



C.R.P.No.1258 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.1258 of 2024

C.M.P.No.6640 of 2024

Dayanithi

...Petitioner

Vs

1.Kalaimani

2.Arulazhi

3.Mathivanan

4.Anjugam

...Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the order dated 05.01.2024 passed by the learned Principal District Judge, Puducherry, in I.A. No.901 of 2021 in O.S.No.46 of 2013 and allow this Civil Revision Petition.

For Petitioner : Mr.R.Thiagarajan
For R1 : Mr.K.S.Karthik Raja



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ORDER

Challenging the order passed by the learned Principal District Judge, Puducherry, in I.A.No.901 of 2021 in O.S.No.46 of 2013 the first defendant is before this Court.

2.In a suit for partition the defence taken was that Govindasamy @ Pugazhendhi, the father of the plaintiffs and defendants had executed a Will dated 04.08.2010 registered on 05.08.2010 as Document No.225/2010, bequeathing the first item of property in favour of the first defendant. The execution of the Will was very much within the knowledge of all the parties concerned. Besides this, the defendants had raised other defences.

3.The plaintiffs had thereafter filed I.A.No.901 of 2021 seeking to amend the plaint and the details of the amendment were given in the petition attached to the said affidavit. In the affidavit filed in support of this petition, the plaintiffs would submit that at the time of cross examination of DW1 he had disputed the signature of his father in the alleged Will. The defendant had admitted that there was a difference in



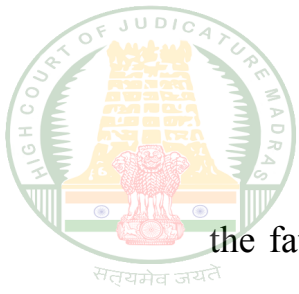
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the signature of the testator in each page of Ex.B1 and Will. The plaintiff's contention is that it is only during the cross examination of DW1 to D.W.3 they had come to know that the relief to declare the Will as null and void had not been taken by them and therefore they have come forward with the petition in question.

4.The defendants would submit that the existence or otherwise of the Will had been brought to the notice of the plaintiffs as early as at the time of the filing of the written statement, which was on 17.06.2013 which was also reiterated during the oral evidence. The contention that they had come to know about the original Will after the evidence was absolutely incorrect. They were aware of the same even before the suit for partition. The defendants had taken a stand that the amendment would result in changing the basic structure of the suit.

5.Heard Mr.R.Thiagarajan, learned counsel for petitioner and Mr.K.S.Karthik Raja, the learned counsel for R1 and perused the records.

6.Admittedly, reference has been made to the Will and the plea regarding the Will has been taken as a defence to the plaintiff's claim that



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the father Govindasamy @ Pugalendhi had died intestate and therefore,

the plaintiffs are entitled to share in the property. The

plaintiffs/respondents had kept quiet all this while and after D.W.1's

cross examination was over, this petition for amendment is taken out.

Having kept quiet for over eleven years the application has been filed

belatedly. The concept of "Liberal Approach" cannot be stretched to

accommodate cases where the litigant has procrastinated. That apart, in

the case on hand it is for the defendant/petitioner to prove the Will, then

the succession will be as per the Will. In case he is unable to prove the

Will then the plaintiff will only be entitled to a share in the property. The

plaintiff is attempting to protract the proceedings and the trial Court has

mechanically allowed the application, the same cannot be sustained.

Therefore, order dated 05.01.2024 in I.A. No.901 of 2021 in O.S.No.46

of 2013 is set aside. Accordingly, the Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

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To

The Principal District Judge, Puducherry.



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