

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.873 of 2015
& M.P.No.1 of 2015

Kaliyamurthy

.. Petitioner

Vs.

1.Venkattammal
Nallusamy Naidu (died)
Thirumalai Ammal (died)

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.10.2013 made in I.A.No.1575 of 2010 in O.S.No.411 of 1998 on the file of the District Munsif, Perambalur.

For Petitioner : Mr.G.Ilamurugu

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 04.10.2013 made in I.A.No.1575 of 2010 in O.S.No.411 of 1998 on the file of the District Munsif, Perambalur.

2.The petitioner is the 2nd defendant and 1st respondent is the plaintiff in O.S.No.411 of 1998 on the file of the District Munsif, Perambalur. The 1st respondent filed the said suit for permanent injunction against the petitioner and his parents who are the defendants 1 and 3. According to the 1st respondent, her grandfather, Ramasamy Naidu executed a Will dated 02.06.1976 and bequeathed the property to her father, Nallusamy Naidu, who is the son-in-law of her grand father. By the said Will, her father became the owner and settled the property on her by the settlement deed dated 24.05.1993. From that date, she is in possession and enjoyment of the property by cultivating and leasing out the same to the third parties. The 1st respondent is paying all the statutory dues and patta and chitta are in her name. The petitioner and defendants 1 and 3/ his parents interfered with her possession and hence, she filed the said suit for permanent injunction.

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3.The petitioner filed written statement on 22.12.1998 which was adopted by the defendants 1 and 3. The petitioner in the written statement has stated that the Will dated 02.06.1976 is not

the last Will of his grandfather. His grandfather subsequently cancelled the said Will and executed a Will dated 12.08.1976 in favour of the 3rd defendant/ his daughter, who is the mother of the petitioner. In view of the subsequent Will, the respondent has not acquired any title on the suit property. With the permission of 3rd defendant, their mother, only the petitioner is cultivating the suit property.

4. Based on the above pleadings, trial commenced and parties let in evidence and closed their side. When the suit was posted for arguments, the respondent filed I.A.No.1575 of 2010 under Section 151 of C.P.C to send the documents Ex.B1, the Will dated 12.08.1976 and Ex.A11, the Will dated 02.06.1976 to the handwriting expert for comparison of signature and thumb impression of Ramasamy Naidu in Ex.A11 with Ex.B1 and to find out the period in which Ex.B1 was executed. According to the respondent, the signature of her grandfather in Ex.B1 is a forged one.

5. The petitioner opposed the said application and contended that the application filed by the respondent is belated one and only

to drag on the proceedings, the present application is filed after conclusion of the trial when the suit is posted for arguments. In Ex.B1, the Will dated 12.08.1976, his grandfather has only put his signature and did not affix his thumb impression. In view of the same, the Court itself can compare the signature and come to the conclusion and prayed for dismissal of the application.

6.The learned Judge considering the averments in the affidavit, counter affidavit and rival contentions of the parties, allowed the application holding that in the interest of justice, respondent must be given an opportunity to prove her case in view of the rival claim of the parties with regard to the title based on the two Wills.

7.Against the said order dated 04.10.2013 made in I.A.No.1575 of 2010 in O.S.No.411 of 1998, the present Civil Revision Petition is filed by the petitioner.

8.Heard the learned counsel for the petitioner. Though notice was served on the respondent and her name is printed in the cause list, there is no representation either in person or through counsel.

9.The respondent has filed the suit for permanent injunction restraining the petitioner and his parents from interfering with her peaceful possession and enjoyment of the suit property. She claims possession based on the Will dated 02.06.1976 marked as Ex.A11 executed by her grandfather in favour of her father who in turn settled the property to her by the settlement deed dated 24.05.1993. On the other hand, the petitioner has contended that the Will dated 02.06.1976 marked as Ex.A11 was subsequently revoked and his grandfather executed another Will dated 12.08.1976, marked as Ex.B1 in favour of his mother and his mother permitted the petitioner to cultivate the land. The issue in the suit is only with regard to the possession of the land. The title of the suit is not an issue in the present suit. The respondent has not filed suit for declaration of title based on her Will. In the suit for permanent injunction, it is for the respondent to prove her possession to get the relief by letting in acceptable evidence. The learned Judge has failed to consider this fact. The learned Judge has held that both the petitioner and respondent are claiming title based on two Wills marked as Exs.A11 and B1 and allowed the application. Both the petitioner and respondent are to prove their title as the

title of the parties cannot be decided in a suit for permanent injunction. The learned Judge allowed the application and has given an opportunity to the respondent to prove her title by proving the genuineness of the Will dated 02.06.1976, marked as Ex.A11 and thereby committed an irregularity. In view of the same, the impugned order of the learned Judge dated 04.10.2013 made in I.A.No.1575 of 2010 in O.S.No.411 of 1998 is set aside and the Civil Revision petition is liable to be allowed.

10. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.01.2018

Index :: Yes/No

Internet :: Yes/No

Speaking order/Non-speaking order

gsa

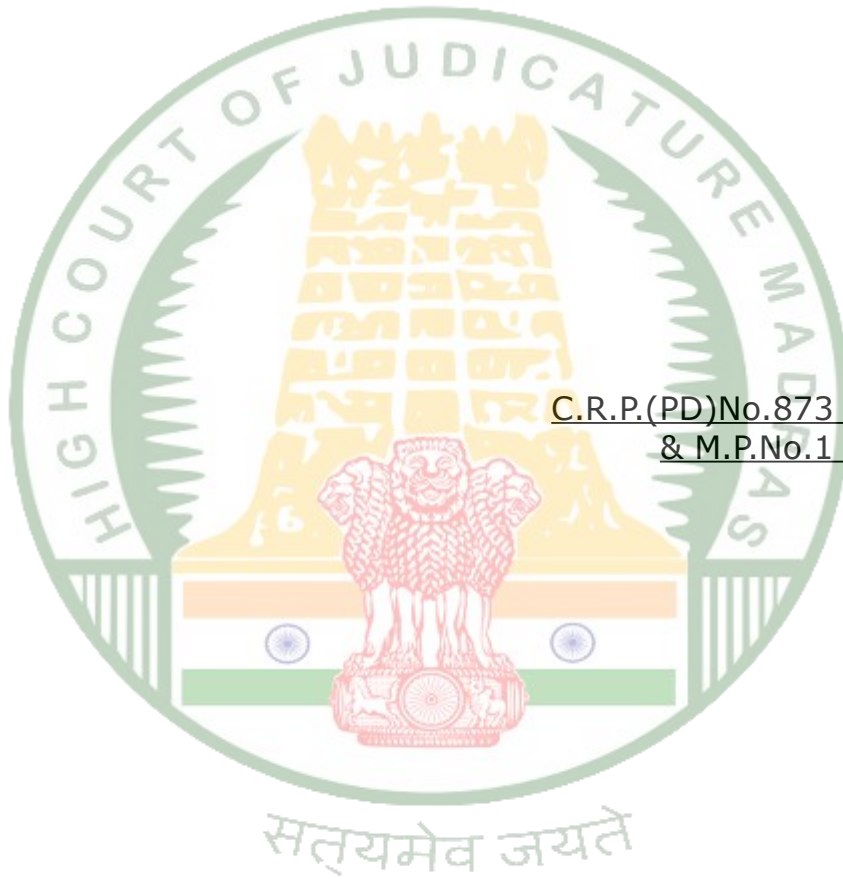
To

The District Munsif,
Perambalur.

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V.M.VELUMANI,J.

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