

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(NPD)No.692 of 2013
M.P.Nos.1 to 3 of 2014 and 1 of 2013

K.M.Murugesan

... Petitioner

Vs.

1.M.Kamaraj
2.M.Krishnan
3.Manickam

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 17.11.2012 made in I.A.No.351 of 2010 in O.S.No.68 of 2005 on the file of the District Munsif Court, Krishnagiri.

For Petitioner : Mr.K.Venkatasubhan
for M/s.Sarvabhauman Asso.

For R1 : Died
For R2 & R3 : Mr.N.E.A.Dinesh

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ORDER

This Civil Revision Petition has been filed against the fair and decretal order 17.11.2012 made in I.A.No.351 of 2010 in O.S.No.68 of 2005 on the file of the District Munsif Court, Krishnagiri.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.215 of 2001 on the file of the Subordinate Court, Krishnagiri. The petitioner filed the said suit for partition against the respondents and one Navamani. A preliminary decree was passed on 21.11.2004. The petitioner filed I.A.No.203 of 2005 for passing final decree. While the said application was pending, fourth respondent, Navamani died. The petitioner filed I.A.No.351 of 2010 to recognise him as legal representative of deceased Navamani and to grant leave to him to continue the proceedings. According to the petitioner, the said Navamani executed a Will dated 15.06.2009, declaring her 1/5th share to the petitioner and on her death, the Will came into force and therefore he is entitled to 4th respondent, deceased Navamani's share also. The respondents 2 and 3 filed counter affidavit and denied the execution of the Will and contended that the 4th respondent, Navamani was mentally retarded and that she was unsound and could not understand anything. Hence she is incompetent to execute the Will and the alleged Will is a forged one.

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3. The petitioner was examined as PW1, M.Natarajan and T.Sivakumar were examined as Pws 2 and 3. The petitioner marked two documents viz.,

the Will dated 15.06.2009 and death Certificate of Navamani as Exs.P1 and P2. The second respondent examined himself as RW1 and did not mark any document. The learned Judge considered the materials on record, averments in the affidavit, counter affidavit and evidence of Pws1 to 3 and RW1, dismissed the application holding that Pws2 and 3 are the close relative of petitioner; they have given contradictory evidence; there are suspicious circumstances in the execution of the Will. It is admitted that executory was ill at the time of execution of the Will and she died 8 days after the execution of the Will.

4. Against the said order dated 17.11.2012 made in I.A.No.351 of 2010 in O.S.No.68 of 2005, the present Civil Revision Petition is filed by the petitioner.

5. Heard the learned counsel appearing for the petitioner and respondents 2 and 3 and perused the materials available on record.

6. From a reading of the order of the learned District Munsif, it is clear that petitioner has failed to prove the genuineness of the Will. PW2 is father-in-law of petitioner. PW3 is close relative of petitioner. Their evidence is contradictory to chief examination and cross examination. The learned Judge,

considering these facts, dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference with the order of the learned District Munsif dated 17.11.2012.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No
gsa

To

The District Munsif,
Krishnagiri.

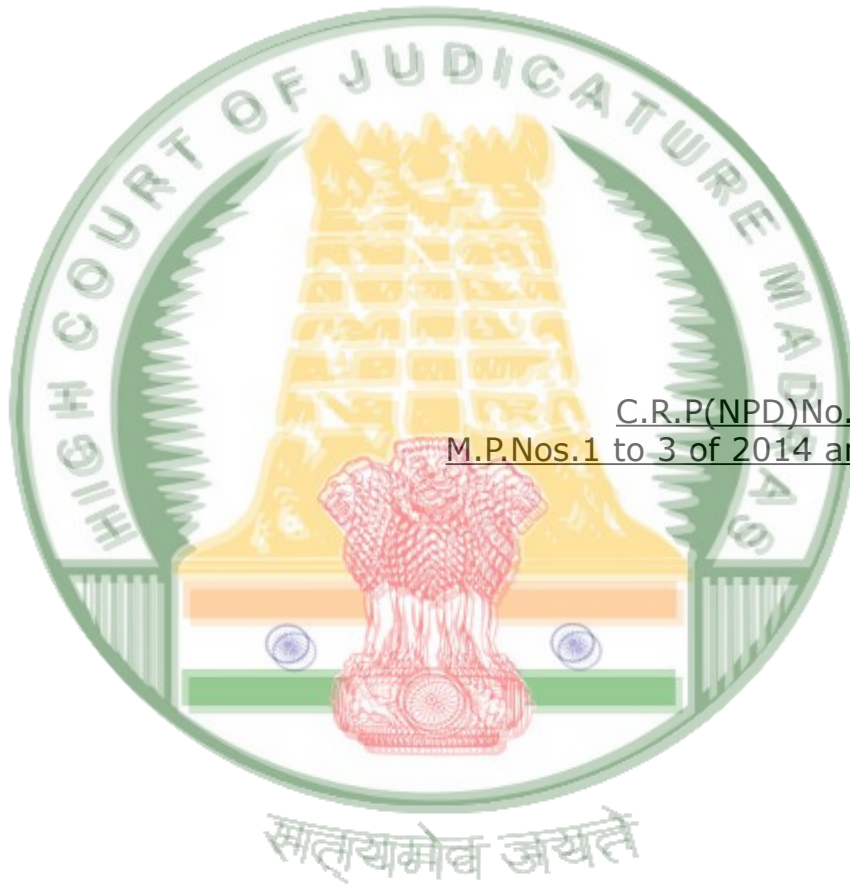


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V.M.VELUMANI, J.

gsa



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