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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (PD) No.50 of 2014

&

M.P.No.1 of 2015

1. Kuppammal
2.Jalandiri
3.Baskaran

... Petitioners/Claimants

Vs.

1.Palani
2.Parimala

.. Respondents/Defendants

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 17.09.2013 in I.A.No.295 of 2013 in O.S.No.47 of 2003 on the file of the Sub Court, Vellore, Vellore District.

For Petitioners : Mr.R.Vasudevan
For Respondents : M/s.C.Prabakaran for R2
No appearance for R1

O R D E R

This revision is filed challenging the order of the Subordinate Judge, Vellore, made in I.A.No.295 of 2013 in O.S.No.47 of 2003.

2.The plaintiffs in O.S.No.47 of 2003 on the file of the Sub Court, Vellore, are the petitioners in this revision.

3. The petitioners have instituted the suit against the respondents claiming 2/3rd share in the suit property. The respondents have contested the suit by filing a detailed written statement. The case of the plaintiffs is that the second defendant Parimala is not the wife of the deceased Meiyazhagan. The defendants claimed that the second defendant is his wife and he has also executed a registered Will on 28.03.2000. After the plaintiff's side evidences was over, the defendants have examined six witnesses and also marked the disputed Will. Thereupon, the petitioner filed I.A.No.295 of 2013 to send the Will for opinion of an expert. The respondents opposed the application. The learned Sub Judge dismissed the same. Aggrieved by the said order, the respondent revision is filed.

4. Mr.R.Vasudevan, learned counsel for the petitioner submitted that the defendants have not examined the witnesses to the Will and DW6 was working as Junior Assistant of the Sub Registrar Office and he is not a competent person to give evidence in this case. It is further submitted that the Will is a forged one and it is not proved, according to law.



5. Per contra, Mr.C.Prabakaran, learned counsel for the respondents made submissions in support of the order of the trial Court.

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6. It is not in dispute that the suit was filed by the petitioners for partition claiming 2/3rd share in the suit properties. The defendants claimed right based on the Will, dated 28.03.2000. It is settled law that the onus is on the defendants to prove the genuineness of the Will. When the suit was posted for arguments, the petitioners filed the application. The trial Court rightly dismissed the same, which does not warrant any interference by this Court.

7. Accordingly, the Civil Revision Petition is dismissed. The trial Court shall dispose of the suit within a period of six weeks from the date of receipt of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To
The Sub Judge,
Vellore, Vellore District.

+ 1 cc to Mr.R. Vasudevan, ADvocate sR.8962
+ 1 cc to Mr.C. Prabakaran, Advocate
Sr.9296

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Krd(CO)
Eu 09.03.15