



WEB COPY



C.R.P. (PD) .No.5283 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5283 of 2024

and

C.M.P.No.29493 of 2024

T.Sivaguru

.. Petitioner

Vs.

Arulselvam

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order made in I.A.No.465 of 2023 in O.S.No.2 of 2020 dated 19.12.2023 on the file of the Additional District Munsif, Cuddalore.

For Petitioner : Mr.P.K.Harinath Babu

For Respondent : Mr.D.Ravichander



C.R.P. (PD) .No.5283 of 2024

WEB COPY

ORDER

This civil revision petition arises against the order passed by the learned Additional District Munsif at Cuddalore in I.A.No.465 of 2023 in O.S.No.2 of 2020 dated 19.12.2023.

2.The civil revision petitioner is the 3rd defendant in the suit.

3.O.S.No.2 of 2020 is a suit for the following reliefs:

- (i)To declare that the plaintiff as the legal heir of deceased T.Dhandapani, S/o.Thangavel,*
- (ii)To pass a decree of mandatory injunction directing the 5th defendant to issue the legal heir certificate to the plaintiff that he is the legal heir of deceased T.Dhandapani, S/o.Thangavel.*

4.The case of the plaintiff is that on 18.12.1997, one Dhandapani, S/o.Thangavel, had adopted the plaintiff as his son. He had also made him as a nominee in certain records. The said Dhandapani passed away on



C.R.P. (PD) .No.5283 of 2024

16.11.2019. He died intestate. Therefore, the plaintiff had applied for legal heirship certificate, which was not issued to him. This was on account of the fact that the defendants 1 to 3 were the class-II heirs of the said Dhandapani, creating a cloud over his title. Hence, the suit for the aforesaid reliefs.

5.The 3rd defendant filed a detailed written statement. He pleaded that alleged adoption of the plaintiff is a false one. He added that Dhandapani had executed a “WILL” when he was in a sound disposing state of mind on 12.09.2019. By virtue of this “WILL”, the 3rd defendant claimed that he had succeeded to the estate.

6.On these pleadings, issues were framed and the parties were pushed to trial. At that stage, the plaintiff filed an application in I.A.No.465 of 2023 invoking Section 151 of Code of Civil Procedure. He submitted as the 3rd defendant has pleaded title by virtue of the “WILL”, it is his duty to prove the “WILL” first. Thereafter, he would enter the witness box.

7.This application was opposed by the 3rd defendant. The 3rd defendant



C.R.P. (PD) .No.5283 of 2024

pleaded that unless and until the adoption is proved, the plaintiff will not get a right to succeed to the estate. He pointed out that the plaintiff could win over the witnesses to the “WILL”, creating disadvantage to the case of the 3rd defendant.

8.The learned Trial Judge, on consideration of the affidavit and counter, came to a conclusion that the 3rd defendant claiming a right through the “WILL”, has to prove the “WILL” first and only thereafter, the plaintiff has to enter the witness box and prove the adoption. Aggrieved by the same, the present civil revision petition.

9.I heard Mr.P.K.Harinath Babu for the civil revision petitioner and Mr.D.Ravichander for the respondent.

10.The learned counsel reiterated the contentions that were placed before the Court below.

11.I have carefully considered the submissions and gone through the



impugned order.

WEB COPY

12.The normal rule in terms of Order XVIII is that the plaintiff has the right to begin. However, power is retained by the Court to direct the defendant to enter the witness box first, if certain facts have to be proved by the defendant as a condition precedent to continue with the defence in the suit. To give an example, if the relationship between the parties is not in dispute and a suit for partition is filed between the siblings and one of the siblings projects a “WILL”, then the Court can direct the propounder of the “WILL” to enter the witness box first and prove the same. This is because, in case the “WILL” is not proved and the relationship being admitted, it becomes an easy task for the Court to decide the suit. This principle however cannot be extended to facts as in the present case.

13.It is not in dispute that defendants 1 to 3 are class-II heirs of the deceased Dhandapani. The plaintiff is projecting the adoption for the purpose of disturbing this natural course of succession. Unless and until adoption is proved, the question of the 3rd defendant proving the “WILL” does not arise.



C.R.P. (PD) .No.5283 of 2024

The burden is heavy on the plaintiff to prove adoption. Unless and until this burden is discharged, the turn of the defendant does not arise. This is because, in case adoption fails, the defendant need not even enter the witness box to project his case. This is because, the “WILL” interferes with the right of succession amongst the legal heirs of Dhandapani. The plaintiff certainly is not a legal heir of Dhandapani, either by virtue of class-I or class-II, unless and until the adoption stands scrutiny. This is certainly, not a case, where the defendant has to prove his case first and then the turn of the plaintiff will arrive.

14. In the light of the above discussion, the Civil Revision Petition is allowed. The order passed by the learned Additional District Munsif, Cuddalore, in I.A.No.465 of 2023 in O.S.No.2 of 2020 dated 19.12.2023, is set aside. The plaintiff shall enter the witness box first and thereafter it shall be the turn of the defendants, if they so desire.

15. At this stage, Mr.D.Ravichander states as the evidence of 3rd defendant was closed, he has filed applications to reopen and recall the



C.R.P. (PD) .No.5283 of 2024

proceedings. The 3rd defendant had entered the witness box as D.W.1 pursuant to the impugned order. As the impugned order is being set aside, the applications filed to reopen and recall have become infructuous. They shall be closed by the learned Judge after recording the present order. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.01.2025

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Additional District Munsif,
Cuddalore.



WEB COPY



C.R.P. (PD) .No.5283 of 2024

V.LAKSHMINARAYANAN, J.

krk

C.R.P.(PD).No.5283 of 2024

23.01.2025