

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.2254 of 2011  
& M.P.No.1 of 2011

S.Lakshmi

.. Petitioner

Vs.

1.S.Velusamy  
2.Nagarathinam  
3.Muthulakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.02.2011 made in I.A.No.468 of 2010 in O.S.No.611 of 2008 on the file of the II Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.P.Saravana Sowmiyan

For R1 : Mr.T.M.Hariharan

For R2 : Not ready in notice

Fro R3 : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.02.2011 made in I.A.No.468 of 2010 in O.S.No.611

of 2008 on the file of the II Additional Subordinate Court, Coimbatore.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.611 of 2008 on the file of the II Additional Subordinate Court, Coimbatore. The petitioner filed the said suit for partition claiming 1/4 share on the ground that the suit property is a separate property of her husband Subbiah Thevar. The first respondent filed written statement resisting the said claim on the ground that the suit property is not self acquired property of Subbiah Thevar and it is only an ancestral property and the first respondent is entitled to have 1/2 share of the property by birth. Trial commenced on 18.03.2010. The petitioner let in evidence and the petitioner examined herself as P.W.1 and the suit was posted for examining further witnesses on 14.06.2010. After taking number of adjournments from 14.06.2010 to 01.11.2010, for producing further witnesses filed the present I.A.No.468 of 2010 for summoning to the attesting witnesses to the Will alleged to have been executed by her husband Subbiah Thevar.

3. The first respondent filed counter affidavit and denied the

averments made in the affidavit filed in support of the said application and contended that the petitioner has not complied with the mandatory provision of Order 16 Rule 1 of C.P.C. by filing list of witnesses within the time stipulated after framing issues. In view of the same, the present application is not maintainable.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioner has already sent summons to attesting witnesses and said summons were returned with an endorsement that they are not residing in the said address and the petitioner has taken number of adjournments and filed the present application only to drag on the proceedings and filed suit for partition claiming 1/4 share is not based on the Will.

5. Against the said order of dismissal dated 21.02.2011 made in I.A.No.468 of 2010, the present Civil Revision Petition is filed by the petitioner/plaintiff.

6. Heard the learned counsel for the petitioner and first respondent and perused the materials available on record.

7. The learned counsel appearing for the petitioner raised the grounds in the present Civil Revision Petition and contended that the

petitioner has found the whereabouts of the attesting witnesses and she is seeking issue of summons to their present address. The learned Judge erroneously dismissed the application on the ground that the petitioner has exhausted the remedy by issuing summons to the attesting witnesses earlier. These contentions are without merits. The petitioner has not mentioned the issue of summons earlier to the attesting witnesses and now she has found the present address and she filed the application to issue summons to the attesting witnesses to their present address.

8. It is pertinent to note that when the Civil Revision Petition is taken up for hearing, the learned counsel for the petitioner submitted that the present application is filed only to send summons to the attesting witnesses to their present address. In view of the failure on the part of the petitioner to mention the issue of summons earlier to the attesting witnesses and return of the same with endorsement that they are not residing in the said address, the contention of the learned counsel for the petitioner that the petitioner has filed the present application to issue summons to the attesting witnesses to the present address, is without merits.

9. The learned Judge considering all the aspects in proper

perspective, dismissed the application by giving cogent and valid reason. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 21.02.2011.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

