

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1154 of 2015 and
M.P.No.1 of 2015

P.Stalin

... Petitioner

Vs.

1.N.Kannagi
2.T.Panneerselvam
3.T.Premavathy
4.T.Mahendeswari
5.Ayub
6.Imithiyas
7.Shaik Ali
8.Kathar
9.Mehboob Basha
10.Jafar

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.10.2014 made in I.A.No.87 of 2014 in O.S.No.5038 of 2012 on the file of the XIX Assistant City Civil Court at Chennai.

For Petitioner : Mr.N.Seshadri

For R1 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 29.10.2014 made in I.A.No.87 of 2014 in O.S.No.5038 of 2012 on the file of the XIX Assistant City Civil Court at Chennai.

2. The petitioner is third party, first respondent is the plaintiff and respondents 2 to 10 are the defendants 1 to 9 in O.S.No.5038 of 2012 on the file of the XIX Assistant City Civil Court at Chennai. The first respondent filed the said suit for partition against the respondents 2 to 4, who are brother and sisters, for a direction to the second respondent to render the accounts for the rental income of the suit property from December 2010 to June 2012 and for a direction to the respondents 5 to 8, who are the tenants in the suit property, to deposit 1/4th of rent in the Court. The petitioner filed I.A.No.87 of 2014 under Order I Rule 10 C.P.C. to implead him as 10th defendant in the above suit.

3. According to the petitioner, the property originally belonged to his grand father namely, V.S.Dharani and after his death, the suit property was enjoyed by his grand mother Sakkubai. His grand mother out of love and affection by the Will dated 18.03.2009 bequeathed the suit property to him.

4. The respondents 1 and 3 filed counter affidavit and disputed the existence of the Will and contended that the petitioner has not produced any document to substantiate his claim and has not furnished the particulars of O.P. alleged to have been filed by him for probate of Will. The second respondent, who is the father of the petitioner filed a memo praying for allowing the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and memo filed by the second respondent, dismissed the application holding that the petitioner has not produced any document to substantiate his claim, as first respondent/plaintiff denied the very existence of the Will.

6. Against the said order of dismissal dated 29.10.2014 made in I.A.No.87 of 2014 in O.S.No.5038 of 2012, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record. Though first respondent entered appearance through counsel, there is no representation on behalf of the first respondent.

8. The petitioner is seeking to implead himself as party

defendant claimed to be the absolute owner of the suit property based on the Will dated 18.03.2009 alleged to have been executed by his grand mother. From the impugned order of the learned Judge, it is seen that the petitioner has not produced the said Will and particularly, he has not furnished particulars of the O.P. alleged to have been filed by him for obtaining probate of the Will. Only when the probate is granted to the petitioner, he will acquire the title to the suit property and the present application is premature. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 29.10.2014.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2018

Index:Yes/No

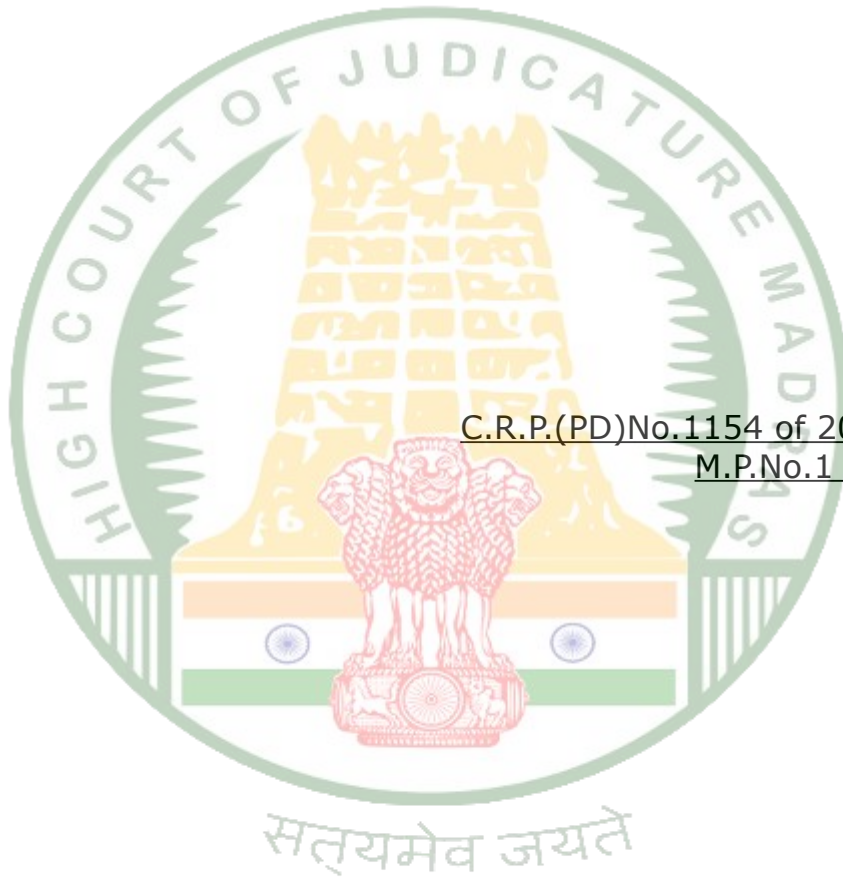
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To

The XIX Assistant City Civil Judge
Chennai.

V.M.VELUMANI,J.

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