

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD).No.1274 and 1275 of 2018 &
C.M.P.No.6541 of 2018

1.Alamelu

2.R.Madhavan

.. Petitioners/plaintiffs in in both CRPs

vs.

1.Rajamanickam Ammal

2.K.Selvi

.. Respondents in both CRPs

Prayer in CRP(PD)No.1274 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.02.2018 passed in I.A.No.82 of 2018 in O.S.No.102 of 2004 on the file of the III Additional District Judge, Salem.

Prayer in CRP(PD)No.1274 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.02.2018 passed in I.A.No.88 of 2018 in O.S.No.102 of 2004 on the file of the III Additional District Judge, Salem.

For Petitioners
in both CRPS

... M/s.P.Jagadeesan

For Respondents
in both CRPS

... Mr.A.E.Ravi Chandran

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioner against the order passed in I.A.Nos.82 and 88 of 2018 in O.S.No.102 of 2004 on the file of the III Additional District Judge, Salem, dated 15.02.2018.

2. After completion of pleadings and before commencement of trial, the petitioner had filed two applications. The Application in I.A.No.46 of 2016 to send the Will dated 16.09.1998 to the Forensic Department, Chennai along with the Thumb impression of Venkataraja Konar for comparison and expert opinion and an application in I.A.No.45 of 2016 to send for the documents from the Office of Sub Registrar, Valapady for the purpose of comparison. These applications were dismissed by the Trial Court. Aggrieved against the order passed by the trial Court, the revision petitioners filed CRP.Nos.1759 and 1760 of 2016 before this Court.

3. While, disposing of CRP.Nos.1759 and 1760 of 2016, this Court has observed that the applications filed by petitioners were too pre-mature and they should await the cross-examination of the

witnesses on their side, including the attesting witnesses to the Will.

4. Later on, the revision petitioners examined the witnesses and the case was posted for arguments. At that time, petitioners filed the applications in I.A.No.82 of 2018 to send for the Will under Section 45 of the Indian Evidence Act to get the expert opinion about the Thumb Impression found in the Will and also one more application in I.A.No.88 of 2018 under Order 16 Rule 6 of C.P.C for directing the Sub Registrar to produce the Thumb Impression register relating to Book I Volume 1565 and pages 49 to 51 and registered as document No.855 of 1990, dated 04.09.1998. those applications were dismissed by the trial court. Aggrieved against the same, the present revision petitions are filed.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. Both the applications were dismissed by the trial Court by the impugned orders. According to the petitioners, as directed by this Court on the earlier occasion in CRP.Nos.1759 and 1760 of 2016, he

has examined the witnesses and also taken the summons to one attestor to the Will, who is no more and other two witnesses evaded with the service of summons. Therefore, he has filed these two applications before the trial Court. But the trial Court failed to consider the above facts simply dismissed the applications. Since this Court has observed that the earlier revisions filed by petitioners were too premature and directed them to approach this Court after examination of witnesses, once again he has approached this Court by way of these revisions.

7. It is not in dispute that the plaintiff has filed the suit for partition on the strength of an unregistered Will dated 16.09.198, stated to have been executed by Venkataraja Konar. Of course, the revision petitioners have taken summons to the attesting witnesses and for one reason or other they could not secure the witnesses. Section 68 is very clear that Will has to be proved by examining at least one attesting witness.

8. Admittedly, the learned counsel for the revision petitioner has not taken steps to examine the attesting witness in the manner known to law. Therefore, the revision petitions are liable to be

dismissed.

9. The learned counsel for the plaintiff would submit that the evidence of both sides are closed and posted for arguments. In order to prove the case of the plaintiff and in the interest of justice and to take coercive steps to bring the attesting witnesses before the trial Court one more opportunity is being given. The trial Court shall entertain such application and dispose the same after giving an opportunity to the revision petitioners, and proceed with the case in accordance with law.

10. With the above direction, these Civil Revision Petitions are dismissed. No costs. Consequently connected miscellaneous petition is closed.

06.04.2018

Index :Yes/No

Internet :Yes/No

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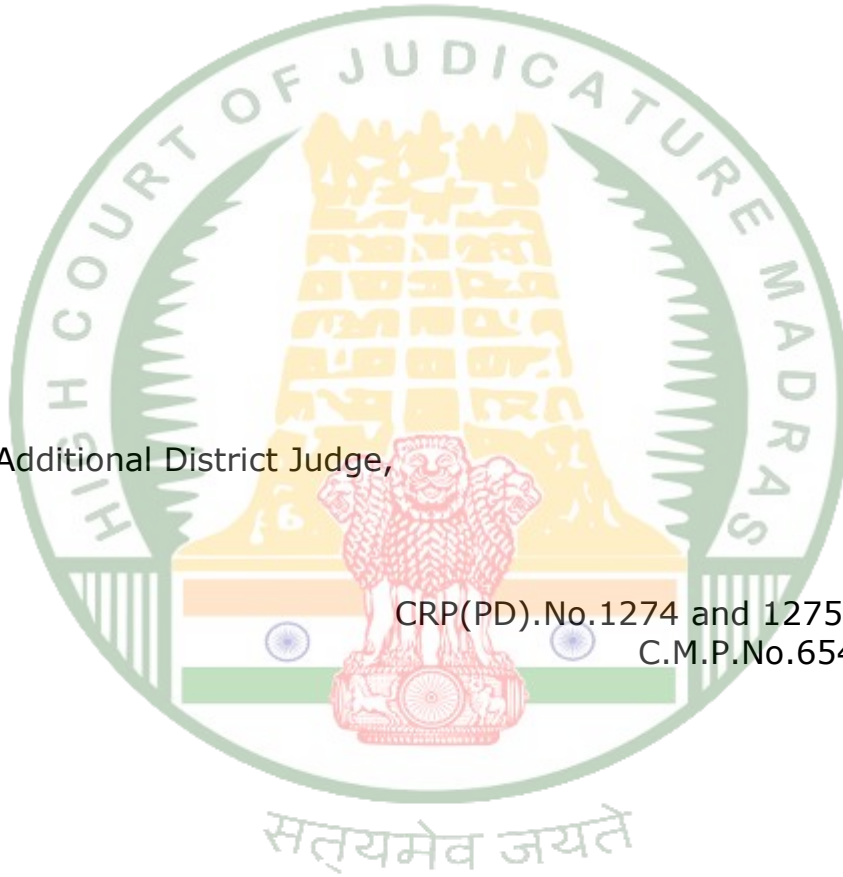
Note:Issue order copy on 10.04.2018.

P.VELMURUGAN.J,

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To

The III Additional District Judge,
Salem.



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