



C.R.P.(MD)No.2249 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.12.2023

Pronounced on : 01.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2249 of 2022
and
C.M.P.(MD)No.10561 of 2022

1.S.Sampth

2.S.Naveen Kumar : Petitioners/Petitioners/Plaintiff

Vs.

1.M.Indrani

2.K.K.Murugesan : Respondents/ Respondents/Defendants

Prayer : This Civil Revision Petition filed under Section 227 of C.P.C., against the fair and decreetal order made in I.A.No.426 of 2019 in O.S. No.490 of 2015 on the file of the Additional District Munsif, Karur, dated 07.06.2022.

For Petitioners : Mr.S.Gokulraj

For Respondents : Mr.J.Joshuva



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.426 of 2019 in O.S.No.490 of 2015, dated 07.06.2022 on the file of the Additional District Munsif Court, Karur, dismissing the petition filed under Section 152 of the Code of Civil Procedure.

2. The revision petitioners as plaintiffs have filed the suit in O.S.No.490 of 2015 against the respondents claiming the reliefs of declaration that the plaintiffs are the absolute and exclusive owners of the suit property and for permanent injunction restraining the defendants and their men from in any manner creating any encumbrance over the suit property and also permanent injunction restraining the defendants and their men from in any manner disturbing the plaintiffs' peaceful possession and enjoyment of the suit property.

3. The plaintiffs have claimed ownership over the suit properties on the basis of Will dated 05.04.2004 alleged to have executed by the deceased Chellammal. The defendants have filed their written statement mainly contending that the Will alleged to have been executed by the



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Chellammal dated 05.04.2004 is a forged, fabricated, created and concocted by the plaintiffs.

4. Pending suit, the defendants have taken steps to send the disputed Will along with settlement deed, dated 13.05.2002 containing the thumb impression of the deceased Chellammal for comparison and for getting a report. The defendants have filed a petition in I.A.No.431 of 2018 to send the signature and thumb impression register relating to the settlement deed dated 13.05.2002 and registered under Book No.I in Doc.No.1955/2002 of Karur West Sub Registrar Officer executed by Sellammal in favour of M.Indirani/first defendant and the petition was ordered to be allowed.

5. It is not in dispute that originally the documents were sent to the Forensic Laboratory, Madurai, but they have returned the same stating that the Forensic Laboratory at Madurai was not having necessary facilities and directed for sending the same to the Forensic Laboratory, Chennai and as per their instructions, the documents were sent to the Forensic Laboratory, Chennai for comparison and report and that the report is awaited.



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6. Meanwhile, the plaintiffs have filed the above application alleging that they were having the partition document dated 22.04.1968 entered into between the deceased Chellammal and family members; that though the plaintiffs have produced the said document along with memo, the learned trial Judge has omitted to include the said document while sending the documents for comparison and that therefore, he was constrained to file the above application to send the partition document dated 22.04.1968 also for comparison and report.

7. The respondents 1 and 2 have filed counter statement raising serious objection, mainly contending that the plaintiffs aggrieved by the orders of trial Court ought to have preferred the revision, that the above application filed under Section 152 C.P.C., is legally not maintainable and that therefore, the petition is liable to be dismissed. The learned trial Judge, after enquiry, has passed the impugned order, dated 07.06.2022, dismissing the said petition. Aggrieved by the order of dismissal, the plaintiffs have preferred the present revision.



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8. The learned counsel for the respondents would submit that the revision petitioners have specifically stated that they are not having any objections to send the settlement deed and the disputed Will for comparison and for getting opinion; that the plaintiffs have nowhere stated about the availability of the partition document at that time or even thereafter and the above petition has been filed only to protract the proceedings and that therefore, the trial Court has rightly dismissed the petition.

9. It is not in dispute that the revision petitioners/plaintiffs have endorsed no objections for sending the disputed document along with settlement deed, dated 13.05.2002 for comparison and report.

10. The learned counsel for the petitioners would submit that when the earlier application was pending, the plaintiff's have filed a memo along with copy of said document requesting the Court to send the said document also for comparison, but, the trial Court, without considering the memo and the document filed along with the same, has passed the impugned order.



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11. It is evident from the copy of the 'B' diary extract produced by the revision petitioners that the revision petitioners have filed the memo along with the partition deed, dated 22.04.1968 as early as on 26.06.2018, when the petition in I.A.No.426 of 2019 was pending and that on 19.11.2018 since the plaintiffs' counsel has made an endorsement that the petition may be allowed, the applications in I.A.No.431 of 2018 and I.A.No.621 of 2018 were ordered to be allowed. But as rightly contended by the learned counsel for the revision petitioners, the trial Court while passing the above orders has not taken into consideration the memo filed by the plaintiffs along with copy of the partition document dated 22.04.1968. The plaintiffs have referred the said document as a partition deed, dated 22.04.1968, but it is evident from the additional typed set that the said document is a sale deed dated 22.04.1968.

12. The learned counsel for the petitioners would submit that since they are disputing the genuineness of the settlement deed, they were forced to file the said 1968 document, which contains the thumb impression of the deceased Chellammal. But, as rightly contended by the learned counsel for the respondents, such a stand was not taken before the



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trial Court, when the earlier application was taken up for hearing and only on the basis that the plaintiffs have stated no objections, that petition was ordered to be allowed.

13. Whatever it is, according to the plaintiffs, one other registered document containing thumb impression of the deceased Chellammal is available and hence, the same has also to be sent for comparison. As rightly contended by the learned counsel for the revision petitioners, no prejudice would be caused to the other side, if the said document is also sent to the Forensic Laboratory for comparison.

14. The next objection is that the petition filed under Section 152 of C.P.C., is legally not maintainable. It is settled law that that mere quoting a wrong provision of law does not disentitle any party from claiming the relief and does not prevent the Court from granting the relief. No doubt, the revision petitioners have invoked Section 152 of C.P.C., but, as rightly contended by the learned counsel for the respondents, the same cannot be applied to the case on hand. But the fact remains that the Court has already sent the disputed Will and the settlement deed and that since the report is



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not yet received, there is absolutely no problem for sending the document dated 22.04.1968 also for comparison.

15. Considering the above, this Court is inclined to interfere with the impugned order and the trial Court is to be directed to send the original sale deed, dated 22.04.1968 to the Forensic Laboratory, Chennai to compare the disputed document along with the document already sent. The revision petitioners are directed to bear the additional expenses. Since the suit is pending from 2015 onwards, the trial Court is directed to complete the trial and dispose of the suit within a period of two months from the date of receipt of the report from the Forensic Laboratory, Chennai.

16. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The Additional District Munsif,
Karur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.



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das

Pre-delivery order made in
C.R.P.(MD)No.2249 of 2022
and
C.M.P.(MD)No.10561 of 2022

Dated : 01.03.2024