
(2006) 02 MAD CK 0140

In the Madras High Court

Case No : C.R.P. (PD) No. 544 of 2005 and C.M.P. No. 5640 of 2005

Rathinambal

APPELLANT

Vs

P. Rajasekaran, P. Dhinesh Kumar and P. Jayalakshmi

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14(1), Order 7 Rule 14(2), Order 7 Rule 15

Citation : (2006) 2 CTC 177

Hon'ble Judges : AR. Ramalingam, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; A. Thiagarajan, for the Respondent

Final Decision : Dismissed

Judgement

AR. Ramalingam, J.—Aggrieved against the order of dismissal passed in I.A. No. 1726 of 2004 in O.S. No. 158 of 2004 on the file of the District Munsif Court, Kangayam by the said District Munsif on 28.2.2005, the petitioner/plaintiff has filed this revision.

2. Brief facts leading to filing of this civil revision petition are to the effect that the said suit was filed for declaration of title in respect of plaint A schedule properties and for partition of plaint B schedule properties wholly based upon a registered Will said to have been executed by the mother of the plaintiff and defendants viz. Valliathal on 13.11.1995 and that while PW1 was examined in part, the plaintiff wanted to prove the Will by examining the attestors after issuing notice to the defendants to produce the original Will into Court and she filed the present I.A. for permission of the District Munsif to mark the xerox copy of the said Will for the purpose of proving the signature of the Testatrix as well as attestors by examining the attestors of the Will on the ground that original Will has been taken away by defendants 1 and 2 at the time of illness and last days of the Testatrix and it came to the knowledge of the plaintiff subsequently

and that further inasmuch as the plaintiff has filed registration copy of the original Will, permission can be granted by the District Munsif to mark the xerox copy now produced at the time of filing of the said I.A. and allow her to examine the attestors, etc.

3. On the other hand, the said I.A. has been hotly contested by defendants 1 and 2 contending that there is no such registered Will executed by their mother as claimed by the plaintiff and if at all there is any Will, it should be a forged and concocted one and that the same Testatrix has executed another Will in the year 2000 in favour of defendants 1 and 2 and that is the last Will of the Testatrix and that by way of after thought only to the convenience of the plaintiff, she has chosen to say as if there was a original Will and only xerox copy was given to the plaintiff and third defendant by the Testatrix and the original Will has been taken away by defendants 1 and 2 without their knowledge and that too without making specific pleading in the plaint in this respect and also without producing xerox copy also along with the plaint and that there is no prayer by the plaintiff to send for the concerned register from the concerned Sub Registrar's Office and examine the attestors to prove the signature of the Testatrix as well as the attestors by making use of the sent-for document and that xerox copy, as such, without specific pleading and non disclosure of the same earlier cannot be admitted as a genuine one and consequently, the petition is liable to be dismissed.

4. I have heard the arguments of the counsels appearing for either side in the light of the order passed by the District Munsif in the above said I.A. concerned with this civil revision petition. The following important aspects have to be considered for the purpose of disposing the civil revision petition. The plaintiff, though, now, belatedly comes forward with the version as if in the year 1995 itself, her mother executed a registered Will and only furnished xerox copies to the plaintiff and third defendant and retained original of the Will with her, this material fact has not been disclosed by way of pleading in the plaint. On the other hand, even the plaintiff has not chosen to explain as to why registration copy alone is available and as to why xerox copy is not filed in the list of documents furnished along with the plaint and instead the list goes to show as if the plaintiff is relying upon the Will executed by Valliathal in favour of the plaintiff and third defendant as document No. 2. This failure on the part of the plaintiff is not in consonance with Order 7 Rule 14(1) and (2) and particularly Rule 15 CPC. In other words, the plaintiff has not chosen even to file a statement that the original is not with her and it is with the defendants.

5. Moreover, the District Munsif has categorically observed in his order that the attestors to the said Will viz., one P.Palanisamy and A.Subramaniam are also figuring as identifying witnesses before the Sub Registrar and the concerned Register can be summoned from the Sub Registrar's office and examine those attestors for the purpose of proving the signature of the Testatrix by the plaintiff and for this course, it appears that the defendants have no serious objection.

Instead of resorting to adopt such a course, the plaintiff appears to be insisting for marking of xerox copy. In such circumstances only, the District Munsif has chosen to refuse to grant permission for letting secondary evidence by marking xerox copy. Therefore, for letting secondary evidence in respect of a Will, there should be permission of the court concerned in the suitable and sufficient circumstances of the case. But, the District Munsif has refused to entertain the petition filed by the plaintiff for more than one reason.

6. Therefore, I do not find any infirmity or illegality in the order passed by the District Munsif, Kangayam and consequently, this revision petition has no merits and the same deserves to be dismissed and is accordingly, dismissed. No costs. The connected C.M.P is also dismissed.