

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.3755 of 2011
M.P.No.1 of 2011

Parvathi

.. Petitioner

Vs.

1. Krishnasamy Reddiar
2. Ramesh
3. Baskar
4. Maheswari
5. Veerachi Reddiar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.02.2011 made in I.A.No.785 of 2010 in O.S.No.102 of 2004 on the file of the Additional District Munsif, Thittakkudi.

For Petitioner : Mr.I.Antony Jesus

For R1, R4 & R5 : Mr.R.Meenal

ORDER

The civil revision petition is filed to set aside the fair and decreetal order dated 22.02.2011 made in I.A.No.785 of 2010 in O.S.No.102 of 2004 on the file of the Additional District Munsif, Thittakkudi.

2. The petitioner is the second plaintiff, respondents are the defendants in O.S.No.102 of 2004 on the file of the District Munsif Court, Thittakkudi. Originally, one Vijaya, daughter of the petitioner filed the above suit. In the said suit, the petitioner was sixth defendant. Pending suit, the said Vijaya died. The petitioner filed I.A.No.217 of 2007 to transpose her as second plaintiff. Though the said application was allowed initially, since no steps were taken subsequently, the same was dismissed. To restore the same, petitioner filed I.A.No.218 of 2005. After filing proof affidavit, the petitioner filed application in I.A.No.785 of 2010 to add the averment that her daughter Vijaya by the Will dated 28.05.2004 bequeathed the property to her.

3. According to the petitioner, when she went to meet her Advocate for filing the application for amendment of the plaint, one Ganesan, an Advocate Clerk has informed her that it is not necessary to meet Advocate for filing application and he took a sum of Rs.1000/- from the petitioner and assured her that the application will be filed for amendment. The Advocate Clerk himself prepared the petition and took signature from some other Advocate and filed the petition. In the petition, the Advocate Clerk did not

mention the Will dated 28.05.2004 executed by Vijaya, in favour of the petitioner herein. In view of the same, she has filed the present application for amendment.

4. The first respondent filed counter affidavit opposing the said application and submitted that after amendment, the evidence can be let in on the same line of the amended plaint. The petitioner is not entitled to seek amendment as per the evidence let in by her.

5. The learned Judge considering the averments in the affidavit, counter affidavit, materials on record and proof affidavit filed by the petitioner, dismissed the application holding that in one place of the proof affidavit, the petitioner has stated that her daughter Vijaya died intestate and in another place, she has stated that she executed the Will, bequeathing the property to the petitioner. The petitioner is not entitled to amend the plaint on the line of the evidence let in by her. The learned Judge also took note of the fact that only Senior Counsel of the petitioner signed the petition and filed the same into Court.

6. Against the order dated 22.02.2011 made in I.A.No.785 of 2010, the present Civil Revision Petition has been filed by the petitioner.

7. Heard the learned counsel for the petitioner. Though notice was served on the respondents 2 and 3 and their names were printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. The petitioner has sought for amendment after commencement of the trial. The reason given by the petitioner for amendment is that the Advocate Clerk only prepared the earlier petition for amendment, transposing the petitioner who was the sixth defendant as the second plaintiff. The petitioner contended that even though she informed the Advocate Clerk about the Will executed by her daughter Vijaya, the Advocate Clerk did not mention the same in the affidavit. The petitioner had stated that the Advocate Clerk did not take the signature of the Advocate in the petition. But took signature of the some other Advocate.

9. The contention of the petitioner that her Advocate did not sign the earlier petition for amendment is proved to be false. The learned Judge verifying the said petition found only Senior Advocate of the petitioner signed the petition. The petitioner has not given any reason for not seeking amendment before commencement of the trial. In the proof affidavit filed by the petitioner, she has taken inconsistent stand, viz., in one place she has stated that her daughter Vijaya died intestate and in another place, her daughter executed the Will dated 28.05.2004.

10. Considering all the facts in entirety, it is clear that the petitioner has not given any acceptable and valid reason for the said amendment. The learned Judge, considering all the materials on record in proper perspective, dismissed the application. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 22.02.2011.

V.M.VELUMANI, J.

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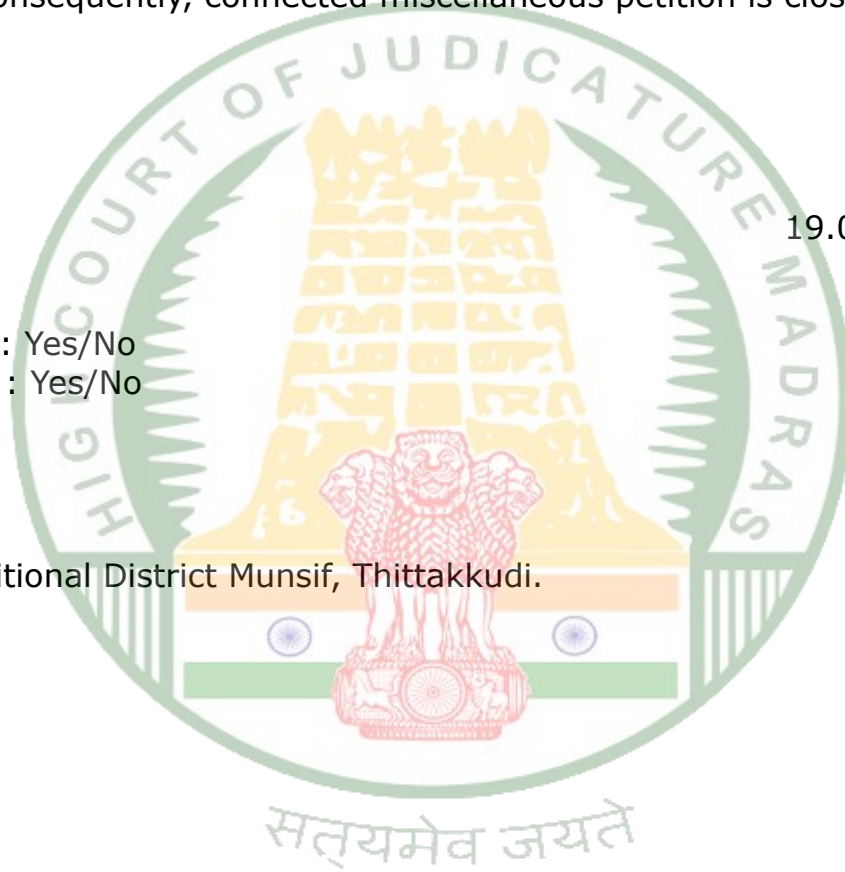
11. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To

The Additional District Munsif, Thittakkudi.



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