

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.Nos.552 and 1655 of 2017
and CMP Nos. 3343 to 3346 of 2017

Rasu @ Vellingiri ... Appellant in C.M.A.No.552 of 2017
Vellingiri Appellant in C.M.A.No.1655 of 2017
Vs.

1.Arukkaniammal
2. Renugadevi ... Respondents in both C.M.As

Prayer in C.M.A.No.552 of 2017: Civil Miscellaneous Appeal filed under section 384 of the Indian Succession Act to set aside the order passed in I.A.No.97/2015 in P.O.P.No.373 of 2014, dated 12.08.2016, on the file of the Principal District Court of Coimbatore.

Prayer in C.M.A.No.1655 of 2017: Civil Miscellaneous Appeal filed under order XLIII rule 1 of CPC and section 384 of the Indian Succession Act to set aside the order passed in P.O.P.No.373 of 2014, dated 12.08.2016, on the file of the Principal District Court of Coimbatore.

For Appellant : Mr.C.Deivasigamani

For R-1 : Mr. A.E.Lakshmi Narayanan

For R-2 : Mr.S.Mukunth for M/s.Sarvabhaum
Associates

COMMON JUDGMENT

C.M.A.No.552 of 2017 has been filed, challenging the order passed by the learned Principal District Judge, Coimbatore, passed in I.A.No.97 of 2015 in P.O.P.No.373 of 2014, dated 12.08.2016. P.O.P.No.373 of 2014 has been filed by Vellingiri, son of Palanisamy Gounder who is the propounder of the Will, seeking probate of the Wills dated 08.06.2011 and 10.06.2011. Pending the petition for probate, I.A.No.97 of 2015 has been filed by the first respondent therein, seeking direction to the District Court to decide the maintainability of the probate, as

the preliminary issue and to reject the petition in P.O.P.No.373 of 2014. The Court, by the impugned order dated 12.08.2016, rejected P.O.P.No.373 of 2014. challenging the same C.M.A.No. 552 of 2017 has been filed.

2. Renugadevi, the plaintiff, who is also daughter of Palanisamy Gounder, has filed the suit at Pollachi Sub Court, in O.S.No.25 of 2014 (wrongly mentioned as 24 of 2014) seeking the relief of partition and separate possession and the same plaintiff has filed a suit in O.S.No.24 of 2014, seeking the relief of permanent injunction. Pending these two suits, P.O.P.No.373 of 2014 has been filed.

3. The learned counsel appearing for the appellant would submit that the order passed in P.O.P.No.373 of 2014 cannot be allowed to be sustained on the ground that the petitioner therein was not at all heard before passing the order.

4. According to the learned counsel for the respondents all the parties in P.O.P have been made as parties in the suits as well and therefore mere inclusion of the parties in the suit would amount to implied notice and therefore the dismissal is justified.

5. Relying upon the decision reported in (2005) 12 Supreme Court Cases 505 (Nirmala Devi v.Arunkumar Gupta), the learned counsel for the appellant would submit that the decision in the probate proceedings on the question of proof of the Will will have a direct impact on the suit and therefore the cases should clubbed for joint disposal/Trial.

6. Suffice to Point out that the non mentioning of the pending two suits in the P.O.P proceedings would amount to suppression or not and whether it is the wilful suppression touching root of the matter is the matter to be decided by the District Judge. Leaving that question open to be decided by the District Judge, this Court is of the view that all the cases can be jointly heard by the District Judge and matter can be disposed of at the earliest point of time.

7. Opportunity of hearing ought to have been given to the learned counsel for the petitioner in P.O.P.No.373 of 2014 and as the opportunity has not been given, P.O.P order is set aside. The matter is remitted back and the Learned District Judge, Coimbatore, who will hear all the three matters together (Jointly) and the District Judge will also incidentally decide the issue whether the omission to mention about the two partition suits in the P.O.P proceedings would be material or not.

8. Subject to the said conditions, the Civil Miscellaneous Appeals are disposed of and the suits and P.O.P shall be disposed of within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Civil Miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. The Principal District Judge, Coimbatore.

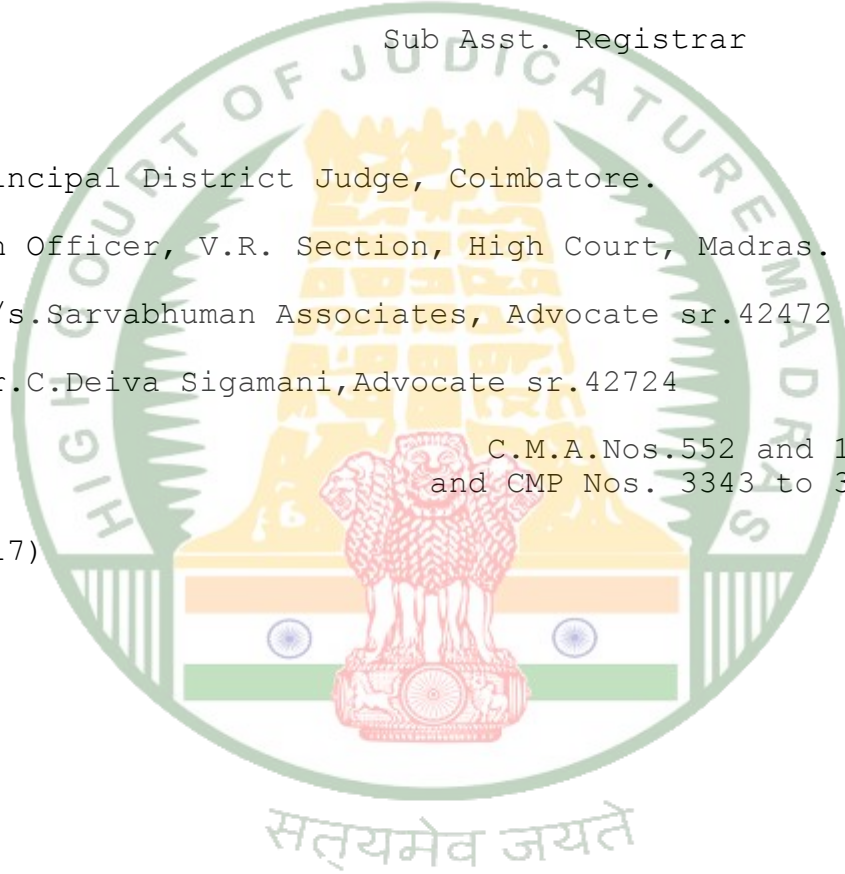
2. Section Officer, V.R. Section, High Court, Madras.

+1cc to M/s.Sarvabhuman Associates, Advocate sr.42472

+1cc to Mr.C.Deiva Sigamani, Advocate sr.42724

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ss(8/8/2017)



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