

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).No.811 of 2018
and
CMP.No.4473 of 2018

B.Saroja

.. Petitioner

Vs

1.K.Durairaj

2.D.Sankar

3.D.Siva Kumar

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.01.2018 in IA.No.1144 of 2017 in OS.No.27 of 2013 on the file of the Hon'ble II Additional District Court, Tiruvallur at Poonamallee.

For Petitioner : Mr.K.S.Ilangovan
for M/s.Achari and Antoni Asso.

For Respondents : M/s.M.Chidambaram

ORDER

By consent of both parties, the Civil Revision Petition itself is taken up for final disposal at the admission stage itself.

2. According to the revision petitioner, the revision petitioner has filed a suit in OS.No.27 of 2013 on the file of the II Additional District Court, Tiruvallur for declaration and permanent injunction against the respondents herein. Thereafter, the revision petitioner has filed an application in IA.No.710 of 2017 for production of the alleged will dated 04.04.1998 relied upon by the respondent. On production of the said will, the revision petitioner has filed the instant application in IA.No.1144 of 2017 on 22.11.2017 seeking to amend the prayer for declaration that the alleged will executed on 04.04.1988 is forged, null and void. The said application was dismissed by the court below. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the revision petitioner would submit that the revision petitioner after the production of the will has filed the instant application. Therefore, the revision petitioner

submitted that inspite of due diligence, the aforesaid document could not be produced, prior to the commencement of the trial, therefore, by satisfying the ingredients under order 6 Rule 17 of the Civil Procedure Code, has filed the amendment application. The court below without considering the aforesaid contention erroneously dismissed the application. Therefore, the order of the court below is liable to be set aside.

4. The learned counsel for the respondents would submit that the present application has been filed belatedly. Hence, the court below has rightly dismissed the said application.

5. By considering the rival submissions of both parties and on perusal of the materials on record, the revision petitioner has filed the instant application in IA.No.1144 of 2017 on 22.11.2017 seeking to amend the prayer for declaration that alleged will dated 04.04.1988 is forged and null and void. According to the learned counsel for the revision petitioner, after producing the original will by the respondents at the time evidence the present application has been filed, inspite of the due diligence, document could not be produced, prior to the commencement

of the trial, therefore, it is necessary to challenge the alleged will as forged and null and void in the suit. Therefore, the revision petitioner has satisfied the provisions under Order 6 Rule 17 of the Civil Procedure Code for amendment of prayer. Hence, this Court has no hesitation to set aside the order dated 18.01.2018 in IA.No.1144 of 2017.

6. At this stage, the learned counsel for the respondents seeks this Court liberty may be granted to object the aforesaid document before the trial court and to direct the court below to dispose of the suit within the time as may be fixed by this Court.

7. At the request of the learned counsel for the respondents, this Court is inclined to direct the II Additional District Judge, Tiruvallur to dispose of the suit in OS.No.27 of 2013 in accordance with law as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this Order. The suit shall be decided without being influenced by any of the observations made in the order.

8. The order dated 18.01.2018 in IA.No.1144 of 2017 is set aside. The Civil Revision Petition is allowed with liberty to raise his

objection for the document, if any, before the trial court.
Consequently, the connected miscellaneous petition is closed. No costs.

