

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) No.246 of 2018
and C.M.P.No.1400 of 2018

K.Neela
W/o. Krishnan,
Represented by her
Power Agent
K.Kannan,
S/o.K.Kaliappan,
No.2/37/1, Agrahara Ayyampalayam,
Nallipalayam Village,
Namakkal District.

.. Petitioner

vs

1.S.Kavitha

2.V.Sengodan

.. Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 23.10.2017 in I.A.No.96 of 2017 in O.S.No.16 of 2012 passed by the Subordinate Judge, Rasipuram dismissing the petition filed under Rule 75 of Civil Rules of Practice to summon the Sub-Registrar, Mallasamudram for production of document No.2524/2006 on his file.

For Petitioner

... Mr.K.A.Mariappan

ORDER

The Civil Revision Petition has been filed to set aside the order dated 23.10.2017 passed by the Subordinate Judge, Rasipuram in I.A.No.96 of 2017 in O.S.No.16 of 2012.

2.According to the petitioner, the petitioner represented by her Power Agent, filed a suit in O.S.No.34 of 2009 seeking for partition before the District Munsif Court, Namakkal and thereafter transferred to Sub Court, Rasipuram and the same was renumbered as O.S.No.16 of 2012. In the said suit, respondents/first defendants 1 and 2 have filed their written statement on 07.10.2009 and 20.10.2009 respectively. Subsequently, the petitioner filed I.A.No.96 of 2017 in O.S.No.16 of 2012 under Rule 75 of the Civil Rules of Practice and under Section 151 of the Code of Civil Procedure before the Court below seeking a direction to summon the Sub Registrar, Mallasamudram for production of document No.2524/2006 dated 10.11.2006 and refer the same to the Handwriting Expert along with Ex.B.4, the Will dated 01.11.2007 for getting opinion for comparison of the signature. The Court below, on 23.10.2017, erroneously dismissed the said application on the ground that the genuineness of Ex.B.4, the Will dated 01.11.2007 has to be proved by the

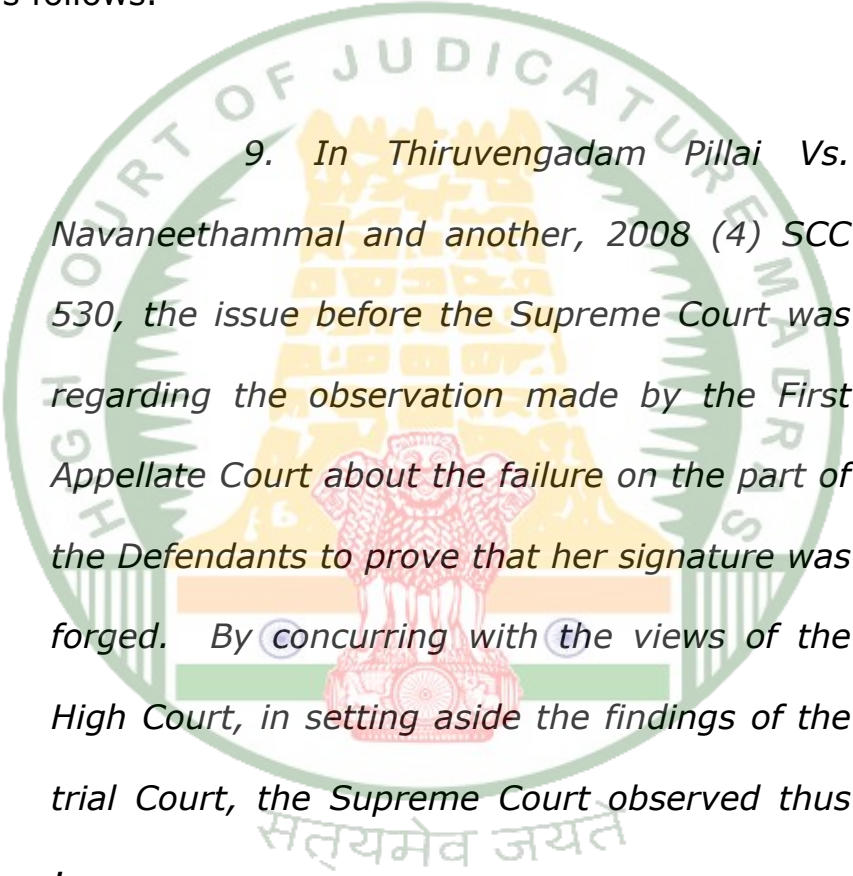
respondents/defendants at the time of trial. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that the petitioner being the plaintiff, it is necessary to compare the signature found in the Will Ex.B.4, dated 01.11.2007 along with the registered sale deed dated 10.11.2006 registered in document No.2524/2006 under Section 45 of the Indian Evidence Act for getting opinion from the Handwriting Expert. Hence, the impugned order passed by the Court below is liable to be set aside.

4.This Court considered the submissions made by the learned counsel for the petitioner and perused the materials available on record.

5.On perusal of the application filed by the petitioner/plaintiff, it is seen that the petitioner filed I.A. seeking comparison of the signature in the Will Ex.B.4, dated 01.11.2007 and the signature of the first respondent, deceased husband in the registered sale deed dated 10.11.2006. Further, the Court below held that based upon the execution of the Will, filed by the aforesaid first respondent's deceased

husband and therefore, it is the duty of the respondents/defendants to prove the genuineness of the Will. At this juncture, in the light of the decision of this Court in the case of **Kannamma Vs. P.Sakunthala** in **CRP.PD.No.156 of 2009**, wherein it is has held in paragraphs 9 and 10 as follows.



