

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3396 of 2016 and
C.M.P.No.17270 of 2016

1 Pavayee
2 Muthulakshmi ... Petitioners/Plaintiffs

Vs

1 Ramasamy
2 Sevantheeswaran ... Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 20.08.2016 made in I.A.No.515 of 2016 in O.S.No.123 of 2012 on the file of the Sub Court, Attur.

For Petitioners : Ms.P.Saritha

For Respondents : Mr.L.Rajendran

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ORDER

According to the petitioners, the petitioners have filed a suit in O.S.No.123 of 2012 before the Sub Court, Attur for partition by metes and

bounds. In the aforesaid suit, the petitioner has filed an application under Order XI Rule 21 C.P.C. in I.A.No.515 of 2016, by contending that second defendant had filed a written statement on 13.3.2014 stating that his paternal grandfather viz., father of the first defendant by name Sengodagounder had left a Will, dated 6.3.1999 in favour of his only son the first defendant, though there was a pleading in the written statement, dated 13.3.2013 about the Will, said Will was not produced along with the written statement and hence, the petitioners/ plaintiffs served notice to the second defendant on 22.8.2014, as contemplated under Order XI Rule 15, 16 C.P.C. to cause production of the Will said to have been executed by Sengodagounder in favour of the first defendant in court for inspection. Inspite of time granted for production of the Will, said Will was not produced before the court. Therefore, non compliance of an order for inspection as contemplated under Order XI Rule 21 C.P.C. and therefore, filed the present application to strike off the defence of the second defendant in the written statement. The court below dismissed the said application by stating that the court below after considering the submissions made by the parties, recorded that the alleged Will, dated 3.3.1999 was marked and evidence of the parties concluded. Therefore, the application filed by the petitioner was rejected by the court below. Challenging the said order, the present Civil revision petition has been filed before this Court.

2 According to the learned counsel for the petitioner, after receiving the written statement, the petitioners/plaintiffs issued a notice to the respondents, dated 20.8.2014 to cause production of the Will dated 6.3.1999. Thereafter, order was passed on 23.6.2015 holding that the respondents had failed to cause production of the Will, dated 6.3.1999. When P.W.1 was cross examined, the second defendant has filed an application in I.A.No.397 of 2016 seeking permission to file additional written statement and also producing the Will, dated 6.3.1999 along with the additional written statement. Thereafter, petitioners filed the instant application to strike off the defence raised in the written statement. The court below erroneously dismissed the said application.

3 The court below taking into consideration that the document as sought for by the second plaintiff was produced before the court below and the trial is still not concluded and hence, the application is premature, same cannot be entertained at this stage. Therefore, the court below has rightly dismissed the application. Hence, there is no warrant to interfere with the order passed by the court below. However, it is open to the parties to file appropriate application before the court below, if permissible under law at later stage.

D.KRISHNAKUMAR, J.

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4 In fine, the Civil revision petition fails and the same is dismissed with the above observation. No costs. Connected miscellaneous petition is closed.

05.03.2018

Index: Yes/No

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To

The Sub Court, Attur



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