

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 3333 of 2017
and
CMP No.15520 of 2017

Thangavel

.. Petitioner

Vs

P.Lakshmi

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal Order dated 25.10.2017 made in I.A.No.404 of 2016 in O.S.No.16 of 2005, on the file of the Principal Sub Judge, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.S.Kaithamalai Kumaran

WEB COPY
ORDER

This revision arises against the fair and decreetal Order dated 25.10.2017 made in I.A.No.404 of 2016 in O.S.No.16 of 2005, on the file of the Principal Sub Judge, Salem.

2. The respondent/plaintiff has filed the suit in O.S.No.16 of 2005 before the Principal Subordinate Judge, Salem for partition and separate possession. The respondent/plaintiff has filed an application in I.A.No.404 of 2016 before the Court below under Order 18 Rule 1 and under Section 151 C.P.C., seeking direction to the defendants to let in evidence first with regard to genuineness of the Will. The Court below allowed the said application and directed the petitioner/defendant to commence the evidence first. Challenging the said order, the petitioner/ defendant has filed the present Civil Revision Petition.

3. It is a specific case of the respondent/ plaintiff that the suit properties were purchased by Kandayammal, mother of the petitioner on 20.11.1957, using her own funds given by her parents and out of the sale proceeds of the jewels presented as Sridhana. The petitioner / defendant disputed the aforesaid fact in the written statement and had stated that the property was purchased by their father Sevi Gounder by a registered sale deed dated 07.04.1965 and by way of registered Will, Sevi Gounder bequeathed the entire suit property in favour of the petitioner/defendant. The said submission was denied by the learned counsel appearing for the respondent/ plaintiff. Therefore,

the respondent has filed the present application stating that since the defendant relies heavily on the Will, the burden is on the defendant to prove the genuineness of the Will.

4. According to the learned counsel for the respondent/plaintiff, there are specific grounds raised in the affidavit filed in support of the application before the Court below. In the written statement, the petitioner/ defendant claims that their father Sevi Gounder, had executed a Will in his favour bequeathing the entire suit property on him. The respondent/plaintiff denied the allegation that there is a Will. If the Will is proved to be genuine, the respondent/plaintiff will not have a share in the suit property. If the Will is proved to be a created one, then the respondent/plaintiff will get her legitimate share. It is the duty of the petitioner/defendant to prove the genuineness of the Will before the Court below. Therefore, the petitioner/defendant should begin the evidence first to prove the genuineness of the Will and hence the Court below has rightly allowed the application.

WEB COPY

5. Considered the rival submissions of the learned counsel for the petitioner and the respondent, this Court is of the view that the respondent, who is the plaintiff in the suit has to establish her case by

leading oral and documentary evidence. Without doing so, the plaintiff is not entitled to examine the defendant's side witnesses or challenge the Will or any other documents. If at all the Will is not genuine, the respondent/plaintiff can question the genuineness of the Will during trial. The burden of proof cannot be shifted to the defendant. As such, the plaintiff cannot seek the defendants to lead the evidence first and thereafter the plaintiff will prove her case. Therefore, the order passed by the Court below is liable to be set aside.

6. Therefore, the order dated 25.10.2017 made in I.A.No.404 of 2016 in O.S.No.16 of 2005 by the court below is set aside. The Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

05.02.2018

Index: Yes/ No

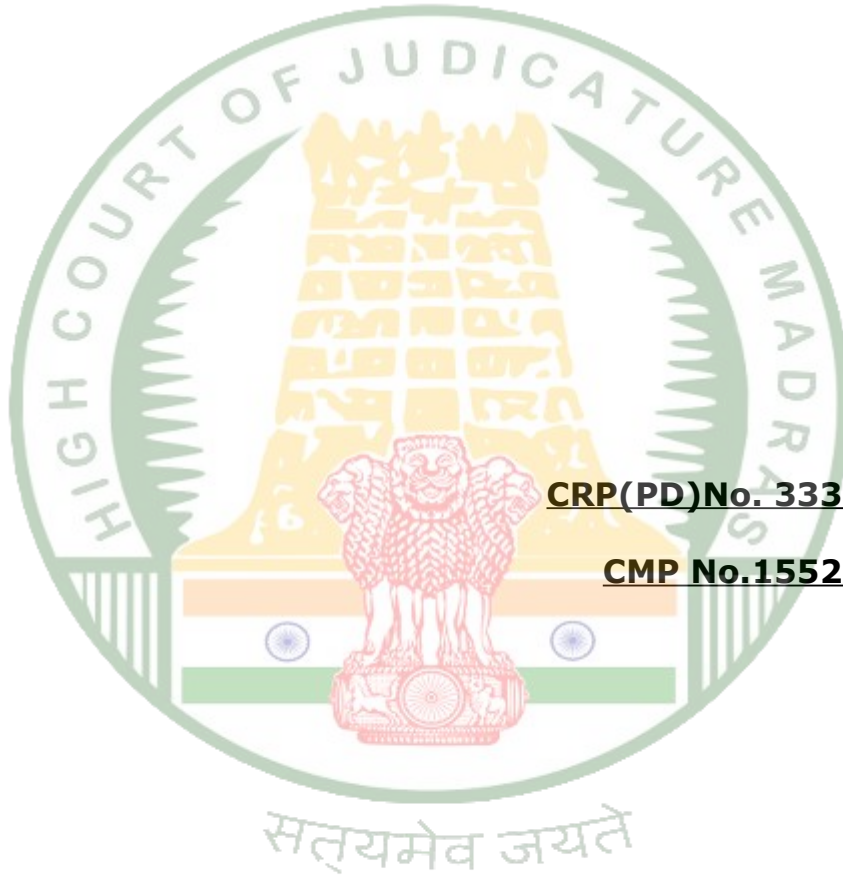
Speaking Order / Non-Speaking Order

To

The Learned Principal Sub Judge,
Salem.

D. KRISHNAKUMAR J.,

nl/sts/ avr



CRP(PD)No. 3333 of 2017
and
CMP No.15520 of 2017

05.02.2018

WEB COPY