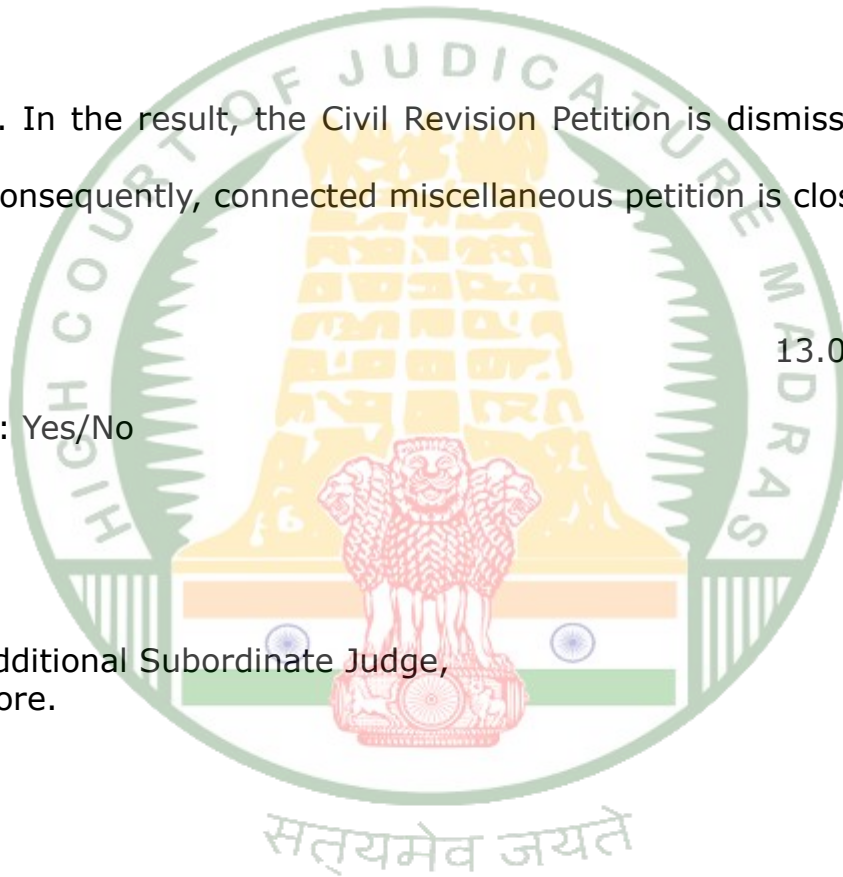
13.09.2017

Index : Yes/No

dm/kj

To

The II Additional Subordinate Judge,  
Coimbatore.

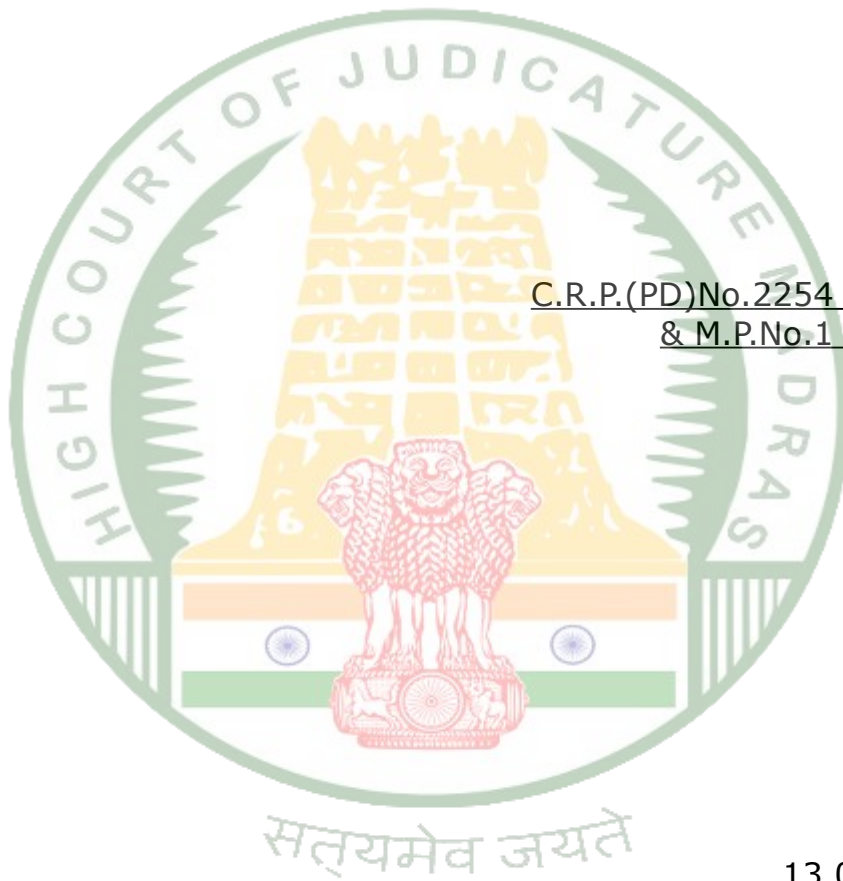


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**V.M.VELUMANI, J.**

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