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CRP NPD.No.5290 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.5290 of 2024

S.Rajeshwari Ammal [died]
A.Gowrishankar

. . . Petitioner

Versus

Sathish Vasani

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decretal Order dated 24.04.2024 made in E.A.No.3 of 2023 in E.P.No.555 of 2023 in RCOP No.1000 of 2016 on the file of the XIV Judge, Court of Small Causes Court, Chennai by allowing this Civil Revision Petition.

For petitioner : Mr.N.Manoharan

For respondent : Mr.Ranjith Kumar

ORDER



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Challenging the dismissal of the application filed by the petitioner to implead himself in the execution petition, the present revision petition has been filed.

2. Brief background of the case is as follows :

One Rajalakshmi Ammal, the landlady filed a petition for eviction of the respondent from the premises. The said rent control proceedings has been filed by the present revision petitioner as a Power of Attorney of the said Rajalakshmi Ammal. In fact, he himself has given evidence in the rent control proceedings. Eviction has been Ordered and the same has reached finality. It appears that during the pendency of the execution proceedings, the said Rajalakshmi Ammal died. Therefore, the petitioner has filed an application to implead himself on the basis of the unregistered Will said to have been executed by the Rajalakshmi Ammal on 20.11.2019. The said application has been dismissed on the ground that since probate has not been obtained in respect of the Will executed by the said Rajalakshmi Ammal. The said Order



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has been challenged in the present Civil Revision Petition.

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3. Mr.K.Ranjithkumar, learned counsel appeared for the caveator and took notice for the respondent. With the consent of both sides, this Civil Revision Petition has been taken up for disposal at the admission stage itself.

4. It is the contention of Mr.N.Manoharan, learned counsel appearing for the petitioner that what is required under Order XXII Rule 5 of Code of Civil Procedure is that it is only a summary enquiry to decide who is the legal representative in a rent control proceedings. When the legatee under the Will need to represent the estate of the deceased testator, he will be the legal representative within the meaning of Section 2 [11] of the Code of Civil Procedure. Therefore, only when a right is claimed on the property, the question of obtaining probate will arise. The petitioner has already initiated probate proceedings and the same is pending in O.P.No.792 of 2022 before this Court.



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5. Whereas, the learned counsel appearing for the respondent would submit that the present revision is not maintainable and there is suppression of material facts and Will has not been proved in the manner known to law. Therefore, the petitioner cannot be impleaded as a party.

6. I have perused entire materials. As far as the application to implead the petitioner as a legal representative is concerned, the petitioner has sought to be impleaded on the basis of the unregistered Will executed by the landlady. It is relevant to note that as far as eviction proceedings is concerned, if a person claims right on the basis of an unregistered Will, the Court has to conduct minimum enquiry to determine the question as to legal representative as per Order XXII Rule 5 of Code of Civil Procedure. Of Course, the right of the parties to claim right over the property is based on the probate proceedings. But at the same time, at this stage, the petitioner need not wait for the outcome of the probate proceedings.



7. In this regard, the Apex Court in the judgment in **Suresh Kumar Bansal Vs. Krishna Bansal and another** reported in **[[2010] 2 Supreme Court Cases 162]** has held as follows :

“In view of the aforesaid discussions and in view of the decision reported in **Jalai Suguna** (supra), we are also of the view that in an eviction proceeding, when a legatee under a Will intends to represent the interest of the estate of the deceased testator, he will be a legal representative within the meaning of **Section 2(11)** of Code of Civil Procedure, for which it is not necessary in an eviction suit to decide whether the Will on the basis of which substitution is sought for, is a suspicious one or that the parties must send the case back to the probate Court for a decision whether the Will was genuine or not.

For the reasons aforesaid, we are of the view that the High Court as well as the trial Court had acted illegally and with material irregularity in the exercise of their jurisdiction



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in not impleading not only the natural heirs and legal representatives of the deceased plaintiff but also the appellant who is claiming his impleadment on the basis of an alleged Will of the deceased plaintiff.”

As per the dictum of the Apex Court, the Order of the trial has to be set aside. The trial Court has to conduct minimum enquiry as per Order XXII Rule 5 of Code of Civil Procedure and ought to have allowed the application and wait for the outcome of the probate proceedings and grant time to the petitioner to expedite the probate proceedings, which is pending before this Court.

8. Accordingly, this Civil Revision Petition is allowed and the Order passed in E.A.No.3 of 2023 in E.P.No.555 of 2023 is set aside. The Execution Court is directed to conduct enquiry as per Order XXII Rule 5 of Code of Civil Procedure and pass Order on the same. If the executing Court, after conducting enquiry holds that the petitioner is the legal representative, the executing Court shall grant sufficient time to the petitioner to pursue the



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probate proceedings before this Court. Thereafter, pass final Orders in respect of delivery. No costs.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

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To,
The XIV Judge,
Court of Small Causes, Chennai.



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N. SATHISH KUMAR, J.

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