
(2010) 01 MAD CK 0136

Madras High Court (Madurai Bench)

Case No: C.R.P. (Pd) (Md) No. 1859 of 2009 and M.P. (Md) No. 1 of 2009

Kannan

APPELLANT

Vs

G.T. Mani and Others

RESPONDENT

Date of Decision: Jan. 4, 2010

Citation: (2010) 3 LW 129

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: N. Tamilmani, for the Appellant; R. Ramadurai and K. Nallathambi, Government Ad.
for R7 to R9, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.S. Ramanathan, J.

The Plaintiff in O.S. No. 65 of 2001 and O.S. No. 214 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Vedasandur, is the revision Petitioner in C.R.P(PD)(MD) No. 1859 of 2009 and C.R.P(PD)(MD) No. 1860 of 2009. In both the revisions, the revision Petitioners are one and the same.

2. In O.S. No. 65 of 2001, the Plaintiff sought for declaration that he is the owner of the suit property and for injunction restraining the Defendants from interfering with the possession and enjoyment of the property. The case of the Plaintiff in O.S. No. 65 of 2001 was that the properties belonged to his father late Govindasamy Reddiar and he died intestate and he is the only legal heir and the Defendants are not the legal heirs of his father and therefore, he filed a suit for declaration. In O.S. No. 214 of 2004, the Plaintiff prayed for declaration that the legal heirship certificate issued to the 9th Defendant is null and void and for consequential injunction restraining the Respondents 1, 2 and 4 to 6 from claiming the legal heirship certificate in respect of the deceased Govindasamy Reddiar. In both the suits, the Defendants filed a written statement and in O.S. No. 65 of 2001, the Defendants filed a written statement that the deceased

Govindasamy Reddiar married one Lakshmi Am-mal in the year 1946 and through Lakshmi Ammal, the Defendants 1 and 2 were born and the deceased Govindasamy Reddiar executed a Will dated 15-06-1994 by which he bequeathed the properties in favour of the Defendants in O.S. No. 65 of 2001 and the Will was executed by him while he was in sound state of mind. In O.S. No. 214 of 2004, it was contended that the deceased Govindasamy Reddiar executed a will, but the date of will was mentioned as 9-06-1994.

3. Joint trial was ordered in both the suits and the Plaintiff's side evidence was over and two witnesses were examined on the side of the Defendants and at that stage, the Defendants have filed I.A. No. 918 of 2008 in O.S. No. 65 of 2001 and I.A. No. 954 of 2008 in O.S. No. 214 of 2004 for amending the written statement to the effect that the late Govindasamy Reddiar executed a Will dated 09-06-1994 and not the Will dated 15-06-1994 or 19-06-1994 as stated in O.S. No. 65 of 2001 and O.S. No. 214 of 2004 respectively and it was wrongly mentioned in those written statement and as per the said Will dated 09-06-1994, the properties were bequeathed in favour of the Defendants 1, 3 and 4 in O.S. No. 65 of 2001, and Defendants 4 to 6 in O.S. No. 214 of 2004. That application for amendment was allowed by the learned District Munsif and aggrieved by the same, these revisions are filed by the Plaintiffs.

4. It is contended by the learned Counsel for the revision Petitioners that after the commencement of the trial and after the examination of two witnesses on the side of the Defendants, the amendment applications were filed for changing the date of Will and also the legatees under the will and by virtue of the amending they want to substitute a new will in the original statement and that would prejudice the Plaintiffs and therefore, the amendment should not be allowed.

5. Per contra, the learned Counsel for the Respondents submitted that the lower Court has rightly held that by allowing the amendment, the scope of the suit is not going to be altered and there is no change of evidence and the Plaintiff's right to challenge the will, is not going to be affected by allowing the application and therefore, there is no need to interfere with the order passed by the lower Court.

6. I have given anxious consideration to the submissions made by both the counsels.

7. It is true that by allowing the amendment, the scope of the suit is not going to be altered, but that is not the only criteria for allowing the amendment. The Defendants have proceeded on the basis that the late Govindasamy Reddiar executed a will dated 15-06-1994 in the suit in O.S. No. 65 of 2001 and in the suit in O.S. No. 214 of 2004 they have proceeded on the basis of that the late Govindasamy Reddiar executed a will dated 15.06.1994. In both the suits, the Defendants further stated that four legatees were mentioned in the will dated 15-06-1994 and 19.06.1994, but by the amendment, they have sought to substitute the date of the will from 15-06-1994 and 19-06-1994 to 09-06-1994 and they also wanted to change the number of legatees from 4 to 3. Further,

by virtue of the amendment, the Defendants attempted to erase the will dated 15-06-1994 and 19-06-1994 as stated by them in the original written statement and substitute another will in that place by saying that the late Govindasamy Reddiar executed a will dated 09-06-1994. Therefore, according to me, by virtue of the amendment, valuable right accrued to the Plaintiff has been taken away by introducing the will dated 09-06-1994. Further, it is not a case of typographical error, because not only the date is altered but the number of legatees are also altered. Further, the third Defendant was examined as one of the Defendants' witness and he also admitted during the evidence that the will is dated 15-06-1994. Therefore, the obvious reason is that the Defendants want to substitute another will dated 09.06.1994 to defeat the claim of the Plaintiff. According to the Defendants in both the suits, but for the will the Plaintiff would be entitled to the decree, if the Defendants have not proved the marriage of the late Govindasamy Reddiar with Lakshmi Ammal. Hence, the will plays a prominent role in deciding the issue and the Defendants having propounded the will dated 15-06-1994 and 09-06-1994, cannot be allowed to substitute the will at the fag end of trial by another will dated 09-06-1994 and also altering the number of legatees. Therefore, at the stage of the closure of the trial, the Defendants cannot be permitted to alter the date of the will and the lower Court has erred in allowing the amendment.

8. Therefore, in my opinion, by this amendment the Defendants have introduced a new case which was not pleaded and they are not entitled to raise that plea at the fag end of the trial. Hence, the order of the lower Court is set aside and the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.