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C.R.P.(PD)No.5208 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.5208 of 2024
and C.M.P.No.29135 of 2024

1. A.Venkatachalam
2. V.Revathi

.. Petitioners

Vs

1.Yagna Prabha
2.Mariappan
3.Sathyapriyan
4.Sivagami
5.Abu Sali
6.Riyza

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.08.2024 made in I.A.No.4 of 2023 in O.S.No.179 of 2016 on the file of the learned Subordinate Judge at Pollachi.

For Petitioners : Mr.Sriram
for Mr.M.N.Balakrishnan

ORDER



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This civil revision petition is at the instance of the defendants

5 & 6.

2. The 1st respondent is the plaintiff. O.S.No.179 of 2016 is a suit for the following reliefs:

“(i) To declare that the forged settlement deed registered in favour of the 6th defendant executed by 5th defendant through forged “WILL” is null and void;

(ii) To pass a preliminary decree dividing the suit property into 2 equal shares by metes and bounds and allot such 1/6th share to the plaintiff and put her in possession thereof by appointing a Commissioner or otherwise;

(This prayer is inserted as per I.A.No.03/2022 dated 27.01.2023 it is amended in the plaint)

(iii) To pass an amount of Rs.833/- (1/6th share) per month of future damages in total one month value of Rs.5,000/- from the year May 2012 to May 2016, under Section 20(12) of C.P.C. 1908.

(This prayer is inserted as per I.A.No.03/2022 dated 27.01.2023 it is amended in the plaint)

(iv) To grant permanent injunction restraining the defendants' 5 and 6 or their agents, men, servants or anybody acting under them or on behalf of them



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from alienating or encumbering the suit property to anybody.”

3. It is the case of the plaintiff that the suit property belonged to one Angamuthu, who passed away on 06.03.2011. Prior to the death of Angamuthu, his wife Tharasankari passed away on 11.02.2008. The plaintiff further states that on the death of Angamuthu, the plaintiff and defendants 1 to 4 succeeded to the estate as they are the class – II legal heirs of the said Angamuthu. When they attempted to collect rents over the property, they became aware that the 1st civil revision petitioner had set up a “WILL” in his favour and on the basis of the “WILL”, he had executed a settlement deed in favour of the 2nd civil revision petitioner, who is none else than his wife. Therefore, the suit is for the aforesaid reliefs.

4. A written statement was presented denying the relationship of the plaintiff with the said Angamuthu. The parties were pushed to trial. The plaintiff took out an application in I.A.No.4 of 2023 under Order XVIII Rule 3 of the Code of Civil Procedure. She wanted a direction from the Court to the effect that the defendants 5 & 6 would have to enter the witness box first and thereafter, take up their turn. This application



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was opposed by the defendants 5 & 6. The learned Trial Judge allowed the application. Hence, the revision.

5. I heard Mr.Sriram for Mr.M.N.Balakrishnan for the civil revision petitioners.

6. Mr.Sriram urged that the order of the Trial Court is erroneous, since under Order XVIII Rule 1 of the C.P.C., it is the duty of the plaintiff to enter the witness box first. This duty has, unfortunately, been forgotten by the learned Trial Judge and shifted to the defendants. Hence, he pleads that the order of the Trial Court requires interference.

7. I have carefully considered the submissions of Mr.Sriram and I have gone through the entire records.

8. There is no dispute that the property originally belonged to one Angamuthu. His wife had predeceased him. It is not in dispute that the said Angamuthu died on 06.03.2011. The defendants 5 & 6 claimed to have succeeded to the estate of Angamuthu on account of an alleged “WILL” said to have been executed by Angamuthu in favour of the 1st



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civil revision petitioner. The 2nd civil revision petitioner claims the property, as a settlement deed had been executed by the 1st civil revision petitioner in her favour.

9. If the “WILL” is proved, automatically the 1st civil revision petitioner will become the owner of the property and consequently, he will have the right to execute the settlement deed in favour of the 2nd civil revision petitioner. Therefore, it is essential that the “WILL”, alleged to have been executed by Angamuthu on 18.08.2006, should be proved. If that issue is proved, as pointed out above, the suit would necessarily have to fail. In case the “WILL” is not proved, then the issue of the plaintiff proving their relationship with the deceased Angamuthu would arise. Therefore, the direction of the learned Trial Judge that defendants 5 & 6 would have to begin first cannot be found fault with. The entire case revolves around the “WILL” dated 18.08.2006 and as the 1st civil revision petitioner/5th defendant is projecting the “WILL”, he is duty bound to prove the same as a propounder.

10. In any event, this is a discretionary order of the learned Trial Judge, which is not susceptible to be revised unless and until it is perverse or arbitrary. I do not find either wise in this case. The civil



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revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2025

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No

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To

The Subordinate Judge at Pollachi.

V. LAKSHMINARAYANAN,J.

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