

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)No.3495 of 2016

and

C.M.P.No.17776 of 2016

1.Nallammal
2.Thangamani

.. Petitioners

..Vs..

1.Minor Subash
2.Minor Iniya
(Minor respondents 1 and 2
are represented by their
mother/guardian Vijaya

3.R.Suresh
4.G.P.Varadharajan

..Respondents

सत्यमेव जयते

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.10.2016 made in I.A.No.127 of 2016 in O.S.No.54 of 2011 on the file of the Principal District Court, Namakkal.

For Petitioners : Mr.C.Prakasam

for Mr.C.Prabakaran

For R1 and R2 : Mr.R.Prabakar

For R3 and R4 : Mr.C.Ashok Kumar

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 20.10.2016 made in I.A.No.127 of 2016 in O.S.No.54 of 2011 on the file of the Principal District Court, Namakkal.

2. The petitioners are the defendants 1 and 2, respondents 1 and 2 are the defendants 3 and 4 and the respondents 3 and 4 are the plaintiffs in O.S.No.54 of 2011 on the file of the Principal District Court, Namakkal. The respondents 3 and 4 filed suit against the petitioner and respondents 1 and 2 (two minor children of second petitioner and grand children of first petitioner) for partition and for permanent injunction. The second petitioner was appointed as guardian by the order made in I.A.No.182 of 2011 and he is the only guardian. The petitioners filed written statement and second petitioner filed a memo adopting the same on behalf of the respondents 1 and 2. The wife of the second petitioner/mother of the respondents 1 and 2 filed I.A.No.356 of 2011 in the suit to remove the second petitioner from the guardianship of the respondents 1 and 2 and from representing them in the suit. According to her, second petitioner has got conflicting interest against the respondents 1 and 2. The learned Judge by order dated 15.09.2011 dismissed the said application. Challenging the said order, she filed C.R.P.(PD)No.952 of

2012 before this Court. This Court by order dated 18.02.2013 allowed the said civil revision petition and removed the second petitioner from guardianship of minors/respondents 1 and 2 and appointed the mother of the respondents 1 and 2 as guardian.

3. Respondents 1 and 2 represented by their mother and guardian filed I.A.No.127 of 2016 to scrap the counter affidavit and written statement filed by the petitioners on behalf of the respondents 1 and 2. According to the mother of the respondents 1 and 2, she has been appointed as guardian of the respondents 1 and 2 and therefore, she is entitled to file counter affidavit and written statement.

4. The petitioners filed counter affidavit and opposed the said application. According to the petitioners, the present guardian, who is mother of the respondents 1 and 2, is colluding with (widow of second petitioner's brother) and by such collusion, they have forged a Will, which is contrary to the interest of the respondents 1 and 2. The petitioners have filed a detailed written statement, which are safeguarding the interest of the minors. If the written statement and counter affidavit are scrapped, it will affect the interest of minors.

Further, the second petitioner has filed only a memo on behalf of the

respondents 1 and 2 adopting the written statement filed by the petitioners.

5. The learned Judge allowed the application on the ground that the mother of the respondents 1 and 2 having been appointed as guardian by this Court, she is entitled to file counter affidavit and written statement filed on behalf of the respondents 1 and 2.

6. Against the order dated 20.10.2016 made in I.A.No.127 of 2016, the present civil revision petition is filed by the petitioners.

7. The learned counsel for the petitioners submitted that this Court in C.R.P.(PD)No.952 of 2012 appointed the mother of the respondents 1 and 2 as guardian and did not give any liberty to her to file counter affidavit and written statement and file a petition to scrap the counter affidavit and written statement filed by the petitioners. This Court also did not pass any orders scrapping the counter affidavit and written statement filed by the petitioners. The learned Judge failed to see that the written statement filed by the petitioners on their behalf cannot be scrapped on the application filed by the respondents 1 and 2 representing by their mother. The learned Judge failed to see that the second petitioner acted only the interest of the minors. On the other hand, mother of the respondents

1 and 2, who is acting against the interest of minors by creating forged documents, has left the minors as well as the petitioners.

8. The learned counsel for the respondents 3 and 4 contended that this Court has removed second petitioner from the guardianship of minors/respondents 1 and 2 on the ground that he is having conflicting interest to that of minors. In view of the said orders, counter affidavit and written statement filed by the petitioners cannot be accepted on behalf of the minors. The learned Judge based on the order of this Court allowed the application. There is no merit in the civil revision petition and hence, he prayed for dismissal of the civil revision petition.

