



CRP NPD.No.17 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Date : 15.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

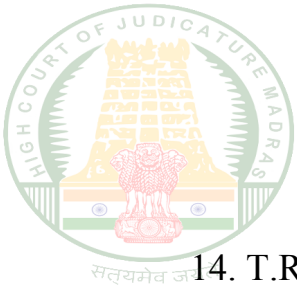
CRP [NPD] No.17 of 2019 & CMP.No.14611 of 2022

Kamalammal [died]
E.Rajendran

. . . Petitioner

Versus

Venu Reddy [died]
Thangavelu Reddy [died]
1. Ekambaram
 Marimuthu [died]
 Nainiammal [died]
 Subramaniam [died]
2. Andal
3. Ramamurthy [died]
4. Meenakshi
5. Kamatchi
6. Gangammal
7. Rajesh
8. Kalaivani
9. Malathi
10. R.Thulukanam
11. R.Sathyaseelan
12. Gowri
13. T.R.Vimala



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14. T.R.Thirugnanam

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[Respondents 10 to 14 are brought on record as LR's of the deceased R3 vide Court Order dated 04.10.20203 made in CMP.No. 11941 of 2021 in CRP.No.17 of 2019 by JSNPJ]

. . . Respondents

PRAYER : Petition filed under Section 115 of Code of Civil Procedure against the Order and decretal Order in E.A.No.61 of 2014 in E.P.No.6 of 2013 in in Tvl. DMC.O.S.No.33 of 1974 on the file of the District Munsif Court, Ponneri.

For petitioner : Mr.Aswin Prasad
for Mrs.V.Srimathi

For respondents : Mr.R.Krishnaswamy – R6 to R9

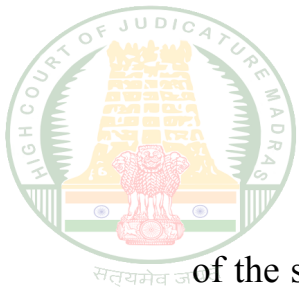
ORDER

Challenging the Order of the Executing Court, dismissing the application filed by the revision petitioner to implead him as legal representative of the deceased plaintiff to execute the decree passed in O.S.No.33 of 1974.



WEB COPY 2. Following facts are necessary for the disposal of this Civil Revision Petition :

One Kamallammal filed a suit in O.S.No.33 of 1974 for partition in respect of her son's share which has already been declared in O.S.No.348 of 1966. The suit filed by the said Kamallammal has been decreed in her favour for 1/6th share in the entire suit properties. The preliminary decree was challenged in A.S.No.1 of 79 on the file of the Sub Court, Thiruvavarur, which was also dismissed on 21.11.1979. As against the same, a second appeal has been filed in S.A.No.1564 of 1980 which has also been dismissed on 01.02.1988. Thereafter, the final decree proceedings has been initiated by the said Kamalammal and the final decree was passed on 24.04.2008 and the said Kamalammal appears to have died on 22.04.2008. After hearing the arguments and before the judgment, she appears to have died. Therefore, the decree and judgment is valid and this aspect has not been disputed by both sides. It is the contention of the learned counsel appearing for the revision petitioner that he is none other than the son of the third defendant in the suit. The said Kamalammal had executed a registered Will in his favour in respect



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of the suit property as early as on 09.07.1999 vide document No.22 of 1999 at the Sub Registrar Office. As a legatee, the petitioner had filed an application to file a Execution Petition to execute the decree. That application was opposed by the respondents disputing the Will that Will has not been proved in the manner known to law. The trial Court has dismissed the application mainly on the ground that none of the attesting witness to the Will has been examined. Challenging the same, the present Civil Revision Petition has been filed.

3. It is the contention of the learned counsel appearing for the petitioner is that one of the attesting witness has already died and steps have also been taken for the other attesting witness. Before an opportunity being given, the trial Court has dismissed the application.

4. Whereas, it is the contention of the learned counsel appearing for the respondent that though the second witness appeared before the trial Court, the petitioner has not examined him as a witness. Therefore, without examining any one of the attesting witness as required under the law, the Will cannot be admitted in evidence. Hence, opposed the revision.



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5. I have perused entire materials. An application has been taken out in the Execution Petition by the legatee of the registered Will. It is relevant to note that what is required by the legatee at this stage to maintain the Execution Petition is to atleast prove the Will by examining one of the attesting witness. The minimum enquiry required at this stage is only with regard to the validity of the document to make it admissible in evidence. While recognizing the legatee or legal representative in pending matters, what is required is only minimum enquiry with regard to the Will and not roving enquiry.

6. It is now stated that the application has been non suited mainly on the ground that none of the witness has been examined. Taking note of the submission of the learned counsel that one of the attesting witness is not alive and therefore, he has not been examined, as the Will is a registered one, this Court is of the view that one more opportunity has to be given to the petitioner, so that he can examine any one of the attesting witness or any one who has acquaintance with the signature of the witness to make the document admissible in evidence.



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7. In such view of the matter, this Civil Revision Petition is allowed and the Order of the Execution Court made in E.A.No.61 of 2013 in E.P.No.6 of 2023 is set aside and the matter is remanded back to the Execution Court for passing Orders afresh. No costs. Consequently, connected miscellaneous petition is closed. The petitioner is at liberty to prove the Will in the manner known to law. Thereafter, proceed the Execution Petition. The Execution Court shall expedite Execution proceedings and dispose the Execution Petition Expeditiously. It is made clear that to maintain the Execution Petition only a minimum enquiry is required and thereafter, if the Will has been challenged on any other ground, it is for the parties to raise all their legal defence before the Execution Court.

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Index : Yes / No

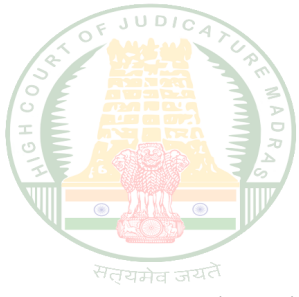
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Speaking/non speaking order

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The District Munsif,
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N. SATHISH KUMAR, J.

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