



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.10.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD)No.1555 of 2018  
and  
CMP(MD)No.6826 of 2018

A.Ilavarasu ... Petitioner/Respondent/Plaintiff  
Vs.  
A.Arunmozhi ... Respondent/Petitioner/Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A No.238 of 2017 in O.S No.140 of 2009 on the file of the District Judge, Virudhunagar at Srivilliputhur dated 27.02.2018.

For Petitioner : Mr.M.Ashok Kumar  
For Respondent : M/s.M.Vijayarathinam

#### ORDER

O.S No.140 of 2009 on the file of the Principal District Judge, Virudhunagar at Srivilliputhur filed by the petitioner herein against the respondent and two others. It is a suit for partition. The suit has been laid on the strength of a Will said to have been executed by their father Late S.A.Anandhan. Trial has since commenced and the plaintiff's side evidence is also over. At that stage, the defendants filed I.A No.238 of 2017 for directing the plaintiff to produce the documents in which the thumb impression of late S.A.Anandhan has been affixed. The said I.A was allowed by the court below. Challenging the same, the plaintiff has filed the present Civil Revision Petition.

2.Heard the learned counsel on either side.

3.It is not in dispute that late S.A.Anandhan filed an injunction suit against the respondent herein before the First Additional District Judge, Chithoor. The suit was decreed. During the pendency of the appeal, S.A.Anandhan passed away and the revision petitioner and other two defendants came on record. At that stage, the Will in question was propounded by the revision petitioner. The First Appellate Court made a limited remand. The findings of the Trial Court were invited in respect of the



genuineness and execution of the Will.

4.It appears that the First Additional District Judge, Chittoor rendered a finding that the revision petitioner herein has proved that the Will in question is genuine and that as per the said Will, it is the revision petitioner who is the legal representative of S.A.Anandhan. Since the due execution and genuineness of the Will are the subject matter of proceedings in A.S No.634 of 2005 on the file of the Andhra Pradesh High Court, I am of the view that the said issue cannot be once again agitated before the District Court, Virudhunagar at Srivilliputhur.

5.In that view of the matter, the order impugned in this civil revision petition is set aside and this Civil Revision Petition is allowed. O.S No.140 of 2009 is based entirely on the Will dated 03.02.2006 said to have been executed by S.A.Anandhan who is the father of the revision petitioner and the respondent herein. As rightly pointed out by the learned counsel appearing for the respondent, the issue is yet to attain finality before the Andhra Pradesh High Court. The appeal filed by the respondent herein is still pending. Therefore, any finding that may be rendered in A.S No.634 of 2005 on the file of the Andhrapradesh High Court will have a direct bearing on the present suit in O.S No.140 of 2009. Therefore, it is only just and proper that the proceedings in O.S No.140 of 2009 on the file of the Principal District Judge, Virudhunagar at Srivilliputhur are put on hold till the issue attains finality in A.S No.634 of 2005 on the file of the Andhra Pradesh High Court.

6.The civil revision petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-I)

To

The Principal District Judge, Virudhunagar at Srivilliputhur.

+1cc to Mr.M.Vijayarathinam, Advocate, SR.No. 91383

+1cc to Mr.M.ASHOK KUMAR, Advocate, SR.No.91273

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