

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2486 OF 2017
AND CMP NO.11792 OF 2017

1.S.Kandasamy
2.K.S.Kumarasamy
3.S.Shanmugam
4.S.Velusamy
5.P.Damodaran

... Petitioners

Vs.

R.Chellammal

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.04.2017 made in I.A.No.64 of 2017 in O.S.No.637 of 2011 on the file of the V Additional District and Sessions Judge, Coimbatore.

For Petitioners : Mr.M.Liagat Ali
For Respondent : Mr.V.Anandha Moorthy

ORDER

This Civil Revision Petition is directed against the order dismissing the application filed under Section 151 of the Civil Procedure Code to reopen the suit on the side of the petitioners / defendants 1 to 5 enabling them to file a petition for expert opinion.

2. The petitioners are the defendant nos.1 to 5 in the suit. The respondent / plaintiff is the sister of the defendants and has filed the suit for partition and separate possession. According to the petitioner, the properties were partitioned already by way of a partition deed dated 31.05.2004 and the copies of the partition deeds were marked as Exs.B1 to B4. The petitioners' claim that the respondent / plaintiff has signed Exs.B1 to B4, but denied the same. Ex.B5 is the release deed. In order to prove her signature, the petitioners have filed an application in I.A.No.645 of 2013 seeking an order to send the documents for the opinion of the hand writing expert and also filed I.A.No.44 of 2014 to produce the original gift settlement deed dated 14.06.2004 executed by the respondent, for comparison. Those petitions were dismissed after due enquiry. Against the

same, the petitioners have not preferred any appeal or revision. The petitioners, thereafter, examined D.W.3 and D.W.4 and the defendant side evidence was closed and the matter was posted for arguments on 08.07.2014. At that stage, the petitioners have filed I.A.No.652 of 2014 for recalling P.W.1 for further cross examination, with respect to the gift settlement deed executed by her in favour of her husband. The said application was also dismissed.

3. Against the above dismissal order, the petitioners have preferred revisions in C.R.P.No.730 of 2016 and C.R.P.No.2123 of 2016. This Court, by its order dated 14.11.2016 has dismissed both the Civil Revision Petitions. Thereafter, the matter was posted for arguments on 22.11.2016. At the request of the petitioners, adjournments were granted from 22.11.2016 to 06.01.2017 and from 18.01.2017 to 21.02.2017. When the Court has made an endorsement that if the petitioners / defendants fail to submit their arguments, final orders will be passed. Again they have filed an interlocutory application to reopen the case for the purpose of sending the documents viz., Exs.B1 to B4 for expert opinion. The Trial Court has found that Exs.B1 to B4 are only xerox copies of documents and

the originals of the same were not produced before the Court. Further, Ex.D5 is an unregistered document. The petitioners have already availed the opportunity of reopening the case and seeking expert opinion on the very same aspect. The matter was taken up to the level of High Court and the prayer sought for by the petitioners were negated. In spite of the same, the petitioners have filed I.A.No.64 of 2017 for the very same relief. Considering the repeated request and the dilatory tactics adopted by the petitioners, the Trial Court has dismissed the interlocutory application.

4. I have considered the submissions made on either side and perused the materials available on record.

5. The petitioners have admittedly filed an application in I.A.No.645 of 2013 to send the documents for expert opinion and once again, they filed another application in I.A.No.652 of 2014 for the same purpose and the same was dismissed in C.R.P.No.730 of 2016 and C.R.P.No.2123 of 2016. Again, the petitioners have filed an application to reopen the case for getting expert opinion. From the factual background,

it can easily be inferred that it is the third attempt, for the same cause, on the basis of xerox copies of documents filed by them. It is nothing but a dilatory tactics adopted by the petitioners to prolong the litigation and defeat the ends of justice. Such frivolous attempts shall not be encouraged and therefore, the Civil Revision Petition is dismissed having no merits to consider.

6. In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

31.07.2017

Index : Yes/No
Internet : Yes/No
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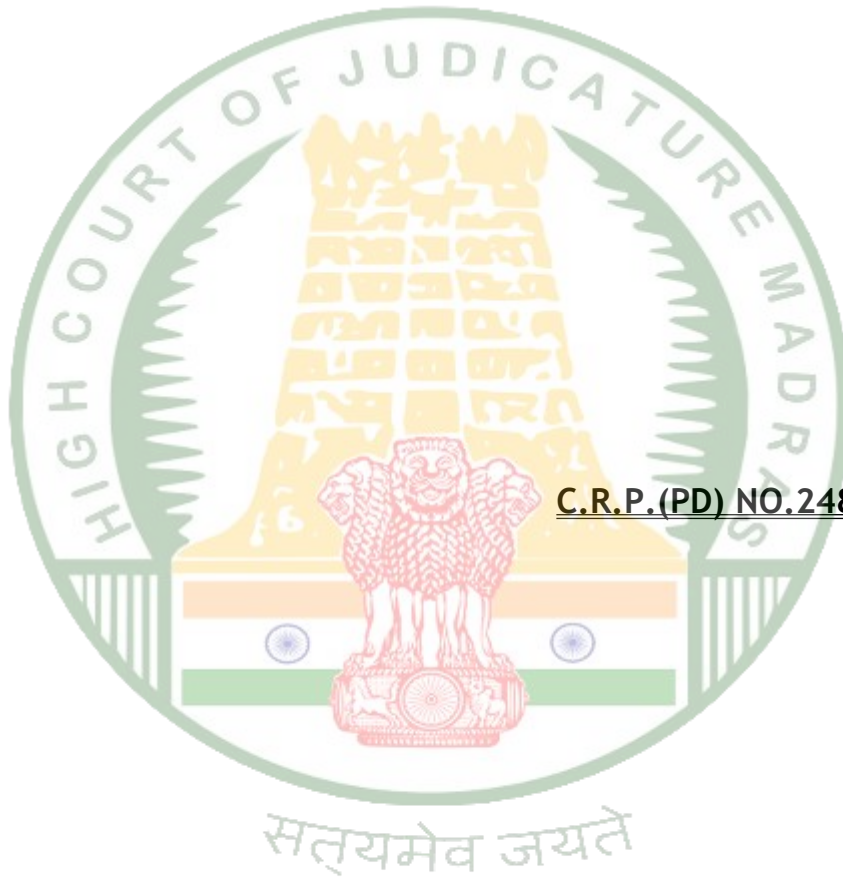
To

The V Additional District and Sessions Judge
Coimbatore.

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M.GOVINDARAJ, J.

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