

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**CRP(PD).No.87 of 2018 &
C.M.P.No.412 of 20181.S.Karuppanna Gounder
2.K.Sadayappa ..

Petitioners

vs.

1.N.Balachandran
2.N.Deivani
S.Sellammal (died)

..Respondents 1&2/Petitioners/Plaintiffs

3.K.Chinnammal

..Respondents -3/Respondents3/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.651 of 2017 in O.S.No.32 of 2007 dated 30.11.2017 on the file of I Additional District Judge, Erode, by allowing the Civil Revision Petition.

For Petitioners

... M/s.D.Balachandran

For Respondents

...Mr.M.Guruprasad

ORDER

The Civil Revision Petition has been filed by the petitioner in I.A.No.651 of 2017 in O.S.No.32 of 2007 dated 30.11.2017 on the file of I Additional District Judge, Erode.

2. After completion of pleadings, respondents/plaintiffs filed the interlocutory application before the Trial Court seeking a direction to the petitioners/defendants to let in evidence first since the revision petitioners have pleaded title through the Will. Such application was allowed by the trial Court under the impugned order. Against such order, the present revision has been filed.

3. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on record.

4. It is not in dispute that the petitioners and respondents are brothers. Admittedly, the respondents/plaintiffs filed the suit for partition against this revision petitioner and others.

5. A perusal of the written statement and additional written statement filed by the 2nd defendant, it is clear that the 2nd defendant has claimed the title through will alleged that senior Sadayappa during his life time on 14.03.2005 executed a Will in a sound and disposing

state of mind and out of his free Will and volition with regard to his entitlement in the suit "A schedule property" and other properties bequeathing his rights in favour of his second son/2nd defendant.

6. Admittedly both the plaintiffs and defendants claim title through one Sadayappa Gounder the father of the second defendant and paternal grand father of the first plaintiff. Plaintiffs filed suit for partition father of the first plaintiff died prodeceased his father senior Sadaiyappa Gounder and the said senior Sadayappa Gounder died on 31.06.2006 intestate hence the plaintiffs have filed suit for partition as if the senior Sadayappa Gounder died intestate they are entitle for partition. The 2nd defendant alleged that the senior Sadayappa Gounder executed will infavour of him therefore the plaintiffs are not entitled for partition as claimed by them. It is settled propositon of law that the bourden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it.

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7. Since he has claimed the title through Will, for which he has to prove the Will and hence has to lead the evidence first before the

plaintiffs come into witness box, this Court finds that there is no infirmity or irregularity in the order passed by the trial Court.

8. Hence, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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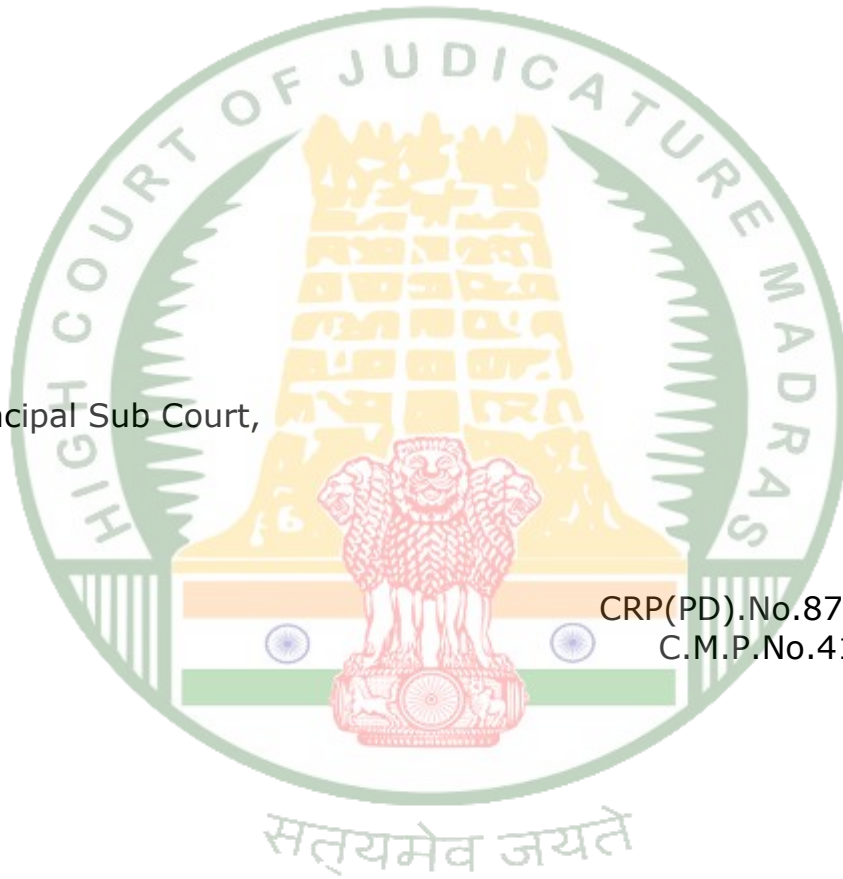
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P.VELMURUGAN.J,

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To

The Principal Sub Court,
Salem.



CRP(PD).No.87 of 2018 &
C.M.P.No.412 of 2018

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12.04.2018