



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.11.2016

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(MD)Nos.1604 & 1605 of 2016

and

C.M.P.(MD)No.7846 of 2016

K.P.Kanagamani

.. Petitioner/Petitioner/
Defendant in both petitions

Vs.

1. P.Andal

2. P.Sivakumar

.. Respondents/Respondents/
Plaintiffs in both petitions

COMMON PRAYER: Petitions filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 21.01.2016, passed in I.A.Nos.1415 and 1416 of 2015 respectively in O.S.No.96 of 2012 on the file of the learned Additional District Munsif, Karur and to allow this Civil Revision petition.

For Petitioner : Mr.G.Sridharan

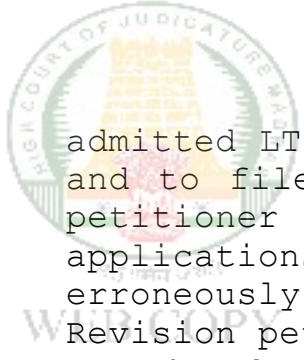
For Respondents : Mr.K.Govindarajan

C O M M O N O R D E R

These Civil Revision petitions arise out of the order passed by the learned Additional District Munsif, Karur, in I.A.Nos.1415 and 1416 of 2015 in O.S.No.96 of 2012, dated 21.01.2016.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. According to the petitioner, the respondents herein filed a suit in O.S.No.96 of 2012 before the District Munsif Court, Karur, for permanent injunction restraining the petitioner from interfering with their possession and enjoyment of the suit property. In the aforesaid suit, the Revision petitioner/defendant filed a written statement and specifically, it was averred in the said written statement that the suit property was settled in favour of the revision petitioner/defendant by registered settlement deed, dated 03.02.2003 by one Sivakami Ammal and likewise, the said Sivakami Ammal had executed a registered Will dated 23.06.2000 in favour of the Revision petitioner. During the cross examination of P.W.1, the second respondent herein had wantonly denied his signatures found in the above said Will and in the settlement deed. Therefore, in order to prove the case of the petitioner and to discord the oral evidence of P.W.1, by comparison of the signatures of the second respondent and his father Palaniyappan found in the above said Will and in the settlement deed with admitted signatures, and also for the appointment of an Advocate Commissioner to compare the LTI of the said Sivakami Ammal found in the registered Will and in the settlement deed along with her



admitted LTI found in the original registered Will dated 11.07.1991 and to file a report, the present applications were filed by the petitioner under Section 45 of Evidence Act. The aforesaid applications filed by the revision petitioner/defendant were erroneously dismissed by the Court below. Hence, the present Civil Revision petition has been filed before this Court.

4. The learned counsel for the respondents would submit that the suit in O.S.No.96 of 2012 had been filed by the second respondent/plaintiff for permanent injunction. Hence, the prayer sought for in the aforesaid applications are not maintainable as the relief prayed in the suit is only with respect to the possession of the suit property and there is no dispute of title. Therefore, the Court below rightly decided that the said application filed by the petitioner cannot be entertained.

5. In view of the submissions made by the parties, the present applications in I.A.Nos.1415 and 1416 of 2015 cannot be entertained at this stage, as the aforesaid suit was filed only for the relief of permanent injunction against the Revision petitioner/defendant not to interfere with the possession and enjoyment of suit property either by way of encroaching or otherwise. In the written statement, it is specifically averred by the Revision petitioner that the registered Will and the Settlement Deed was also executed by Sivakami Ammal in favour of the revision petitioner/defendant. Therefore, at this stage, the present applications filed by the Revision petitioner cannot be entertained in the present suit. Hence, the Civil Revision petitions fail and the same are dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

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Sub Assistant Registrar

To

1. The Additional District Munsif, Karur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to MR.K.Govindarajan, ADVOCATE, SR NO:69094
+1 cc to MR.G.Sridharan, ADVOCATE, SR NO:69270

PMU

SVA/BS/20.02.2017/2P/5C