



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2017  
Pronounced on : 16.02.2018

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) (PD) No.1116 of 2017  
and C.M.P. (MD) No.5055 of 2017

1.Santhanalakshmi  
2.Umayal

.. Revision Petitioners/Respondents 7 & 8/  
Defendants 7 & 8

Vs.

1.N.Balamurugan  
2.Boominathan  
3.C.Nagarajan  
4.S.Balamurugan  
5.S.Sakthivel  
6.Mrs.Nagameenal  
7.Mrs.Nagavalli

.. 1<sup>st</sup> Respondent/Petitioner/Plaintiff

.. Respondents 2 to 7/Respondents 1 to 6  
/Defendants 1 to 6

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition thereby setting aside the Order of the learned VI Additional District Judge, Madurai dated 03.03.2017 passed in I.A.No.173 of 2017 in O.S.No.124 of 2007.

|                 |                       |
|-----------------|-----------------------|
| For Petitioners | : Mr.S.Parthasarathy  |
| For R-1         | : Mr.S.Chandrasekaran |
| For R-2         | : Mr.M.Mohammed Asif  |
| For R-3         | : Mr.K.K.Senthil      |

### O R D E R

This Civil Revision Petition has been filed by the petitioners to set aside the order passed by the learned VI Additional District Judge, Madurai, dated 03.03.2017 in I.A.No.173 of 2017 in O.S.No.124 of 2007.

2. The relevant facts narrated by the petitioners in the affidavit are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

2.i) The first respondent/plaintiff has filed the suit in



O.S.No.124 of 2007 on the file of the VI Additional District Judge, Madurai for the relief of Partition.

2.ii) The entire case of the plaintiff namely, the first respondent herein, rests upon a Will dated 01.06.1989, alleged to have been executed by the mother of the revision petitioners namely, (Late) Rakkammal. The first respondent herein, as the plaintiff, has not chosen to prove the Will in accordance with law. He had let in oral evidence and filed documents, which includes the certified copy of the Will and no sufficient materials have been advanced for non-production of the original Will.

2.iii) The first respondent had chosen to examine himself as the only witness on his side and closed his evidence. Thereafter, the contesting defendants had let in evidence. The first revision petitioner was examined as defendant's side witness and she was cross-examined by the first respondent in detail. After closure of evidence, the matter was posted for arguments, at which time, the first respondent, in order to drag on the matter, had chosen to file petition after petition, such as re-open petition, petition to receive additional documents, petition to recall the first revision petitioner for further examination.

2.vi) The first respondent/plaintiff had filed a petition in I.A.No.969 of 2014 for re-opening of trial and for scientific examination of the thumb impression of the said Rakkammal in the alleged Will to compare the same with that of the thumb impressions available in documents that are alleged to have been admitted. A detailed counter was filed by the revision petitioners. After hearing both the parties, the trial court had dismissed the said application.

2.v) Against the said order of dismissal, the first respondent filed C.R.P(MD).No.752 of 2016 on the file of this Court. On 31.01.2017, this Court dismissed the above Civil Revision Petition thereby confirming the order of the trial court.

3. On the above background of the case, the learned counsel for the petitioners submitted that after dismissal of earlier Civil Revision Petition, the first respondent/ plaintiff had once again filed an application in I.A.No.173 of 2017 to appoint an Advocate Commissioner for collecting the relevant documents from the Sub-Registrar Office and to send the same for comparison of the thumb impression of Rakkammal in the alleged Will with that of those documents and the said application was allowed by the trial court.

4. The learned counsel has mainly attacked the order passed by the trial court on three specific grounds. The first ground is that the trial court has not considered the fact that the relief sought for in both applications are one and the same. The second ground is that the trial court by applying the legal proposition '*res judicata*', should have dismissed the application. The third



ground is that the trial court has not considered the spirit of the order passed by this Court in the earlier Civil Revision Petition.

5. Per contra, the learned counsel for the first respondent/plaintiff has submitted that the first respondent has preferred the present suit for partition solely on the recitals of the said Will and therefore, it is his duty to prove the Will by substantiating oral and documentary evidences before the Court. He further submit one Mrs.Rakkammal had already executed three sale deeds with regard to her absolute properties. The said Rakkammal had executed those sale deeds by her free consent and with a conscious mind, wherein her husband E.Chellaiah Servai stood as one among the witnesses, which would prove the genuineness of the documents. Adding further, the learned counsel submits that since the cited sale deeds are prior to the execution of the disputed Will, it is very much essential to bring the expert for scientific examination for those documents in accordance with law. Therefore, the trial court has viewed the matter in a right perspective and allowed the application and he prays for dismissal of this Civil Revision Petition.

6. I have paid my anxious attention to the rival submissions made on either side. I have carefully perused the documents available on record.

7. Though so many points have been raised by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the first respondent, the only point for consideration is that whether the learned VI Additional District Judge, Madurai, was right in allowing the application in I.A.No.173 of 2017 in O.S.No.124 of 2007.

8. Perusal of record would show that the only difference between the earlier petition and the present petition was that in the earlier petition, the first respondent has sought for sending for the thumb impression books from the relevant sub-registry to the Hon'ble Court's file. In the later petition, the first respondent sought for appointment of Advocate Commissioner for the very specific purpose of visiting the relevant Sub-Registrar Offices to collect the thumb impression book for the very same purpose of getting opinion from the expert.

9. In the said circumstances, I am of the considered view that the only remedy left open to the first respondent/plaintiff is to file a Special Leave Petition before the Hon'ble Supreme Court against the earlier order passed by this Court and the first respondent cannot resort to file subsequent Interlocutory Application in I.A.No.173 of 2017 and the trial court ought not to have allowed the application. The order passed by the trial court is erroneous and the same is set aside.



10. In the result, this Civil Revision Petition is allowed.  
No costs. Consequently, connected C.M.P.(MD)No.5055 of 2017 is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

WEB COPY

Sub Assistant Registrar

To

The VI Additional District Judge, Madurai.

+1cc to Mr.S.PARTHASARATHY,Advocate,SR.49173

+1cc to Mr.S.CHANDRASEKARAN,Advocate,SR. 49167

C.R.P. (MD) (PD)No.1116 of 2017  
and C.M.P. (MD) No.5055 of 2017  
16.02.2018

CM

KK/SV MMS/SAR 4/27.02.2018/ 4P- 4C/