

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.349 of 2015
and M.P.No.1 of 2015

Dellibai @ Gowrammal ... Petitioner

Vs.

Mounthulu Naidu .. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.11.2014 made in I.A.No.419 of 2014 in O.S.No.148 of 2011 on the file of the Principal District Munsif Court, Ambur.

For Petitioner : Mr.S.L.Sudarsanam

For Respondent : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.11.2014 made in I.A.No.419 of 2014 in O.S.No.148 of 2011 on the file of the Principal District Munsif Court, Ambur.

2. The petitioner is defendant and respondent is plaintiff in O.S.No.148 of 2011. The respondent filed said suit for declaration and permanent injunction. According to the respondent, the suit property originally belonged to one Sambangi Chettiar. One Suguna is the second wife of said Sambangi Chettiar. After the death of said Sambangi Chettiar, petitioner and said Suguna orally partitioned the property of the said Sambangi Chettiar, the original owner. The suit property was allotted to Suguna/second wife of Sambangi Chettiar. The respondent purchased the property by the sale deed dated 10.11.2008 from Suguna/second wife of Sambangi Chettiar. The petitioner filed written statement on 07.12.2009 and denied all the averments made by the respondent. According to the petitioner, Suguna is not second wife of Sambangi Chettiar and there was no partition between Suguna and petitioner. The petitioner is the only legal heir of Sambangi Chettiar and after his death, she inherited the suit property.

WEB COPY

3. Based on these pleadings, issues were framed and trial has commenced. The respondent let in oral evidence by examining three witnesses, marked documents and closed his side. When the suit was posted for evidence on behalf of the petitioner, the petitioner

filed present I.A.No.419 of 2014 under Order VIII Rule 1 of C.P.C., for permission to file additional written statement.

4. According to the petitioner, her father Sambangi Chettiar executed a Will dated 29.04.1981 and bequeathing the suit property to the petitioner's mother and petitioner. The said Will is registered one. After the death of her mother/Lakshmi Ammal, petitioner has become owner of the suit property. She came to know about the Will by verification in the Registrar's Office and obtained the certified copy of the Will. In view of the above facts, the petitioner sought for leave to file additional written statement.

5. The respondent filed counter affidavit and contended that the petitioner has not mentioned the Will in the original written statement. The petitioner has come out with the present application only after evidence being let in and closed by the respondent and when the suit is posted for evidence on behalf of the petitioner. Therefore, the application is not maintainable.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and averments made in the written

statement already filed, held that the petitioner is introducing a new case that she was not aware of the Will at the time of filing of the written statement and the Will has not come into force and dismissed the application.

7. Against the said order of dismissal dated 24.11.2014 made in I.A.No.419 of 2014, the present Civil Revision Petition is filed by the petitioner/defendant.

8. Heard the learned counsel for the petitioner and perused the materials available on record. Though the notice was served on the respondent and his name has been printed in the cause list, there is no representation on behalf of him either in person or through counsel.

9. From the materials available on record, the petitioner in the written statement already filed, has come out with the specific case that Suguna/vendor of the respondent is not second wife of Sambangi Chettiar and there was no oral partition between the petitioner and said Suguna. The petitioner as a sole legal heir of Sambangi Chettiar, has inherited the property. Contrary to the said

stand, the petitioner now seeks leave of the Court to file additional written statement taking a stand that Sambangi Chettiar executed a Will dated 29.04.1981, whereby the suit property was bequeathed to the petitioner's mother and petitioner. She has become absolute owner of the property after the death of her mother, as per the Will. This is a new case which the petitioner is trying to introduce. The petitioner as a defendant is not entitled to introduce any new case by filing additional written statement. Additional written statement can be filed only for clarification of the facts stated in the written statement already filed or to fortify the statement made in the written statement filed earlier. Further, the petitioner has not stated when she came to know about the Will and reason for seeking to file and mark certified copy of the Will and as to why she is unable to produce the original Will. The petitioner has not cross-examined the respondent's witnesses with regard to the above issue.

