



C.R..P.(PD)(MD).No.695 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.695 of 2025

and

C.M.P(MD)No.3689 of 2025

Thangavelu

... Petitioner/Petitioner
Defendant

Vs.

Padmini

... Respondent/
Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.4 of 2024 in O.S.No.166 of 2010 on the file of the District Munsif Court, Aranthangi, dated 12.11.2024.

For Petitioner : Mr.R.Balakrishnan

ORDER

The defendant in O.S.No.166 of 2010 on the file of the District Munsif Court, Aranthangi, has filed the present Civil Revision Petition challenging the order passed in I.A.No.4 of 2024, wherein, the trial Court has dismissed the application filed by the defendant for reopening the suit.



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2. The above said suit has been filed by the respondent herein for the relief of declaration of title and permanent injunction. Though the defendant had remained *exparte*, the suit was dismissed by the trial Court. Challenging the same, the plaintiff had filed A.S.No.135 of 2017 before the Sub Court, Aranthangi. The learned Subordinate Judge was pleased to allow the appeal and remitted the matter back to the trial Court granting an opportunity to both the parties to let in evidence.

3. The petitioner/defendant herein contends that he claims right to the property on the basis of a Will dated 06.06.1996 said to have been executed by Kathayee in favour of himself. Pending suit, according to the defendant both the attesting witnesses had passed away and therefore, he has examined the son of one of the deceased to attesting witness. When the suit is posted for arguments, the defendant had filed the present application in I.A.No.4 of 2024 to examine the scribe of the Will, dated 06.06.1996. The trial Court has dismissed the said application. Challenging the same, the present Civil Revision Petition has been filed.



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4. According to the learned counsel appearing for the revision petitioner, since the other attesting witness is not alive, he would like to examine the scribe in order to prove the Will dated 06.06.1996.

5. Heard the learned counsel appearing for the revision petitioner and perused the material records.

6. As per the case of the defendant one of the attesting witnesses has passed away and his son has already examined as D.W.1. The other attesting witness, though he is alive, he is bed ridden and he is not in a position to depose before the Court. In such circumstances, the defendant has sought permission of the Court to examine the scribe.

7. As per Sections 68 and 69 of the Indian Evidence Act, only the attestors have to be examined or any person who is acquainted with the signature of the attestor has to be examined to prove the Will and the scribe cannot depose as an attesting witness. In such circumstances, the trial Court has rightly dismissed the application, which was filed when the suit was posted for arguments. There are no merits in this Civil Revision Petition.



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8. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The District Munsif Court,
Aranthangi.
2. The Sub Court,
Aranthangi.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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