

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.3.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3241 and 3242 of 2017

and

C.M.P.No.15171 and 15172 of 2017

1 Palaniammal

2 Palanisamy

... Petitioners/Defendants in
both C.R.Ps.

Vs.

M.Chinnasamy

Nayakiammal (died)

... Respondent/Plaintiff in
both C.R.Ps.

These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the orders, dated 13.7.2017 made in I.A.No.336 and 337 of 2017 in O.S.No.648 of 2012 on the file of I Additional District Judge, Fast Track Court, Coimbatore.

For Petitioners
in both C.R.Ps.
For Respondent
in both C.R.Ps.

: Mr.K.Krishnan for
Mr.A.Sivaji
: Mr.S.Karthikeibalan

COMMON ORDER

According to the petitioners, the respondent has filed a suit in O.S.No.648 of 2012 for partition against the petitioners herein. In the aforesaid suit, plaintiff's side evidence was concluded. At this stage, the applications in I.A.No.336 and 337 of 2017 were filed by the respondent to reopen and recall P.W.1 to adduce further evidence. The petitioners herein resisted the application by filing counter stating that by way of adducing additional evidence in respect of Will, he introduces new fact about the allotment of share to the Marappa Gounder and the same is not permissible under law. However, the trial court allowed the applications. Challenging the aforesaid order, the petitioners have preferred the present Civil revision petition before this court.

2 According to the petitioners, plaintiff's mother died on 1.11.2016 and suitable amendments were made in the plaint on 18.4.2017. Thereafter, after plaintiff's side evidence was closed, the present application has been filed. The respondent has not stated any reason for filing the aforesaid Will at the pre-trial stage. Further, no satisfactory reason has been stated for filing the application belatedly that too after plaintiff's evidence was closed. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent would submit that the aforesaid application has been filed on 18.4.2017 immediately after the death of the petitioner's mother on 1.11.2016. Therefore, there is no delay on the part of the respondent in filing the application. Hence, the order passed by the court below is perfectly valid in law and the Civil revision petition is liable to be dismissed.

4 Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials on record.

5 On perusal of records shows that plaintiff's side evidence was closed, at this stage, the respondent has filed the instant application to mark the alleged Will executed by the plaintiff's mother. The respondent being the plaintiff in the suit has to prove the genuineness of the Will by adducing oral and documentary evidence. A perusal of the impugned order shows that a detail order has been passed by the trial court by stating that the contents in the testament claimed to be executed by the mother in favour of the respondent will not amount to pleadings by the petitioner/respondent herein or by the mother and further held that the petitioner/respondent herein cannot adduce evidence in respect of the final decree and allotment of share in O.S.No.641 of 1969 and hence, no prejudice would be caused to the

D.KRISHNAKUMAR,J.

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opposite party and allowed the petition. There is no error or illegality in the
order passed by the court below and hence there is no warrant to interfere
with the order passed by the court below.

6 Accordingly, the Civil revision petition fails and the same is
dismissed. Since the suit is of the year 2012, the learned Additional District
Judge, Fast Track Court, Coimbatore is directed to dispose of the suit in
O.S.No.No.648 of 2012 on his file as expeditiously as possible. No costs.
Connected miscellaneous petition is closed.

13.3.2018

Speaking/Non Speaking order

Index: Yes/No

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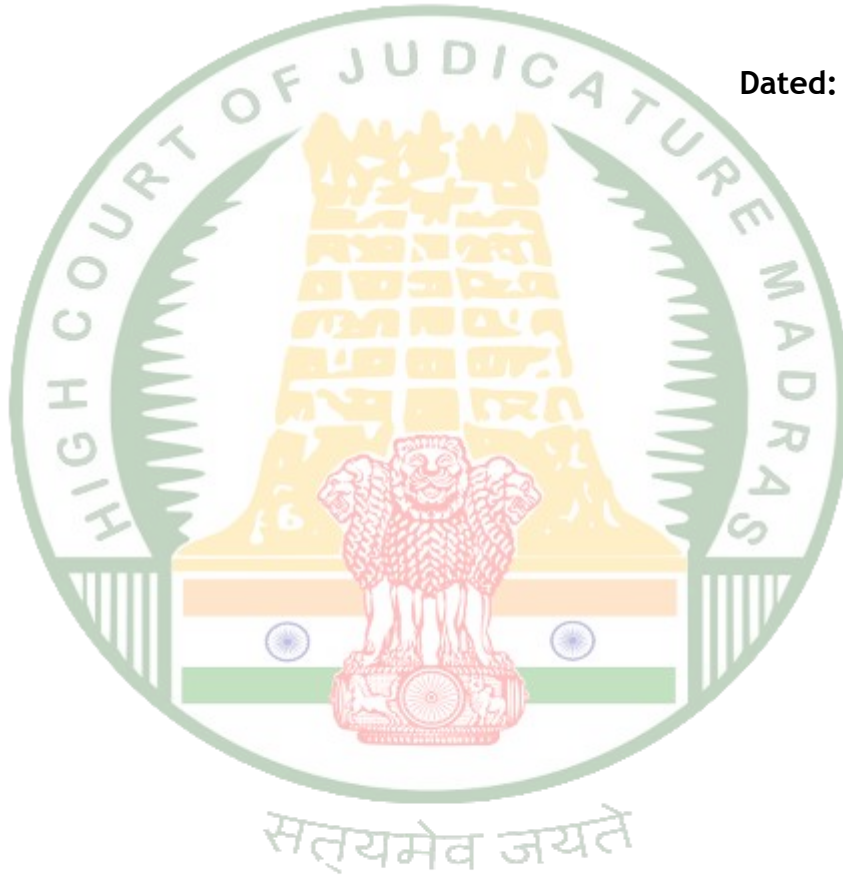
To

I Additional District Judge, Fast Track Court, Coimbatore.

C.R.P.(PD) No.3241 & 3242 of 2017 &
C.M.P.No.15171 and 15172 of 2017

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Dated: 25.1.2018



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