13.03.2018

Speaking/Non-Speaking order

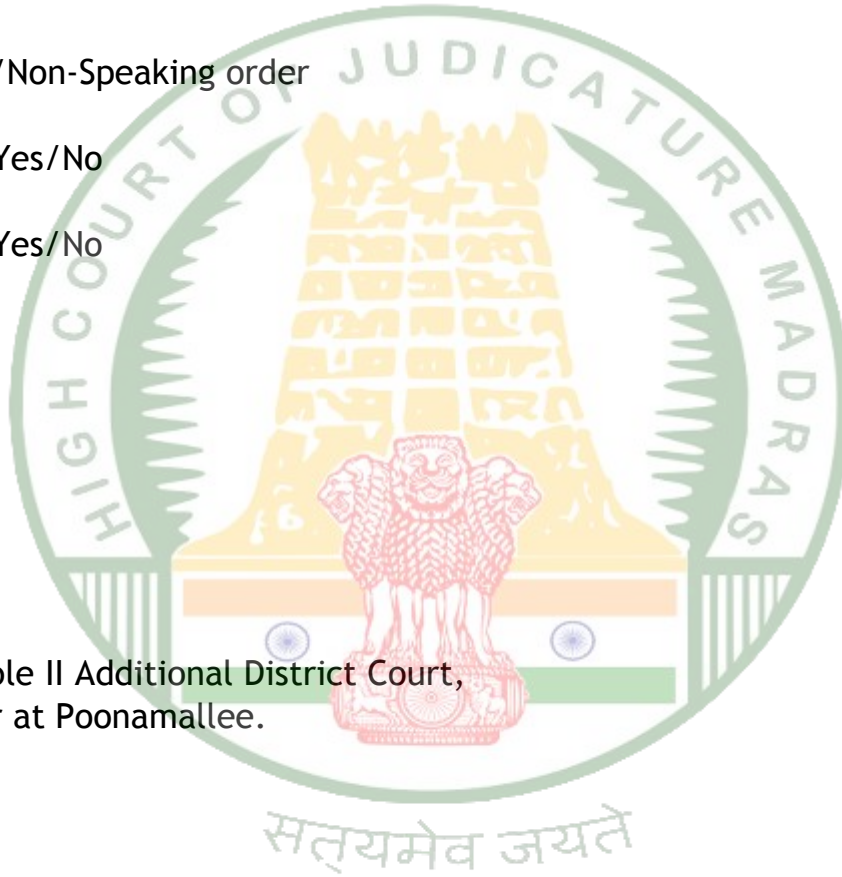
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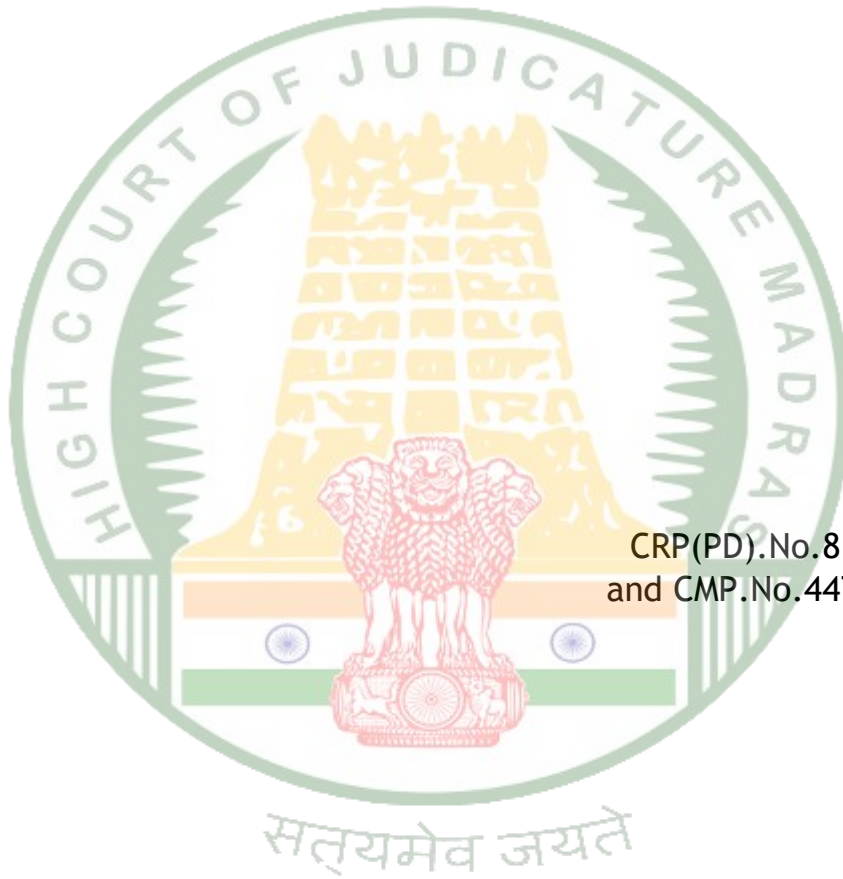
The Hon'ble II Additional District Court,
Tiruvallur at Poonamallee.



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D. KRISHNAKUMAR J.,

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