

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2018

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[PD] No.3184 of 2018

and

C.M.P.No.18192 of 2018

K.N.Rangasamy

.. Petitioner

Vs

1. E.Chinnammal

2. Saroja

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order on decreed order made in I.A.No.573 of 2018 in O.S.No.141 of 2013 on the file of the District Municipal Court of Namakkal dated 11.09.2018 and allow the above Civil Revision Petition.

For Petitioner : Mr.G.K.Muthukumar

For Respondents : Mr.T.Dhanyakumar

ORDER

The order under challenge in an application filed under Order 18 Rule 17 of C.P.C, the respondents request to recall PW1 to let in further evidence to mark a Will and sale deed.

2.The respondents herein had filed the application under Order 18 Rule 17 of C.P.C stating that the first plaintiff and her husband had died during the pendency of the suit. Before the death, the first plaintiff had executed a Will in favour of respondents herein. Apart from the Will, the

Power of Attorney also came to be executed by the plaintiff in favour of the respondents, in these documents, which were sought to be introduced in the suit.

3. The petitioner herein had filed a counter before the trial court stating that there are no satisfactory reasons for having not produced these documents earlier and that the present documents are sought to be marked only for the purpose of prolonging the proceedings. He had also submitted that these documents were introduced only for the purpose of filling up the *lacuna*.

4. Considering both the rival submissions, the Court below had allowed the application stating that there was no delay in filing the application under Order 18 and Rule 17 and that the same was filed immediately, after the cross examination of PW1. The Court below also found that no prejudice would be caused to the petitioner herein, if that application is allowed. Challenging the same, the present Civil Revision Petition has been filed.

5. The learned counsel for the petitioner submitted that when the evidence of the PW1 was extensively examined, the present documents were not marked and no proper reasonings were also given in the

application before the Trial Court for marking the documents. As such, the learned counsel submitted that there is malafide intention on the part of the respondents herein in not having marked the documents at the appropriate time. The learned counsel also submitted that the present application has been filed only to fill up the lacuna.

6. On the contrary the learned counsel for the respondent submitted that there was no delay on their part in producing the documents and since the matter is posted for continuation of PW1 evidence and the application filed at that stage was in time and it cannot be stated to be delayed. The learned counsel submit that even otherwise they have adduced appropriate reasons for not having produced the documents earlier and there is no infirmity in the order of the Trial Court.

7. I have my careful consideration to the submissions made by the respective counsels.

8. As observed by the Court below, the application under Order 18 Rule 17 has been filed immediately after the evidence of PW1. When a specific question was put to the witness, she had stated that she is willing to produce the Will which is in her possession. It is, after this examination, the application has been made. As such, it cannot be said that the

application has been made with malafide intention or to protract the proceedings. The relief sought for in the suit is for declaration and since the respondents herein, claim rights over the suit properties through the Will, it can only be held as a crucial document. The Trial Court requires to appreciate the necessary evidence and the documents, for arriving at a just and fair conclusion. By introducing this will and other connected documents, it cannot be said that prejudice would be caused to the petitioner herein.

9. In the light of the above observations, this Court holds that there is no infirmity in the order passed by the Trial Court in I.A.No.573 of 2018 by allowing the application. As such, there are no merits in this case. Accordingly the same stands dismissed. Nevertheless, the Trial Court shall endeavour to complete the trial atleast within a period of sixty days from the date of receipt of a copy of this order.

10. Hence, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

15.11.2018

gsi/dh

Index : Yes/No

Internet : Yes/No

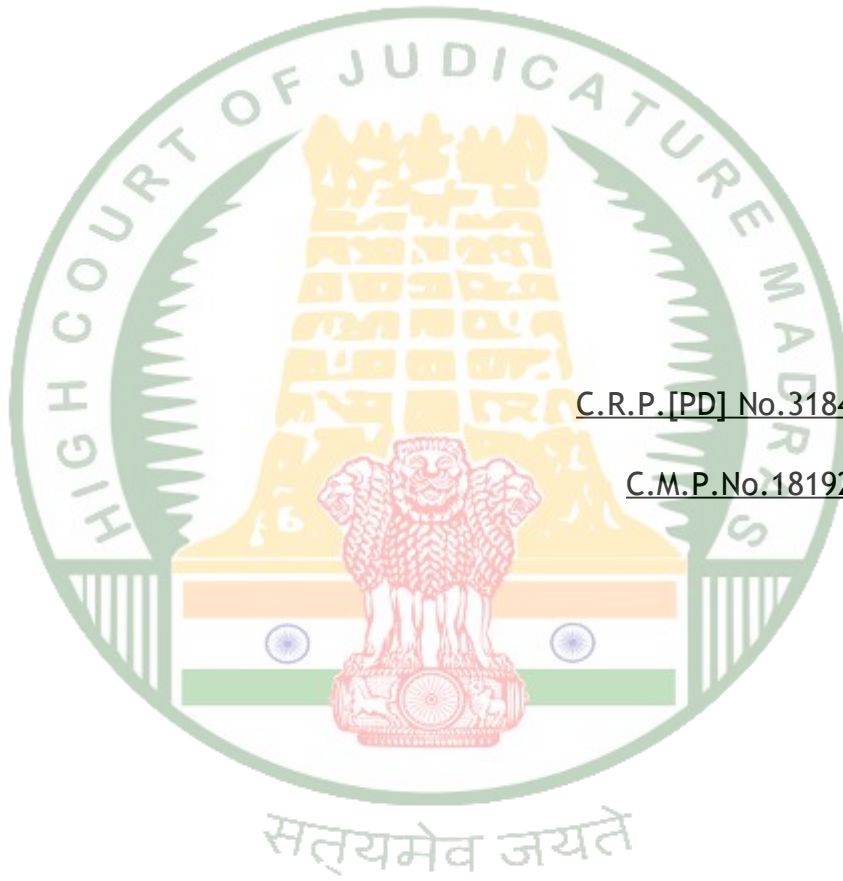
To
The District Municipal Court,
Namakkal.



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M.S.RAMESH, J.

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