

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)Nos.1918 and 1919 of 2017

&

CMP.Nos.9282 and 9283 of 2017

1. Rasool Khan

2. Minor Sharu Khan

.. Petitioners in both Civil Revision Petitions

..Vs..

1. Hussaina Bi

2. Basiri Bi

.. Respondents in both Civil Revision Petitions

Prayer in CRP(PD)No.1918 of 2017:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.98 of 2015 in O.S.No.42 of 2015 on the file of Principal Sub Court, Krishnagiri dated 11.12.2015 as confirmed in C.M.A.No.09 of 2016 on the file of the Principal District Judge, Krishnagiri dated 06/02/2017.

Prayer in CRP(PD)NO.1919 of 2017:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.12.2015 in I.A.No.99 of 2015 in O.S.No.42 of 2015 on the file of Principal Sub Court, Krishnagiri dated 11.12.2015 as confirmed in C.M.A.No.08 of 2016 on the file of Principal District Judge, Krishnagiri dated 06/02/2017.

For Petitioner : Mr.G.Surya Narayanan

COMMON ORDER

The issues involved in both the Civil Revision Petitions are one and the same and they are taken up together and disposed of by this common order.

2. These civil revision petitions are filed to set aside the common order in I.A.Nos.98 of 2015 and 99 of 2015 in O.S.No.42 of 2015 on the file of Principal Sub Court, Krishnagiri dated 11/12/2015 as confirmed in C.M.A.Nos.09/2016 and 08/2016 dated on the file of the Principal District Judge, Krishnagiri dated 06/02/2017.

3. The Petitioners are the defendants 3 and 4 and the respondents 1 and 2 are the plaintiffs in O.S.No.42 of 2015. The respondents filed a suit for partition and separate possession and to declare the gift deeds dated 11.06.2008, 28.02.2012 and 01.08.2012 as null and void and for consequential injunction.

4. According to respondents 1 and 2, the properties are joint

family properties. The petitioners by undue influence and fraudulently obtained gift deeds dated 11/06/2008 vide document no.1672/2008, 28.02.2012 vide document no.650/2012 and 01.08.2012, vide document no.2268/2012 from their parents. The gift deeds are not valid and not binding on the respondents 1 and 2 and prayed for partition.

5. Along with suit, the respondents 1 and 2 filed two applications in I.A.Nos.98 of 2015 and 99 of 2015 in O.S.No.42 of 2015 for interim injunction restraining the petitioners not to alienate or to encumber the suit property and not to cut trees. According to the respondents 1 and 2, the petitioners are cutting the valuable trees, which are available in the suit properties and if they are allowed to do so, the respondents 1 and 2 will be put to irreparable loss and hardship.

6. The petitioners filed counter and submitted that earlier, respondents 1 and 2 filed in O.S.No.45 of 2012 for very same relief and the said suit was dismissed. The respondents 1 and 2 has not taken any further proceedings and the said judgment has become final. The petitioners also filed in O.S.No.51 of 2014 and 176 of 2014 for declaration and injunction and prayed for dismissal of the applications.

3. The learned Judge considering the materials on record

and granted interim injunction. The petitioners filed C.M.A.Nos.8 and 9 of 2016 on the file of learned First Appellate Judge, Krishnagiri challenging the order in I.A.Nos.98 of 2015 and 99 of 2015. The learned First appellate Judge, Krishnagiri dismissed the appeals by the order dated 06.02.2017 confirming the order dated 11.12.2015 in I.A.Nos.98 of 2015 and 99 of 2015. Against the same, the present Civil Revision Petition are filed.

8. The grievance of the petitioners is that both the courts below have failed to give a finding whether the respondents 1 and 2 have made out a prima facie case and balance of convenience is in their favour.

9. Heard the learned counsel for the petitioner and perused the materials on record.

10. The respondents 1 and 2 have filed suit for partition and separate possession and stated that the gift deed executed by their parents in favour of the petitioners are invalid and the same were executed by undue influence and fraudulently. Whether the gift deeds are valid are not, whether the respondents 1 and 2 are entitled to partition and separate possession can be decided only at the conclusion of the trial by appreciating the evidence let in by the parties. Pending suit if the

petitioners cut the trees and sell or alienate or encumber the property, if respondents 1 and 2 succeed in the suit, the rights of the respondents 1 and 2 would be affected. In view of the above facts, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11. Now, the learned counsel appearing for the petitioners submitted that the O.S.Nos.51/2014 and 176/2014 filed by the petitioners are also transferred and the same has to be tried along with O.S.No.42 of 2015. In view of the same, the learned Principal Subordinate Judge, Krishnagiri is directed to dispose of all the suits on merits and in accordance with law, as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order.

