

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.PD.No.296 of 2018
and CMP.No.1615 of 2018

Prithivirajan

.. Petitioner

Vs.

Tholkappian

.. Respondent

PRAYER : The Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the order dated 16.09.2017 made in I.A.No.233 of 2017 in O.S.No.245 of 2003 on the file of the Principal District Munsif, Virudhachalam.

For petitioner : Mr.R.Arun Dattan

For Respondent : Mr.J.Antony Jesus

ORDER

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This civil revision petition has been filed to set aside the order dated 16.09.2017 passed in I.A.No.233 of 2017 in O.S.No.245 of 2003 on the file of the learned Principal District Munsif, Virudhachalam.

2. According to the petitioner, the respondent has filed the suit in O.S.No.245 of 2003 on the file of the Principal District Munsif, Virudhachalam seeking partition. The second defendant has filed the written statement on 10.11.2003, subsequently, he filed the additional written statement on 01.07.2008. Thereafter, the petitioner has become major, cause title was amended and declared that the third defendant has attained majority. Subsequently, vakalat was filed by the counsel for the third defendant on 29.04.2016 and hence, the matter was directed to be posted on 16.06.2016 for filing additional written statement. Thereafter, the plaintiff's side evidence was closed and the suit was posted for defendant's side evidence on 20.04.2017. The petitioner has filed the instant application to raise the additional written statement by the third defendant in the aforesaid suit. The said application was dismissed by the Court below. Hence, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit that the third defendant attained majority and seeks time for filing additional written statement. The first defendant has executed a registered sale deed in favour of the petitioner. Therefore, in order to avoid multiplicity of proceedings, the said application has been filed to raise the additional

written statement, since the second defendant has not raised additional plea in the written statement, the order passed by the Court below is liable to be set aside.

4. The learned counsel for the respondent would submit that the suit is of the year 2013. The petitioner has filed the application in the year 2017 to raise the additional written statement and the same was not accepted. Since the said application has been filed by the petitioner belatedly, this civil revision petition is liable to be dismissed.

5. Considering the submission made by both parties and on perusing the materials available on record, it is seen that the petitioner/third defendant has attained majority, after attaining majority and he filed vakalat on 29.04.2016, the counsel for the petitioner seeks time for filing additional written statement and the suit was posted on 20.04.2017 for defendant's side evidence, the delay is not properly explained in the application, that too, at the stage of defendant's side evidence. The petitioner has to prove the genuineness of the will, by adducing oral and documentary evidence, at the time of the trial in the suit. I do not find any error or illegality in the order passed by the Court below.

D.KRISHNAKUMAR,J.

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6. In view of the submissions made by the learned counsel for both sides,I am inclined to pass the following orders:

a) The impugned order passed by the learned Principal District Munsif, Virudhachalam in I.A.No. I.A.No.233 of 2017 in O.S.No.245 of 2003 is hereby confirmed and the civil revision petition is dismissed.

(b) On instructions, both the parties undertake that they will cooperate for speedy disposal of the suit before the trial court. The trial Court is further directed to dispose of the suit as expeditiously as possible, preferably on or before 30.06.2018. Consequently, connected miscellaneous petition is closed. No costs.

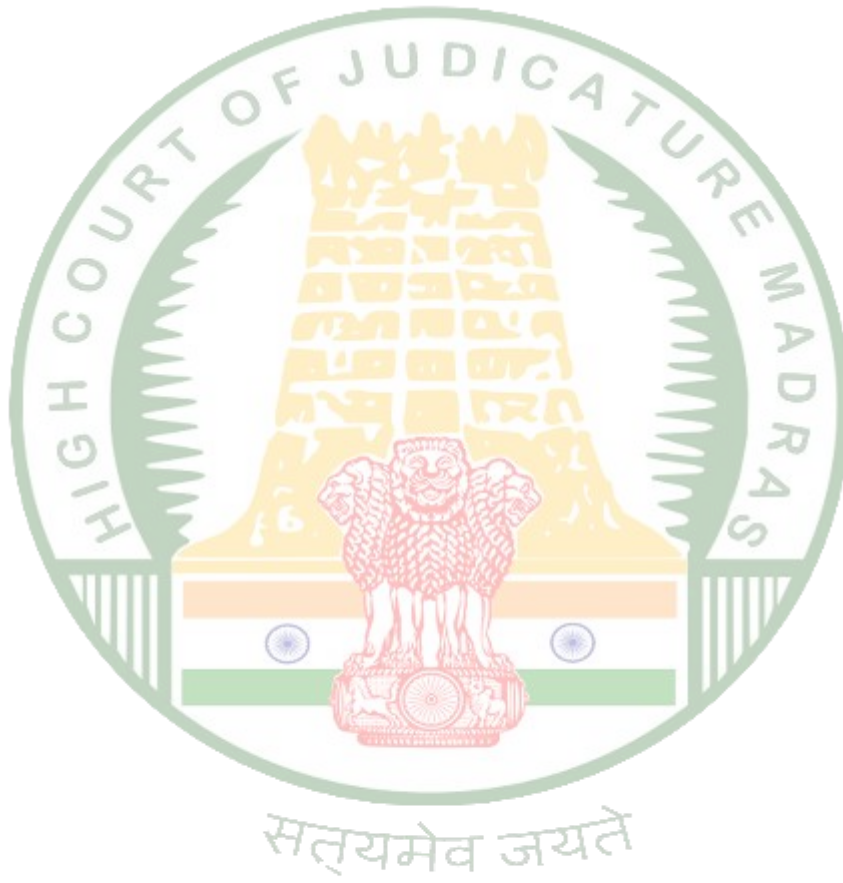
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Index : Yes/No
Internet: Yes/No
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To

The Principal District Munsif,
Virudhachalam.

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