

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PD 2937 of 2015

and

M.P. 1 of 2015

1. P.Shanthi
2. P.Jeevanandham
3. P.Parthiban

... Petitioners

Versus

S.Kamalam

... Respondent

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decretal order dated 27.03.2015 made in I.A.No.154 of 2015 in O.S.No.1056 of 2008, on the file of III Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.R.Subramanian

For Respondent : Mr.B.Gopalakrishnan

ORDER

This Civil Revision Petition has been filed against the order rejecting the application filed under Order 8 Rule 9 of C.P.C. to

file a reply statement to the written statement filed by the respondent/defendant.

2. The petitioners have filed a suit for declaration, declaring the Will executed by one Chandrasekaran dated 05.05.2003 is true, genuine and operative, and also for consequential injunction. According to the plaintiffs, the deceased Chandrasekaran was the absolute owner of the suit schedule property, and he is a friend of 1st plaintiff's husband Palanisamy. The deceased Chandrasekaran was a bachelor, and during his life time, only 1st plaintiff's husband taken care of him. When the deceased Chandrasekaran fell ill, the 1st plaintiff's husband only admitted him in the hospital, and he only met medical expenses. Out of love and affection, the deceased Chandrasekaran has executed a Will in favour of 1st plaintiff's husband Palanisamy dated 05.05.2003 executing the entire property in favour of him. After his death, the defendant, who is Aunt of deceased Chandrasekaran trying to interfere with the possession of the plaintiffs. Hence, the Suit has been filed.

3. The defendant has contested the suit by filing the written statement stating that, the 1st plaintiff's husband is not a friend,

and he is only a tenant under Chandrasekaran. During his life time, he was hale and healthy, and suddenly, he died due to the road accident occurred on 30.08.2005. The defendant also disputed the other claims made by the plaintiffs stating that, he has only taken care of deceased Chandrasekaran, and let out the medical expenses. The above written statement filed in the year 2008 itself. After 7 years, the plaintiffs have filed the present application to file a reply statement to the written statement in the year 2015. That application has been dismissed by the court below. Challenging the same, the present Civil Revision Petition has been filed.

4. I have heard and considered the rival submissions made by the learned counsel appearing for petitioners as well as learned counsel appearing for respondent and perused the records carefully.

5. The learned counsel appearing for the petitioners submitted that, when the defendant has disputed the factual aspects, and coming out with a new case that the plaintiffs are only tenants, the petitioners came up with the present application to file a reply statement to the written statement. In

the reply statement, the petitioners have only disputed the claim of defendant and also disputing the fact that the deceased Chandrasekaran died in a road accident.

6. The Trial Court after considering entire materials dismissed the application holding that, the application was filed belatedly after 7 years, and absolutely, there is no reason stated for the delay in filing the reply statement to the written statement. That apart, in the reply statement also, the plaintiffs have come up with a new case, which is not permissible under law.

7. I have also gone through the materials available on record, the issue revolved around a Will said to have executed by deceased Chandrasekaran in favour of 1st plaintiff's husband Palanisamy. It is for the plaintiffs to prove the Will through acceptable evidence. Already, the original plaint contained necessary averment regarding the circumstances leading to the execution of Will. That apart, the learned Trial Court has held that, the application has been filed after 7 years of filing written statement, and there is no explanation for the delay in filing the present application. Considering all those circumstances, the

Trial Court has rightly considered the materials, and dismissed the application. I also gone through the materials, I find no illegality or irregularity in the order passed by the Trial Court, and I find no merit in this Civil Revision Petition.

8. However, considering the fact that the suit is pending from the year 2008, the Trial Court is directed to complete the trial and dispose the Suit within a period of six months from the date of receipt of the copy of this order. Accordingly, the present Civil Revision Petition stands dismissed with the above direction. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2015 is closed.

12.12.2019

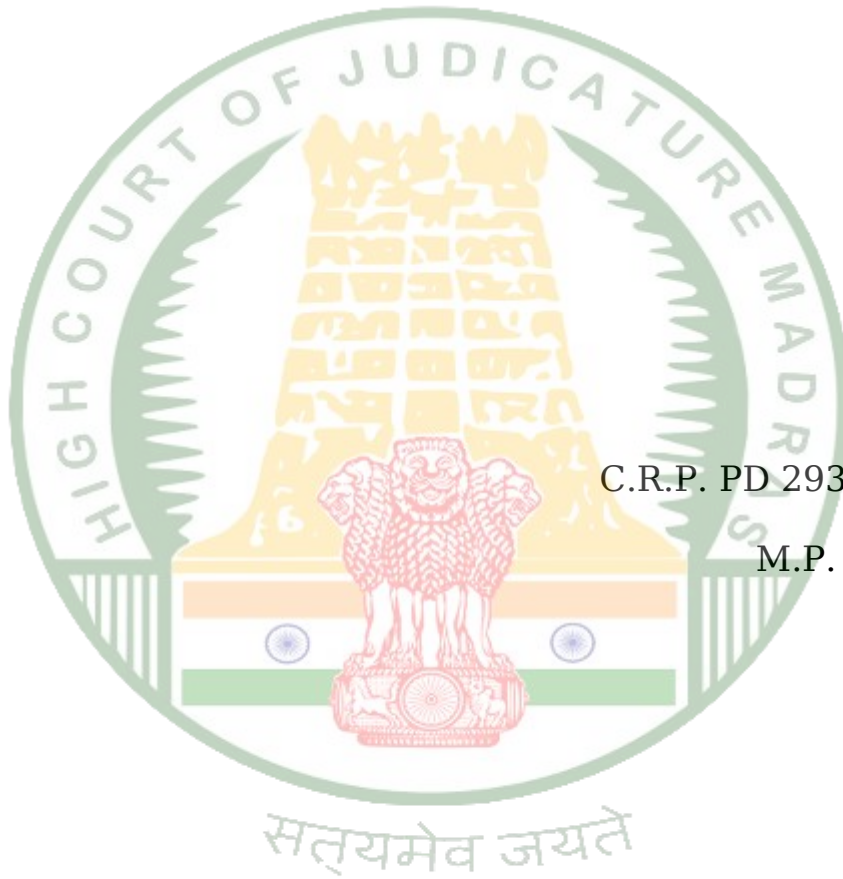
Index : Yes/No
Internet: Yes/No
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To

III Addl. District Judge,
District Munsif Court,
Coimbatore.

V.BHARATHIDASAN,J.

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