



C.R.P.(PD)(MD).No.1591 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.1591 of 2018

and

C.M.P.No.6957 of 2018

K.Balasubramanian

... Petitioner/Petitioner/Plaintiff

vs

1.Palaniammal

Ramasamy Thevar(Died)

2.Muppidathi Ammal

3.Valliyammal

Kandhasamy Thevar(Died)

4.Marimuthu Pandiyan

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the Fair and Decretal order dated 20.06.2018 passed in I.A.No.743 of 2016 in O.S.No.21 of 2011 on the file of the Principal District Munsif Court, Ambasamudram.



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For Petitioner : Mr.R.J.Karthick
For R1 : Mr.H.Arumugam
For R2 to R4 : No appearance

ORDER

The present Civil Revision Petition has been filed by the plaintiff in O.S.No.21 of 2011 on the file of Principal District Munsif Court, Ambasamudram.

2. The present suit has been filed for the relief of declaration that the preliminary decree dated 10.01.2001 passed in O.S.14 of 1993 on the file of Sub Court, Ambasamudram is not binding upon the plaintiff.

3. According to the plaintiff, the suit schedule properties originally belonged to one Shanmugasundarathammal. She had executed a Will on 10.05.1984 in favour of the second and sixth defendant therein. In turn, the second and sixth defendant have executed a sale deed in favour of the plaintiff on 24.10.1994.

4. Suppressing the said fact, the first defendant herein had filed O.S.No.14 of 1993 for partition. Preliminary decree came to be passed on



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10.01.2001. Challenging the said preliminary decree, A.S.No.247 of 2002, was filed by the second defendant herein and the same was also dismissed on 31.07.2007. Further, it is brought to the notice of the Court that the plaintiff in O.S.No.14 of 1993, filed I.A.No.378 of 2004 for passing final decree and the same is pending.

5. It is the case of the defendants that the suit schedule properties did not belong to one Shanmugasundarathammal. But, it belongs to the father of Shanmugasundarathammal, namely, Muthupandi. Therefore, Shanmugasundarathammal had not executed a Will dated 10.05.1984 and it was contended that it was a forged document. Therefore, the plaintiff herein had filed I.A.No.743 of 2016, to mark a xerox copy of the said Will on the ground that when they purchased the property, the original Will was not handed over to vendors, namely defendants 2 and 6 on the ground that some other properties are also included in the said document.

6. The trial Court had dismissed the said application on the ground that though notice was issued to the second defendant under Section 66 of Indian Evidence Act, he had appeared before the Court and filed a Memo to



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the effect that he is not having the custody of the said documents. Therefore, Section 65-A has not been satisfied. Challenging the same, the present Civil Revision Petition has been filed.

7. According to the learned counsel appearing for the revision petitioner, the family members of Shanmugasundarathammal have colluded together and even after having the custody of original Will dated 10.05.1984, they refused to produce before the Court. Hence, he contended that he had already marked the certified copy of the Will as Ex.A3 and unless the xerox copy of the Will is marked, it would be difficult for him to prove the execution of the said Will.

8. Per contra, the learned counsel appearing for the first respondent would contend that the present plaintiff is a *pendente lite* purchaser and therefore, the sale deed is subject to the result of the said suit. Therefore, the present suit itself is not maintainable. He further contended that a xerox copy of the Will cannot be marked. Hence, he prayed to sustain the order passed by the trial Court.



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9. This Court considered the submissions made on either side and perused the materials available on record.

10. The plaintiff in the present suit is attempting to mark a xerox copy of a registered Will dated 10.05.1984 on the ground that the original Will is sustained by his vendors, namely, the second and sixth defendants in the present suit.

11. It could be seen from the records that the plaintiff has issued a notice under Section 66 of the Indian Evidence Act to the second defendant alone and he reported before the Court that he is not having the custody of the original Will.

12. As per Section 65 of the Indian Evidence Act, unless notice is issued under Section 66, the person intending to produce the secondary evidence will not be entitled to file the secondary evidence. In the present case, notice has not been issued to the plaintiff's co-vendor namely, sixth defendant in the present suit. Therefore, the conditions imposed under Section 65-A have not been satisfied with.



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13. In those circumstances, this Court does not find any illegality or infirmity in the order passed by the trial Court, dismissing the application for receiving the xerox copy of the Will dated 10.05.1984. The plaintiff is at liberty to issue a notice under Section 66 of the Indian Evidence Act to the sixth defendant and thereafter, proceed in accordance with law.

14. With the said observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2024

Internet: Yes/No

Index: Yes/No

RJR

To

The Principal District Munsif Court, Ambasamudram.



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R.VIJAYAKUMAR, J.

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