20.06.2017

sji/ssd
Index :Yes / No
Internet:Yes / No

Speaking Order/Non Speaking Order

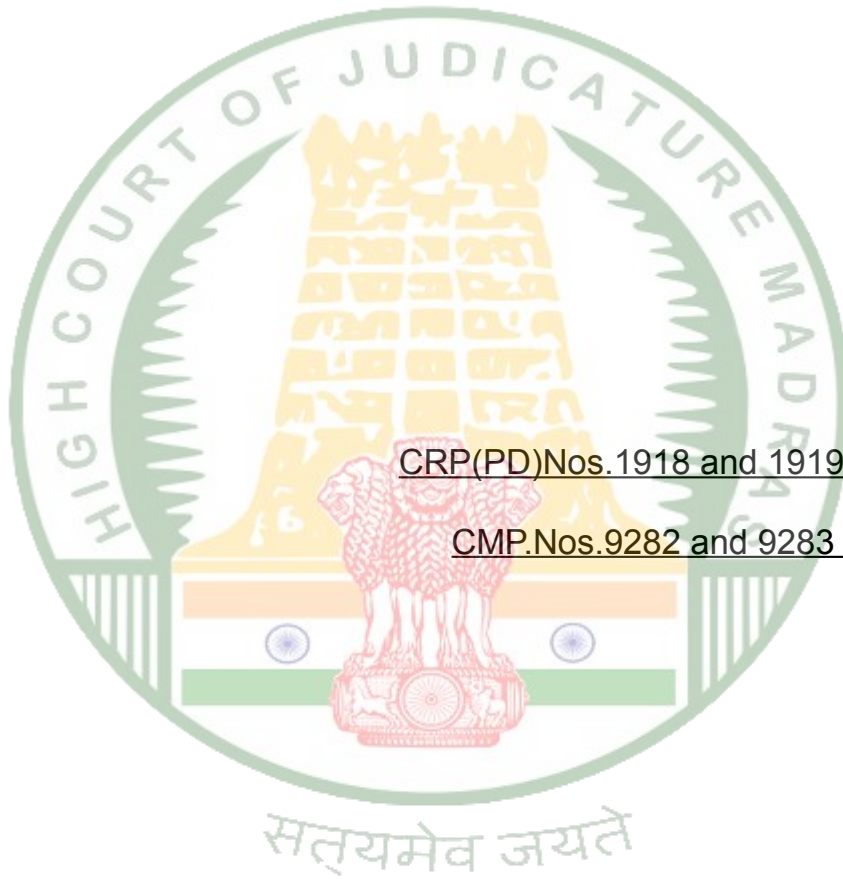
To

1. The Principal Sub Court,
Krishnagiri.

2. The Principal Judge,
Krishnagiri.

V.M.VELUMANI,J

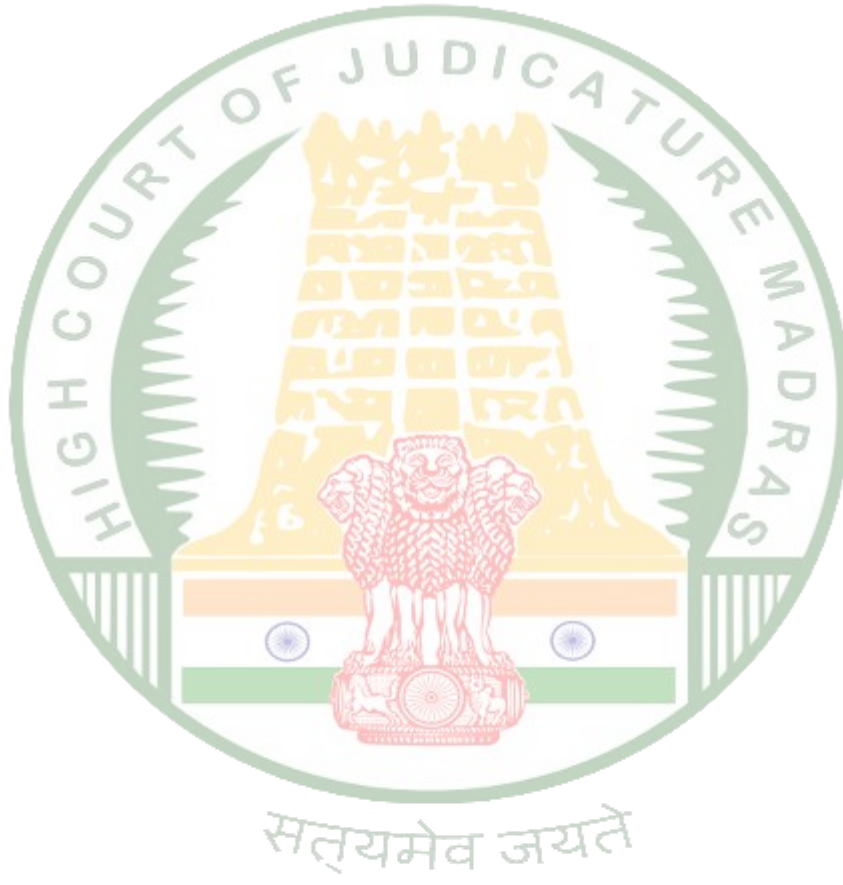
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