



C.R.P(MD)No.1244 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1244 of 2024

Angammal (Died) ... Plaintiff

Rajam @ Rajammal (Died) ... Petitioner

OM.Prakash ... Petitioner / Legal heir of Rajammal

Vs

Kasi Pandaram @ Kasirajan ... Respondent / Defendant

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C, to allow this Civil Revision Petition by setting aside the fair order and decretal order made in E.P.No.12 of 2020 in O.S.No.154 of 1995 dated 04.03.2024 on the file of the District Munsif Court, Thuraiyoor.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : No appearance



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ORDER

This Civil Revision Petition is filed to set aside the fair order and decretal order made in E.P.No.12 of 2020 in O.S.No.154 of 1995 dated 04.03.2024 on the file of the District Munsif Court, Thuraiyoor.

2. The facts in brief is that the suit in O.S.No.154 of 1995 was decreed on 22.06.1999 which was filed by the deceased Angammal, seeking the relief of permanent injunction, restraining the defendants not to interfere into the right of the poojariship for the period of eight days in a month and five days in a month through her husband and father. The suit was decreed as prayed for without cost. Against which the defendants filed appeal before the appellate Court in A.S.No.129 of 1999 before the Subordinate Court, Trichi. The appeal was filed by the first defendant. At that time Angammal was dead and legal representatives were brought on record. The appellate Court also concurred the judgment decree passed by the trial Court. There upon there was no second Appeal. Alleging that the injunction order was violated by the respondent E.P.No.12 of 2020 was filed by the revision petitioner with the following averments:



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i) The respondent violated the injunction order passed in the original suit, they must be punished for violating the injunction order. That was resisted by the respondent / first defendant stating that in the appeal suit, a compromise was reached between the parties. Moreover, it is only a suit for permanent injunction and decree was passed only in personam. Apart from that it is also contended that they have not violated the injunction order. After hearing both sides, the execution Court by order dated 04.03.2024, dismissed the petition observing that the second petitioner who is the revision petitioner herein has not established the Will executed by the main execution petitioner namely Rajam @ Rajammal who died after that. The Will dated 08.06.1996 was not established as per the law. So the revision petitioner namely Om Prakash has no right to prosecute the execution petition. Against which this revision petitioner is preferred.

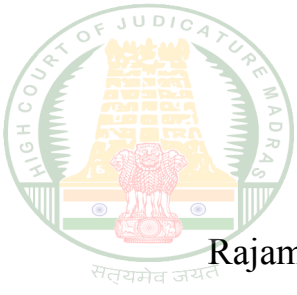
3. Eventhough learned counsel for the revision petitioner would submit that the validity of the Will was not challenged by the respondent in the counter, but the Court on its own has recorded such a finding that the Will was not proved. So according to him, the order passed by the



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execution Court is *per se* illegal. But perusal of the entire records shows that the original plaintiff namely Angammal died after the decree. Later her daughter namely Rajam @ Rajammal filed the main execution petition. Pending the execution petition, Rajam @ Rajammal died. So E.A.No.3 of 2022 was filed by Om prakash by virtue of the Will, he was brought on record as second petitioner. Now according to the execution Court since the Will has not been established or proved as per section 68 of the Indian evidence Act, he is not entitled to maintain the petition.

4. Eventhough it is submitted by the revision petitioner that the above said Will is not disputed by the respondent herein but as per Section 68 of the Indian Evidence Act, unless the Will is proved by examining any one of the contesting witness, no right can be claimed by anyone. Simply because the respondent has not denied or disputed the Will, the duty of the revision petitioner is not taken away. So the execution Court rightly came to the conclusion that the Will is not properly proved. Apart from that it is also seen that the right of the revision petitioner namely Om Prakash need not be a matter for consideration because the original cause of action arose when Rajam @



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Rajammal was alive. According to Rajam @ Rajammal, the respondent violated the injunction order. Whether the cause of action arose on that date is a matter for consideration. So that can be decided only on the basis of evidence. Om Prakash has not stated anything that his right was also violated by the respondent herein. That is only a secondary issue. No additional evidence was produced by Om Prakash stating that the above violation continues, even on the date of filing E.A.No.3 of 2022.

5. As mentioned above, we need not concentrate much upon the right of Om Prakash but it must be decided on the basis of the alleged cause of action alleged to have been taken place during the lifetime of Rajam @ Rajammal. In this regard, there is no evidence on both sides. For that purpose, I am of the considered view that the matter can be remitted back to the execution Court to decide the issue as to whether the violation really took place as contended by deceased Rajam @ Rajammal, for which evidence must be let in by this petitioner.



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6. With the above said, the dismissal order in E.P.No.12 of 2020 in O.S.No.154 of 1995 dated 04.03.2024 passed by the learned District Munsif, Thuraiyoor. is set aside. The matter is remitted back to the file of learned District Munsif, Thuraiyoor. However, liberty is granted to the petitioner herein namely OM Prakash to establish the Will as per law.

7. With this liberty, this Civil Revision Petition is allowed and the matter is remitted back. No costs.

07.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

- 1.The District Munsif Court, Thuraiyoor.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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ORDER
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