in his favour. Based upon the above said averments, the petitioner herein had filed I.A.No.117 of 2007 in the final decree application to record himself as legal heir of the deceased Meenachi Achi. Since the respondents in the said application had not filed their counter, the application came to be allowed on 28.08.2007 recognizing the present revision petitioner as the legal heir of Meenachi Achi.

5. The revision petitioner herein had thereafter filed I.A.No.49 of 2008 under Order I Rule 10 read with Section 151 of Civil Procedure Code (herein after referred to as “CPC”) to transpose himself as the second



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petitioner in the final decree proceedings and to delete petitioners 2 to 4 in the said final decree proceedings. However, pending I.A.No.49 of 2008, the revision petitioner has filed a memo giving up his prayer to delete petitioners 2 to 4 from the final decree proceedings and restricted his prayer to transpose himself as one of the petitioners in the final decree proceedings.

6. The above said application was resisted by the co-petitioners in the final decree proceedings on the ground that the original Will dated 13.04.2005 has not been produced before the Court and without establishing the Will, the revision petitioner cannot be transposed as one of the petitioners in the final decree proceedings. They further contended that any order passed transposing the revision petitioner as one of the petitioners in the final decree application would confer some legal right upon him to claim the share of Meenachi Achi.

7. The trial Court, after considering the submissions made on either side, had dismissed the application on the ground that the application has been filed quoting wrong provision of law viz., Order I Rule 10 CPC. The



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trial Court has further held that the original Will dated 13.04.2005 has not been produced. The trial Court has proceeded to hold that even being arrayed as the 33rd respondent, without being transposing himself as one of the petitioners in the final decree proceedings, the 33rd respondent would still claim the share of Meenachi Achi on proving the Will dated 13.04.2005 and therefore, there is no necessity to transpose him as one of the petitioners in the final decree application. The trial Court further held that there is no mention in the affidavit filed in I.A.No.49 of 2008 alleging that the other petitioners in the final decree application are attempting to withdraw the same or not going to prosecute the same. On the above said grounds, the trial Court proceeded to dismiss the application. Challenging the same, the present revision petition has been filed.

8. According to the learned counsel appearing for the petitioner, the other petitioners in the final decree application have already sold out certain portions of the property and therefore, they may not evince any interest in prosecuting the said application. In case, if the said application is dismissed for default, the petitioner will be put to great hardship by filing another



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application and it would be difficult for the revision petitioner to transpose him at the relevant point of time. He further contended that the revision petitioner had already filed the original Will while filing the application in I.A.No.117 of 2007. Therefore, the original Will is already in the custody of the Court. He further contended that mere wrong quoting of the provision of law would not take away the jurisdiction of the Court to mould the relief and permit the petitioner to get himself transposed as one of the petitioners in the final decree proceedings. Hence, he prayed for allowing the revision petition and transpose him as one of the petitioners in the final decree proceedings.

9. Per contra, learned counsel appearing for the 31st respondent herein had contended that the petitioner has never filed the original Will before the Court. He further contended that no allegations have been made as against the co-petitioners in the final decree proceedings that they are going to withdraw the same or they are going to not press the final decree proceedings. In such a situation, the question of transposing the 33rd respondent as one of the petitioners in the final decree proceedings does not



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arise. He further contended that without proving the Will dated 13.04.2005, the petitioner cannot seek to transpose himself in the place of Meenachi Achi. Therefore, he prayed for sustaining the order passed by the trial Court.

10. I carefully considered the submissions made on either side and perused the material and records.

11. There is no dispute that the final decree application in I.A.No. 521 of 2004 arising out of a decree in O.S.No.289 of 2004 is pending before the District Munsif Court, Melur. Pending final decree application, the 1st petitioner viz., Meenachi Achi has passed away on 29.09.2006. It is the contention of the revision petitioner that the said Meenachi Achi has executed a registered Will in his favour on 13.04.2005. It is settled position of law, unless the revision petitioner proves the Will in a manner known to law, he cannot claim the share of deceased Meenachi Achi. Therefore, merely because he is being transposed as one of the petitioners in the final decree proceedings that will not confer any right on him. The other reason



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assigned by the trial Court for dismissing the application relates to wrong quoting of provision of law, which is not sustainable in the eye of law.

12. The learned counsel appearing for the petitioner has expressed some apprehensions that the co-petitioners in I.A.No.521 of 2004 may leave it to be dismissed for default or may not press the same, in view of the fact that some alienations have already been made by them. As already stated, merely because the revision petitioner is going to be transposed as one of the petitioners in the final decree proceedings that will not confer any right upon him, unless and until he proves the Will dated 13.04.2005 said to have been executed by Meenachi Achi, in the manner known to law. Therefore, the apprehensions expressed by the other petitioners in the final decree proceedings are not legally sustainable.

13. In view of the above said facts, the order passed by the trial Court in I.A.No.49 of 2008 on 04.08.2018 is set aside and the revision stands allowed. The 33rd respondent is transposed as one of the petitioners in I.A.No.521 of 2004. It is made clear that the revision petitioner/33rd



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respondent will not be entitled to the share of Meenachi Achi, unless and until he proves the Will dated 13.04.2005 in the manner known to law. The final decree Court is directed to dispose of the final decree application on or before 31.12.2024. No costs.

03.06.2024

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

abr

To

The District Munsif,
Melur.



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R.VIJAYAKUMAR, J.

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