

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3871 of 2017

and

C.M.P.No.18078 of 2017

Valliammal

Vs.

..Petitioner

1.Subramaniam,
2.Saraswathi,
3.Periyasamy,
4.Eswaran.

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 24.01.2017 made in I.A. No.457 of 2016 in O.S. No.79 of 2013 on the file of the learned Sub Court, Perundurai.

For Petitioner : Mr.N.Manokaran

ORDER:

The petitioner herein filed a suit in O.S.No.79 of 2013 for declaration, partition, separate possession and permanent injunction

against the respondents. The respondent also filed a suit in O.S.No.452 of 2002 before the I Additional Sub Court, Erode. In the aforesaid said, ex-parte order was passed on 31.03.2003. In the aforesaid suit, the respondent admitted the will dated 03.01.2002 executed in favour of the petitioner. Therefore, the petitioner has filed the instant application in I.A.No.457 of 2016 in O.S.No.79 of 2013 to send for the entire records in O.S.No.452 of 2002 from the I Additional Sub Court, Erode. The respondents have filed counter statement by contending that the respondents have taken steps to set aside the ex-parte decree. Even at the time of examining the petitioner as PW1, the same fact could have been stated and hence it is clear that the instant application is unnecessary at this stage and filed just to protract the proceedings. Considering the said fact and the submissions of both parties, the trial court has dismissed the suit by holding that the petitioner can apply for certified copy of the decree and file before the court. Challenging the said order, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that calling for the entire records in O.S.No.452 of 2002 would not cause prejudice to the respondents. Hence, the order passed by the trial court is liable to be set aside.

3. Considering the said facts and the submissions made by the learned counsel for the petitioner, when the court below itself has granted liberty by observing that the petitioner can very well apply for the certified copy of the said decree and the same shall be filed before the court, this Court is of the view that there is no error or illegality in the order passed by the court below. Hence, this Court does not warrant any interference with the order passed by the trial court. However, liberty is granted to the petitioner to file appropriate application before the court below for granting reasonable time for furnishing the said certified copy.

4. In the result, the Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

25.10.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

lok

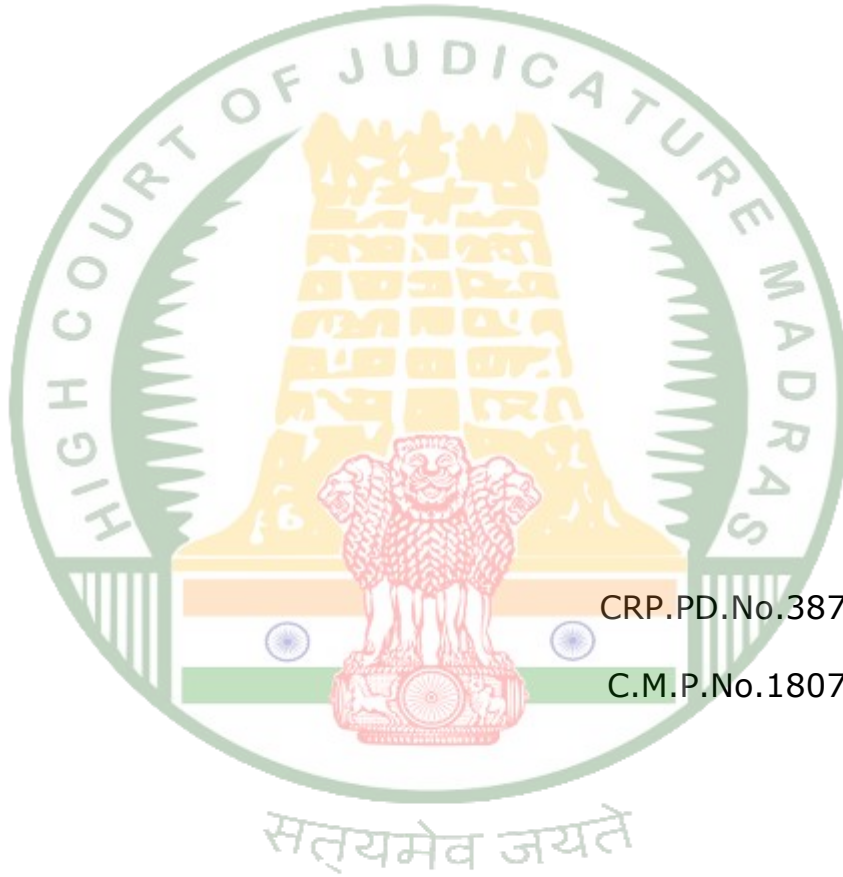
WEB COPY

D.KRISHNAKUMAR. J,

lok

To

The Subordinate Judge,
The Sub Court,
Perundurai.



CRP.PD.No.3871 of 2017
and
C.M.P.No.18078 of 2017

WEB COPY

25.10.2017