

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.791 and 792 of 2015
& M.P.No.1 of 2015

Sivalakshmi

.. Petitioner in
both CRPs.

Vs.

Ramalinga Chokkavel

.. Respondent in
both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.02.2015 made in I.A.Nos.232 and 233 of 2015 in O.S.No.288 of 2005 on the file of the District Munsif, Kangeyam.

In both CRPs.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : No appearance

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 11.02.2015 made in I.A.Nos.232 and 233 of

2015 in O.S.No.288 of 2005 on the file of the District Munsif Court, Kangeyam.

2. In both the Civil Revision Petitions, the parties and the issues are one and the same and hence, they are disposed of by this common order.

3. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name has been printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

4. The petitioner is second defendant and respondent is first defendant in O.S.No.288 of 2005 on the file of the District Munsif Court, Kangeyam. One K.R.Thamarai filed suit for partition against the respondent, petitioner and one Murugesan. The petitioner filed written statement on 28.02.2006 and also filed additional written statement, the respondent filed written statement on 24.07.2007 and additional written statement on 22.10.2010, the third defendant Murugesan filed written statement and additional written statement

on 05.02.2015 and they are contesting the suit. The plaintiff filed reply statement on 18.09.2014. The trial commenced and the petitioner let in evidence and closed her side. The respondent examined his witnesses. The respondent examined one P.P.Duraisamy, Notary Public as D.W.6. The respondent traced title over the suit property based on the Will dated 14.05.2005 alleged to have been executed by his father K.Palanisamy Gounder.

5. According to the petitioner, respondent forged the Will dated 14.05.2005 subsequent to filing of the suit and sold the property to the third defendant. The respondent examined the said Duraisamy, Notary Public, who attested the Will dated 14.05.2005 as D.W.6 to prove that D.W.6 attested the Will, book No.8. According to the petitioner, entry in book No.8 with regard to the Will dated 14.05.2005 is last entry in the book No.8. In the circumstances, the petitioner filed present two applications in I.A.Nos.232 and 233 of 2015 to reopen the evidence of the respondent and recall D.W.6 for further examination with regard to book No.7 & 9 and production of book Nos.7 and 9 is necessary to prove that the alleged entry made by D.W.6 Notary Public in book No.8 is fabricated and forged.

6. The respondent filed common counter affidavit and submitted that the petitioner did not cross-examine D.W.6 on that day. When D.W.6 was examined in chief, after taking permission only, petitioner cross-examined D.W.6 and petitioner ought to have filed application for production of book Nos.7 and 9 before cross-examining D.W.6.

7. The above said reasoning of the respondent is not a valid reason. Admittedly, the entry made with regard to the Will dated 14.05.2005 is the last entry in book No.8. In order to clear the doubt raised by the petitioner, it is necessary to recall D.W.6 for further examination of D.W.6 with regard to book Nos.7 and 9 and production of book Nos.7 and 9 will assist the Court in deciding the issue completely.

8. For the above reason, both the Civil Revision Petitions are allowed and the order of the learned Judge dated 11.02.2015 made in I.A.Nos.232 and 233 of 2015 is set aside. The petitioner is directed to cross-examine D.W.6 on the same day when D.W.6 is recalled. The learned Judge is directed to dispose the suit as expeditiously as possible in any event not later than three months

from the date of cross-examination of D.W.6. No costs.

Consequently, connected Miscellaneous Petition is closed.

08.01.2018

Index : Yes/No

Speaking/Non speaking order

kj

To

The District Munsif, Kangayam.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(PD)Nos.791 and 792 of 2015
& M.P.No.1 of 2015

WEB COPY

08.01.2018