10. The learned Judge has considered all the aspects in proper perspective and also the stage of the suit, dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated

24.11.2014. It is open to the petitioner to raise all her objections at the time of argument.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

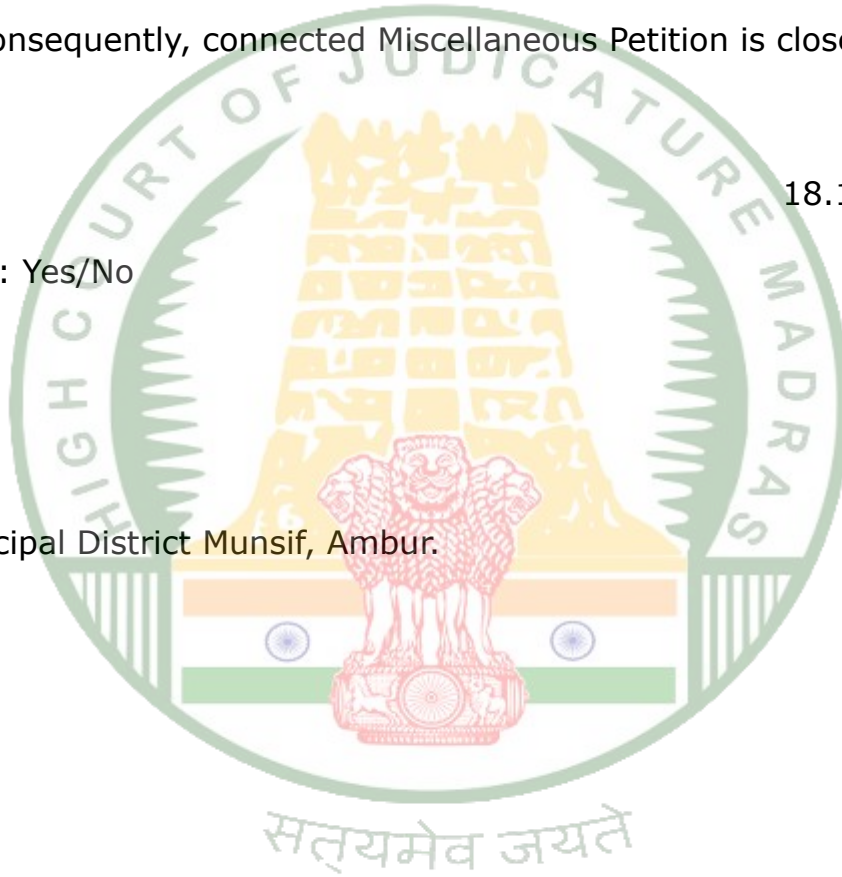
18.12.2017

Index : Yes/No

kj

To

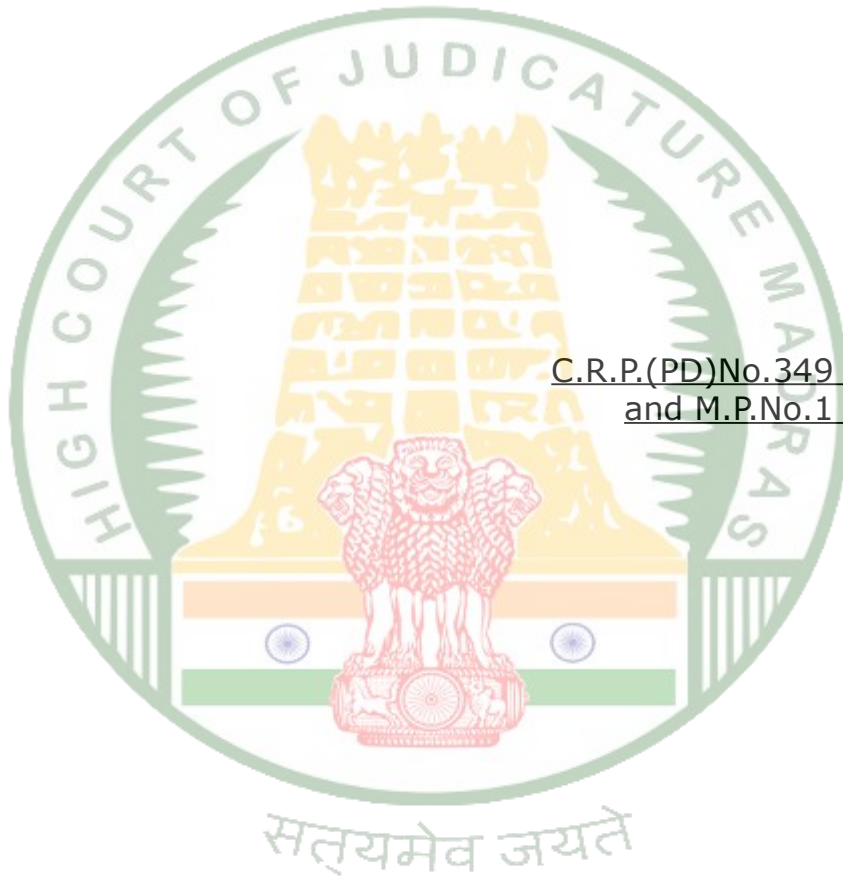
The Principal District Munsif, Ambur.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(PD)No.349 of 2015
and M.P.No.1 of 2015

WEB COPY

18.12.2017