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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1881 of 2022

K.Venugopal (Died)

1. S.Mathavanantha

2. L.Sujith Kasiraj

...Petitioners

Vs.

P.K.Sivaraja

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records relating to the Fair and Decreetal order passed in E.A.No.01 of 2021 in E.P.No.31 of 2020 in O.S.No.50 of 2017 dated 13.06.2022 on the file of the Principal Sub Court, Theni, Theni District and set aside the same by allowing this Civil Revision Petition.

For Petitioner : M/s.S.Sarvagan Prabhu

For Respondent : Mr.R.Suriyanarayanan



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ORDER

This Civil Revision Petition is filed by the plaintiff in the suit to set aside the Fair and Decreetal order passed in E.A.No.01 of 2021 in E.P.No.31 of 2020 in O.S.No.50 of 2017 dated 13.06.2022 on the file of the Principal Sub Court, Theni, Theni District.

2. The plaintiff in the suit are the revision petitioner herein and the defendants in the suit are the respondents herein. For the sake of convenience, the parties are referred to as plaintiff and defendants as per the ranking in the suit.

3. The plaintiff has filed a suit in O.S.No.50 of 2017 for recovery of money and the same was allowed. Thereafter, the plaintiff has filed E.P.No.31 of 2020. Pending EP the plaintiff died on 05.08.2020. He was not having any legal heir. However, the present proposed petitioners claiming that a Will, dated 17.08.2016 was executed by the deceased plaintiff and through the said Will they claim right over the estate of the plaintiff. Therefore, the proposed petitioners had filed E.A.No.1 of 2021 to grant permission to continue the litigation in EP by



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considering them as legal heirs of the deceased plaintiff. However, the Court below while considering the EA held that the proposed petitioners have not taken any steps to file an impleading petition inspite of sufficient time given by the Court. But the contention of the proposed petitioners is that they had filed the Execution Application to grant permission to contest the case as legal heirs of the deceased plaintiff and continue the litigation in Execution Petition and hence the impugned order passed in the Execution Application is erroneous and non-application of mind.

4. It is seen that the plaintiff Venugopal died issueless and the proposed petitioners claiming rights through the Will, hence the proposed petitioners had sought permission to continue the execution petition based on the Will. But the said EA was dismissed since the proposed petitioners had not filed petition to implead themselves as legal heirs.



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5. When the EA itself is filed based on the rights granted under the Will, then the proposed petitioners ought to be considered as legal heirs of the deceased plaintiff, consequently permission ought to be granted to continue the litigation. As of now the Will is not questioned or challenged by anybody. Further the respondent herein is bound to pay the amount to the deceased plaintiff and he cannot object for the rights claimed by the proposed petitioners. If the EA is allowed the respondent herein would not be prejudiced. If there is rival claim, it will be only against the proposed petitioners and in such circumstances the proposed petitioners would be liable for such rival claim and not the respondent herein. Therefore, the proposed petitioners shall be directed to file an indemnity bond with an undertaking that if there is any rival claim from any third party, then the proposed petitioners are liable to pay the same. And the respondent shall not be made liable for the said claim.

6. Accordingly, this Civil Revision Petition is allowed and the impugned Fair and Decretal order passed in E.A.No.01 of 2021 in E.P.No.31 of 2020 in O.S.No.50 of 2017 dated 13.06.2022 on the file of the Principal Sub



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Court, Theni, Theni District, is hereby set aside. The proposed petitioners are directed to file an indemnity bond with an undertaking that if there is any rival claim from any third party, then the proposed petitioners are liable to pay the same and they are undertaking to pay the same. And the respondent shall not be made liable for the said claim. The Learned Principal Sub Judge, Theni, Theni District, is directed to implead the proposed petitioners based on the Will dated 17.08.2016 and further directed to take E.P. No.31 of 2020 on file and proceed further. No Costs.

24.10.2024

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

To

1. The Principal Sub Court, Theni,
Theni District.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.R.P(MD)No.1881 of 2022

24.10.2024