9. In *Thiruvengadam Pillai Vs. Navaneethammal and another*, 2008 (4) SCC 530, 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 observed thus :-

19. 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."

10. In *P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals*, (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.

In view of the above decision, the contention of the petitioner is liable to be rejected.

6. In the light of the above facts and circumstances of the case and the decision **cited supra**, this Court is not inclined to interfere

with the orders passed by the trial court, as there is no error or illegality in the order passed by the court below. The Civil Revision Petition is liable to be dismissed.

The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

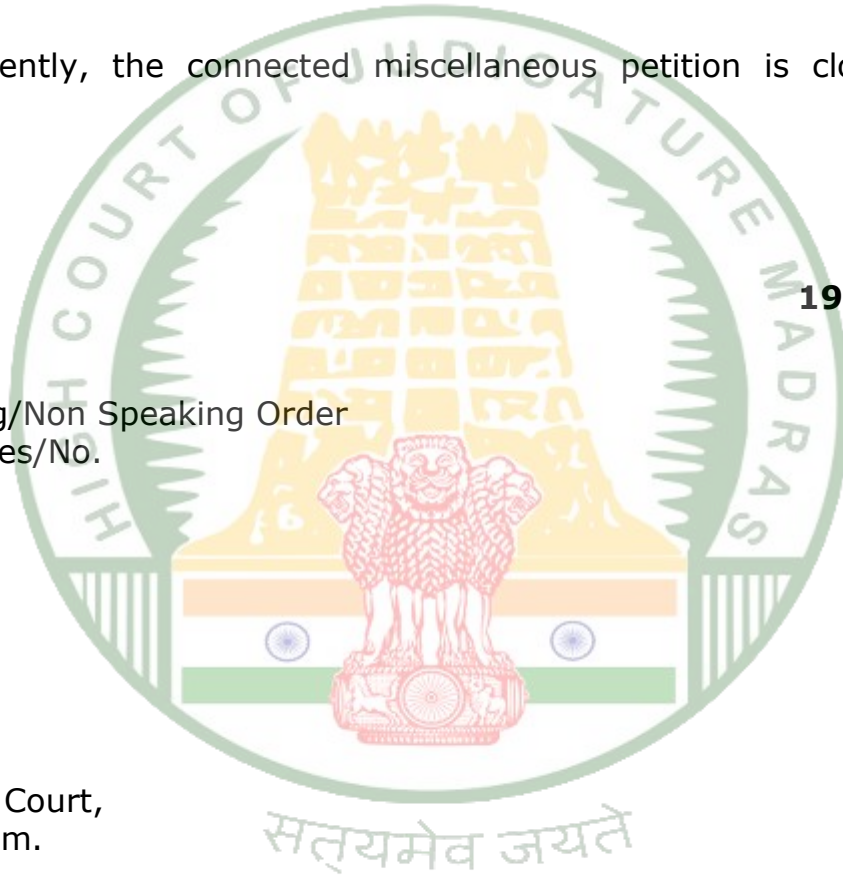
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Speaking/Non Speaking Order
Index: Yes/No.

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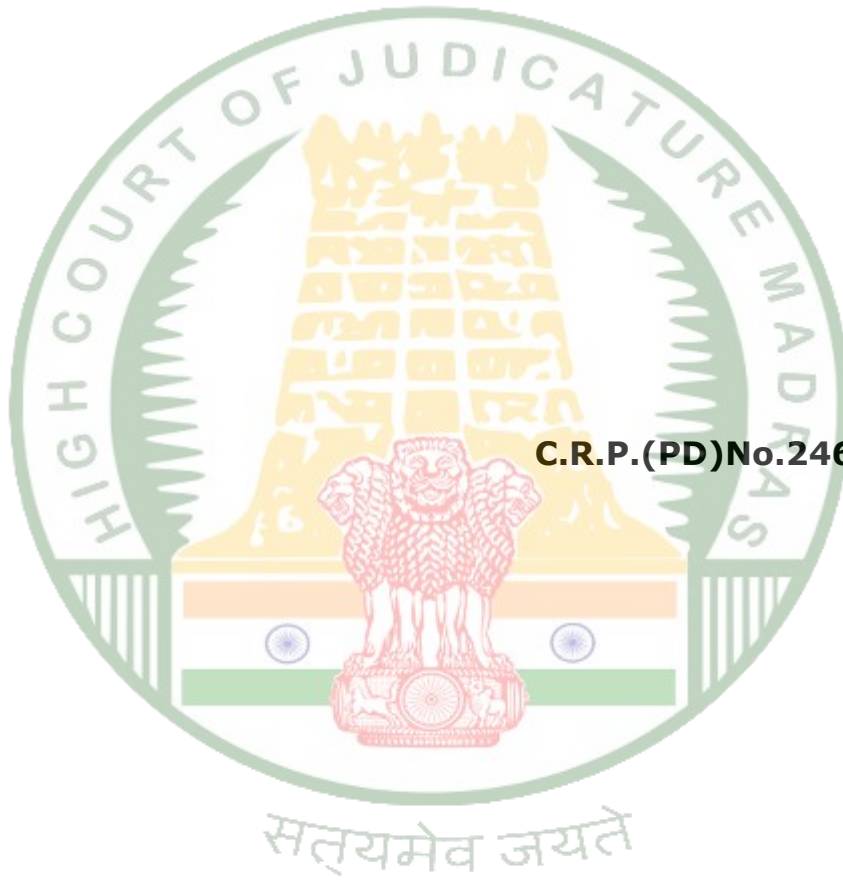
To

The Sub Court,
Rasipuram.



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D.KRISHNAKUMAR,J.
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C.R.P.(PD)No.246 of 2018

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