9. Heard both sides and perused the materials on record.

10. From the typed set of papers filed by the petitioners, it is seen that the petitioners filed written statement on 01.02.2012 stating that the mother of the respondents 1 and 2 in collusion with widow of second petitioner's brother created forged will dated 25.07.2009, as though the (late) Kandasamy, grand father of the respondents 1 and 2 (father of second petitioner and husband of the first petitioner) executed a Will bequeathed the property to the respondents 1 and 2 and other two grand children through his other

son viz., (late) Tamil mani. The petitioners also stated that the mother of the minors/respondents 1 and 2 filed O.S.No.74 of 2011 for declaration and permanent injunction in collusion with others to defeat the interest of the respondents 1 and 2. The learned Judge has not considered the fact that written statement has been filed by the petitioners as defendants 1 and 2. The second petitioner as guardian of respondents 1 and 2 filed a memo accepting the written statement filed by the petitioners.

11. In the circumstances, the learned Judge committed irregularity in scrapping the written statement as well as counter affidavit filed by the petitioners. The learned Judge failed to see that the mother of the respondents 1 and 2 as guardian appointed by this Court can only seek scrapping of the memo filed by the second petitioner adopting the written statement filed by them on behalf of the respondents 1 and 2. The learned Judge erred in scrapping the written statement and counter affidavit filed by the petitioners.

12. In view of the above facts, the order of the learned Judge dated 20.10.2016 made in I.A.No.127 of 2016 is set aside. Subsequent to the filing of the written statement and memo, mother of the respondents 1 and 2 (wife of the second petitioner) filed C.R.P.(PD)No.952 of 2012 and this Court appointed her as the

guardian of the minors. In view of the order of this Court, the present guardian can seek permission to file additional written statement on behalf of the respondents 1 and 2.

13. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

29.06.2017

Index :Yes / No
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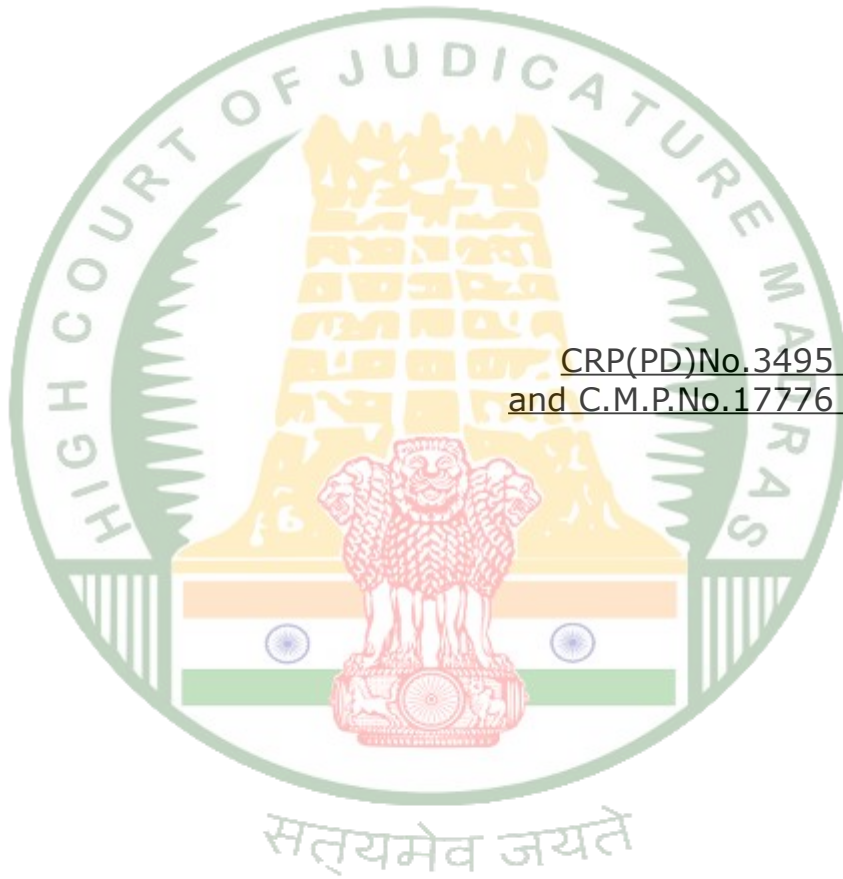
The Principal District Court
Namakkal.



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V.M.VELUMANI,J.

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