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P.Udayakumar vs R.Chakrapani

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Court : Chennai Orders

Decided On : Sep-25-2025

Judge : Honourable Mr.Justice M.Jothiraman

Appeal No. : CRP/1215/2024

Appellant : P.Udayakumar

Respondent : R.Chakrapani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN C.R.P.No.1215 of 2024 and C.M.P.No.6343 of 2024 P.Udayakumar ... Petitioner

Versus

R.Chakrapani ... Respondent Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.12.2023 passed in I.A.No.1 of 2023 in O.S.No.17 of 2018 by the Principal Subordinate Judge, Ponneri. For Petitioner : Mr.E.Prabhu

For Respondent : Mr.B.Sudir Kumar

ORDER

Unsuccessful plaintiff has preferred the present civil revision petition. A suit in O.S.No.17 of 2018 has been filed for declaration, recovery of possession, for damages for the use and occupation and for permanent

injunction. The defendant has filed the written statement, necessary issues

were framed, trial commenced.

2. On behalf of the plaintiff, plaintiff examined himself as PW1 and

documents were marked. Plaintiff's side evidence was completed and thereafter, the case was posted for defendant's side evidence. On behalf of the defendant, the defendant examined himself as DW1 and Exs.B1 to B8 were marked. The alleged Will dated 15.10.2004 has been marked as Ex.B5 subject to objection raised by the petitioner/plaintiff. Thereafter, the defendant has filed an application in I.A.No.1 of 2023 in the above suit under Order XVI Rule 1, 5 and 7 of the Code of Civil Procedure, 1908 to permit the defendant to take summon on the attesting witness in the Will.

3. Upon hearing on either side, the Court below vide order dated

14.12.2023 allowed the application on the ground that though the plaintiff has raised serious objection in allowing the petition, since the suit is for declaration, recovery of possession, damages and permanent injunction, an opportunity must be given to the petitioner/plaintiff to put forth his claim. Aggrieved over the same, the present revision has been instituted.

4. The learned counsel appearing for the revision petitioner/plaintiff

would submit that Absolutely no averments or pleadings were made by the defendant in the written statement about the alleged Will dated 15.10.2004, which was marked subject to objection raised by the plaintiff. Therefore, the question of examining the alleged attesting witness by issuance of Subpoena does not arise at all. The learned counsel further submits that in the absence of pleadings, no evidence can be let-in by the parties. There is no pleading with regard to the alleged Will nor the alleged Will was filed along with the written statement. Therefore, the Court below without considering the objections raised by the plaintiff and without assigning any reason, allowed the interlocutory application in I.A.No.1 of 2023. To strengthen his contention, learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in 2024 INSC 222 [Mohan Hirachand Shah Vs. Geeta Kumarchand Shah & Others].

5. Per contra, the learned counsel appearing for the respondent /

defendant would submit that Ex.B5 original Will was executed by one Rajan during his life time in favour of the defendant in respect of the suit property and said Will is duly acted upon after the demise of the testator and the

defendant is in possession of the property till date as absolute owner thereof. The learned counsel further submits that it is just and necessary to permit the defendant to take summons on the attesting witness to depose orally and his examination is very much necessary. Otherwise the defendant will be put to great hardship. The learned counsel for respondent to strengthen his contention further submits that Rule 1A of Order VIII of the Civil Procedure Code, 1908 deals with the procedure for production of documents by the defendant. He further submits that under Rule 1A(3) of Order VIII, a document which ought to be produced in Court by the defendant, but is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. In this case, Ex.B5 alleged Will has already been received as a

document and the same also came to be marked subject to objections. It is submitted that in order to prove the Will, it is just and necessary to examine the attesting witness in this case. To strengthen his case, learned counsel for respondent relied upon a judgment of the Supreme Court in Civil Appeal No.3427 of 2020 [Sugandhi (dead) by Lrs. & Anr. Vs. P.Rajkumar].

6. It is well settled that in the absence of pleadings, no evidence can be

let in by the parties. It is also well settled that once the document is marked subject to objection, the objections raised shall be considered by the concerned court at the time of final arguments and pronouncing judgments. This is vide a judgment of Hon'ble Supreme Court in Bipin Shantilal Panchal Vs. State of Gujarat and another reported in (2001) 3 SCC 1 . Relevant paragraph is paragraph 14 and the same reads as follows: 14. When so recast, the practice which can be a better substitute is this: whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration....

7. In the instant case on hand, the alleged Will came to be received as a

document and also marked as Ex.B5 subject to objection. The Will has to be proved in a manner known to law. Therefore, the examination of attesting witness in the Will is necessary. In order to decide the real controversy between the parties and in order to avoid multiplicity of proceedings, an opportunity must be provided to the parties to establish their case. Hence, this

Court is not inclined to interfere with the order of the Court below.

8. Accordingly, this civil revision petition is dismissed. Consequently,

the connected miscellaneous petition is closed. There shall be no order as to costs. 25.09.2025 Index : Yes/No Speaking order : Yes/No Neutral Case Citation : Yes/No gpa To The Principal Subordinate Judge Ponneri

M. JOTHIRAMAN, J.

gpa Tr.C.M.P.No.1215 of 2024 and C.M.P.No.6343 of 2024 25.09.2025

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