

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2018

CORAM

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CIVIL REVISION PETITION(PD) No.1039 of 2018
and C.M.P.No.5470 of 2018

M.R.Palanisamy .. Petitioner

vs

1.Gnanasoundari

2.Kavitha

3.Nandhini

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 29.01.2018 passed in I.A.No.1152 of 2016 in O.S.No.233 of 2015 on the file of the II Additional District-cum-Sessions Court, Tiruppur.

For Petitioner

... Mr.K.Goviganesan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 29.01.2018 passed in I.A.No.1152 of 2016 in O.S.No.233 of 2015 on the file of the II Additional District-cum-Sessions Court, Tiruppur.

2. According to the petitioner/first defendant, the respondents/plaintiffs filed a suit in O.S.No.233 of 2015 against the petitioner/first defendant and other defendants seeking declaration, partition and permanent injunction on the file of the learned II Additional District -cum- Sessions Judge, Tiruppur. In the aforesaid suit, the first defendant filed an application in I.A.No.1152 of 2016 under Order 26 Rule 10(A) read with Section 45 of the Indian Evidence Act, to appoint a Commissioner to take the disputed signature in the original unregistered Will dated 17.09.2014 to the Government Handwriting Expert for opinion by comparing the same with the signature of M.R.Karuppasamy in the admitted sale deeds executed by him on 08.07.2014 (Document No.3078/2014) and 20.11.2014 (Document No.5601/2014). A counter statement has also been filed in the said I.A. stating that petitioner has already obtained the expert opinion from Private Agency and the same has also been marked and further it is stated that the execution of the Will has to be proved before the Court below under Section 68 of Indian Evidence Act. The trial Court, after considering the submissions made by both parties and on perusal of records, dismissed I.A.No.1152 of 2016 by order dated 29.01.2018 stating that the plaintiffs have to prove the Will before the Court. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that when the respondents relied upon the alleged unregistered Will, which has been executed in their favour, in respect of the common property claiming to be their exclusive property, the petitioner is bound to disprove the alleged unregistered Will dated 17.09.2014. Hence, the petitioner filed I.A.No. 1152 of 2016 with the aforesaid prayer. But, the trial Court without considering the prayer sought for by the petitioner, erroneously, dismissed the application. Hence, the impugned order passed by the Court below is liable to be set aside.

4.Heard, submissions made by the learned counsel for the petitioner and perused the materials available on record.

5. On an earlier occasion, this Court in the case of **P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908** held as follows:

"26. In **Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530: (2008) 2 MLJ 1115**, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the

Supreme Court held thus at p.1124 of MLJ:-

"17. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses...."

27. In *P.Sood & Co., (Manufacturing)* represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005) 2 MLJ 603: (2005) 3 CTC 12, Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert."

6. On perusal of the records, it is seen that the respondents filed a suit for declaration, partition and permanent injunction relying on the alleged unregistered Will dated 17.09.2014, wherein, to disprove the genuineness of the said Will, the petitioner, filed the instant application to appoint a Commissioner. When the alleged unregistered Will is relied upon by the respondents, it is the duty of the respondents to prove the genuineness of the Will by producing necessary materials before the Court below by way of oral and documentary evidence. In the light of the decisions cited supra, the burden is on the part of the respondents/plaintiffs to prove the genuineness of alleged unregistered Will. Therefore, this Court is not inclined to entertain the Civil Revision Petition.

7. In view of the facts and circumstances of the case and in the light of the aforesaid judgment, the impugned order passed by the Court below is sustainable and does not warrant interference of this Court. Hence, the Civil Revision Petition is liable to be dismissed.

In the result, the Civil Revision Petition fails and the same is dismissed. The impugned order dated 29.01.2018 passed in I.A.No.1152 of 2016 in O.S.No.233 of 2015 by the learned II Additional District-cum-Sessions Court, Tiruppur is confirmed. The petitioner is also at liberty, to make their objections, at the time of trial in the suit. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2018

Speaking/Non Speaking order

Index: Yes/No.

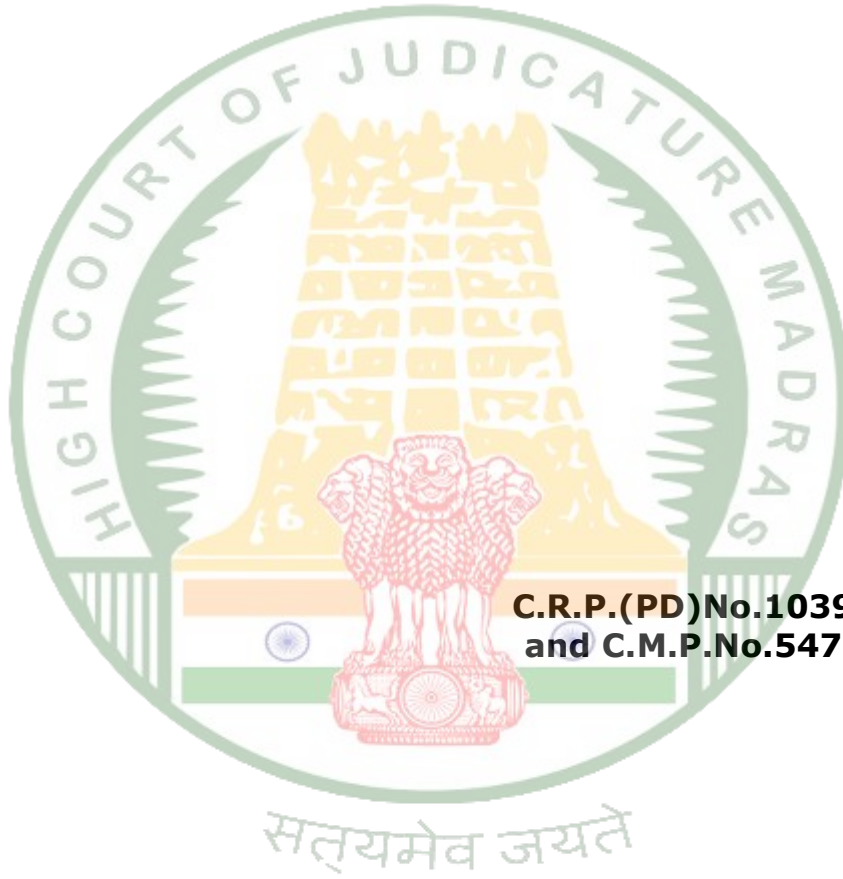
To

The II Additional District-cum-Sessions Judge,
Tiruppur.

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D.KRISHNAKUMAR,J.

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Date: 20.03.2018