

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2740 to 2742 of 2015
& M.P.No.1 of 2015

1.Gandhimathi
2.Kavitha
3.Revathi
4.Sithara
5.Archana
6.Natarajan

.. Petitioners in all
C.R.Ps'

Vs.

1.Pachaiyammal
2.Ayyammal
3.Anjalai
Ponnan (Died)
Sakkarai @ Govindasamy (Died)
4.Samburnam
5.Manimaran
6.Ilangovan

.. Respondents in
all C.R.Ps'

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 08.04.2015 made in I.A.Nos.921 to 923 of 2015 in O.S.No.149 of 2004 on the file of the II Additional District Munsif Court, Kallakurichi.

For Petitioners : Mr.P.Valliappan

For R1 to R6 : Mr.V.Anand

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 08.04.2015 made in I.A.Nos.921 to 923 of 2015 in O.S.No.149 of 2004 on the file of the II Additional District Munsif Court, Kallakurichi.

2. The parties and issues involved in all the Civil Revision Petitions are one and the same, therefore, disposed of by this common order.

3. The petitioners are defendants 6 to 11, respondents 1 to 3 are the plaintiffs and respondents 4 to 6 are the defendants 3 to 5 in O.S.No.149 of 2004 on the file of the II Additional District Munsif Court, Kallakurichi. The respondents 1 to 3 filed the said suit for declaration and recovery of possession. The second defendant, father of the petitioners filed written statement on 28.07.2000 and was contesting the suit. The second defendant died and these petitioners were impleaded as defendants 6 to 11. Trial commenced. Evidence of the parties were closed. The learned counsel appearing for the respondents argued the matter. When the suit was posted for arguments on behalf of the petitioners/defendants 6 to 11, the

petitioners have come out with the present three applications in I.A.Nos.921 to 923 of 2015 to re-open, recall DW4 and send for documents. According to the petitioners, they are contesting the suit on the ground that their grand father, Kandasamy Moopar by a registered Will dated 20.05.1998 bequeathed the suit property to their father, second defendant and 6th petitioner. The original Will was filed by their father in O.S.No.561 of 1990 on the file of the District Munsif Court, Kallakurichi. The said proceedings, is now pending in S.A.No.804 of 2005. Their father filed I.A.No.198 of 2012 to send for the said Will from this Court. The said I.A was dismissed. The C.R.P.No.4627 of 2014 filed by the second defendant, the father of the petitioners against the said order of dismissal in I.A.No.298 of 2012 was also dismissed. In the circumstances, to prove the Will dated 20.05.1998, it is necessary to send for the original registered Will dated 20.05.1998 from the Sub Registrar Office, Thiyyagadurugam and to re-open the case and recall DW4 to prove the Will.

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4. The 5th defendant's counter affidavit was adopted by other respondents and they opposed the said applications. According to the respondents, DW4, in the chief examination and cross-examination has stated that at present, he cannot identify the

signature of Kandasamy Moopar. Further in his evidence, DW4 has stated that he does not know who all have signed the Will. The suit was argued by all the counsel and when the suit is posted for arguments on behalf of the petitioners, the learned counsel have filed the present petitions only to drag on the proceedings and prayed for dismissal of the applications.

5. The learned Judge, by the common order dated 08.04.2015, considering the affidavit and counter affidavit, dismissed all the three applications.

6. Against the orders of dismissal dated 08.04.2015 made in I.A.Nos.921 to 923 of 2015 in O.S.No.149 of 2004, the petitioners have come out with the present three Civil Revision Petitions.

7. Heard the learned counsel appearing for the petitioners as well as the respondents 1 to 6 and perused the materials available on record.

8. From the materials available on record and the xerox copy of the Will based on which petitioners are putting forth their

case, it is seen that the DW4 in chief and cross examination has stated that he does not know how many pages are there in the Will and who are all signed the Will. In cross examination, he admitted that at this point of time, he will not be in a position to identify the signature of Kandasamy Moopar. The learned Judge, considering the evidence of DW4, who has stated that he cannot identify the signature of Kandasamy Moopar, has dismissed all the three applications. In view of the admission by DW4 in chief examination that he cannot identify the signature of Kandasamy Moopar, due to lapse of time, the application sent from the Sub Registrar office as well as the applications to reopen the case and recalling DW4 to prove the signature of Kandasamy Moopar are devoid of merits. The learned Judge has stated all the above facts and dismissed the applications by giving cogent and valid reasons.

9. These Civil Revision Petitions are dismissed. No costs.

Consequently, connected miscellaneous petition is also closed.

27.10.2017

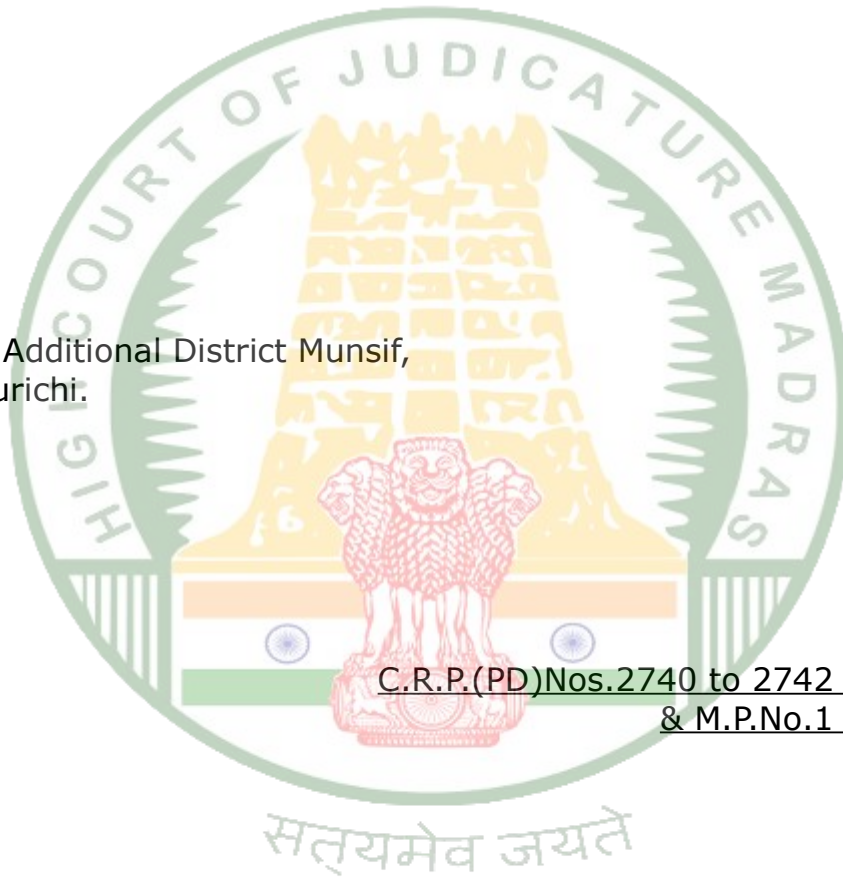
Index: Yes/No
gsa

V.M.VELUMANI,J.

gsa

To

The II Additional District Munsif,
Kallakurichi.



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