



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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C.R.P.(PD)(MD) Nos.889 and 890 of 2018
and C.M.P.(MD) No.3940 of 2018

A.Mariammal

... Revision Petitioner/Petitioner/
Petitioner/3rd Defendant (In both Cases)

-vs-

1. Subbulakshmi

... 1st Respondent/1st Respondent/
1st Respondent/Plaintiff

2. The District Collector
Tuticorin District.

3. The Tahsildar
Kovilpatti,
Tuticorin District.

... Respondents 2 & 3/Respondents 2 & 3/
Respondents 2 & 3/Defendants 1 & 2
(In both Cases)

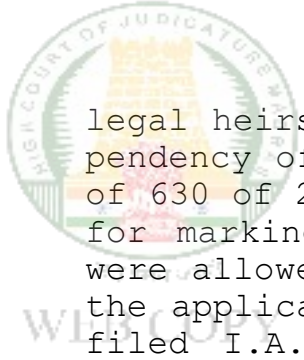
Prayer in CRP(MD) No.889/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.03.2018 passed in I.A.No.1013 of 2017 and restore I.A.No.629 of 2017 in O.S.No.227 of 2013 on the file of District Munsif Court, Kovilpatti and to grant such other relief or reliefs that this Honble Court may deem fit to grant in the circumstances of the case.

Prayer in CRP(MD) No.890/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.03.2018 passed in I.A.No.1014 of 2017 and restore I.A.No.630 of 2017 in O.S.No.227 of 2013 on the file of District Munsif Court, Kovilpatti and to grant such other relief or reliefs that this Honble Court may deem fit to grant in the circumstances of the case.

For Petitioner : Mr.K.P.Krishnadass
For R1 : No Appearance
For R2 & R3 : Mrs.VPM.Vaishnavi
Govt. Advocate
(In both Cases)

C O M M O N O R D E R

The revision petitioner is the 3rd defendant in O.S.No.227 of 2013 on the file of District Munsif Court, Kovilpatti and in the suit, the plaintiff / 1st respondent herein sought for declaration that she is only the legal heir of the deceased Ayyalusamy, grant of



legal heirship certificate to her by the 2nd respondent, etc. During pendency of the suit, the petitioner/3rd defendant filed I.A.Nos.629 of 630 of 2017, seeking permission to examine the petitioner herself for marking certain vital documents. Though the said applications were allowed on payment of costs, pursuant to non payment of costs, the applications came to be dismissed and therefore, the petitioner filed I.A.Nos.1013 and 1014 of 2017 for setting aside the said dismissal orders, which were also dismissed by the Trial Court. Challenging those two orders, the petitioner / 3rd defendant is before this Court.

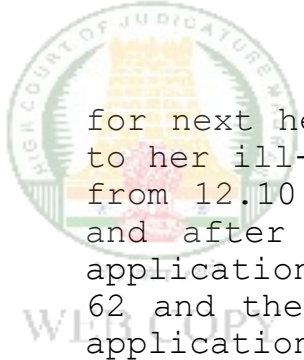
2. It is the case of the revision petitioner that the plaintiff is not the wife of late Ayyalusamy and there is no proof adduced to that effect, but actually, the petitioner is the legally wedded wife of late Ayyalusamy and they led a happy matrimonial life at Muthukrishnapuram and the name of the petitioner has also been shown in the ration card. It is the further case of the petitioner that late Ayyalusamy had inherited several properties and in order to usurp those properties, the plaintiff had filed the suit with false averments. The statement of the plaintiff that late Ayyalusay had two wives is false and the revision petitioner alone is his wife. Stating that the revision petitioner has got some piece of evidence to establish her case and if she is not allowed to mark the same, much prejudice would be caused to her, it is prayed that the orders of the Trial Court call for interference by this Court.

3. Learned Government Advocate appearing for R2 and R3 would contend that the averments raised in the plaint regarding her marriage with late Ayyalusamy and his subsequent death at her residence at Muthukrishnapuram, have to be proved by the plaintiff, but however, during enquiry, it was found that the late Ayyalusamy had two wives, which was duly stated in the written statement.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for R2 and R3 and also perused the material documents available on record. There is no representation for the 1st respondent.

5. It is seen that it is a dispute between two ladies, as to who is the wife of late Ayyalusamy and both sides have filed supporting documents in support of their claim. In the meanwhile, the 3rd defendant in the suit / revision petitioner herein had filed applications for marking additional documents to substantiate her claim. Though those two applications were allowed by the Trial Court, consequent to non compliance of the condition in respect of payment of costs, the said applications were dismissed.

6. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. A perusal of the pleadings as could be seen from I.A.Nos.1013 and 1014 of 2017, would unravel that the costs were ordered to be paid on or before 12.10.2017 and the case was posted



for next hearing on 23.10.2017. In the interregnum period, pursuant to her ill-health, she was admitted as an in-patient in the hospital from 12.10.2017, which made it impossible for her to pay the costs and after her discharge, she came to know of the dismissal of applications for non payment of costs. Admittedly, she is aged about 62 and there will not be any falsity in the statement made in the application for setting aside the dismissal orders. It was submitted by the revision petitioner that balance of convenience is in her favour and therefore, she must be given an opportunity to mark the documents, by setting aside the orders of the Trial Court.

7. Considering the overall circumstances of the case, this Court is of the view that the petitioner shall be allowed to contest the suit effectively by adducing additional documents and thus, this Court is inclined to set aside the orders dated 20.03.2018 passed in I.A.Nos.1013 & 1014 of 2017 so as to restore I.A.Nos.629 & 630 of 2017 in O.S.No.227 of 2013 by the learned District Munsif, Kovilpatti.

8. In the result,

a) these civil revision petitions are allowed and the orders dated 20.03.2018 passed in I.A.Nos.1013 & 1014 of 2017 so as to restore I.A.Nos.629 & 630 of 2017 in O.S.No.227 of 2013 by the learned District Munsif, Kovilpatti, are set aside;

b) the petitioner shall pay the costs as ordered by the Trial Court within a period of one week from the date of receipt of a copy of this order;

c) the Trial Court is directed to dispose of the suit within a period of three months thereafter without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

1. The District Munsif,
Kovilpatti

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**



+1cc to M/S.K.P.Krishnadass, Advocate SR.No. 68892
+1cc to Special Government Pleader, SR.No. 69136

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C.R.P. (PD) (MD) Nos.889 and 890 of 2018

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JM/SKN RSK/SAR 3/16.08.2018/4P/6C