

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.3257 of 2013

and M.P.No.1 of 2013

1.Renuga Devi
2.Gokila Devi

..

Petitioners /
Defendants 2 & 3

versus

1.Shanmugasundaram

..

1st Respondent /
Plaintiff

2.Avanasilingam

..

2nd Respondent /
1st Defendant

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.04.2013 made in I.A.No.188 of 2013 in O.S.No.263 of 2004 on the file of the II Additional Sub Court, Erode.

For Petitioners : M/s.Zeenath Begum
For Respondent No.1 : Mr.A.Sundaravadhanan

ORDER

The defendants 2 and 3 in O.S.No.263 of 2004 on the file of the learned II Additional Subordinate Judge, Erode, are the petitioners herein.

2. Before the trial Court, the first respondent / plaintiff has filed a Suit in O.S.No.263 of 2004, as against the petitioners and the second respondent, for the relief of partition and separate possession.

3. During the pendency of trial proceedings, the petitioners had filed a petition in I.A.No.188 of 2013, seeking for an order to send the original Will dated 10.04.2004 along with receipts and identification card, containing signatures of Chidambaram through a Court Officer for the purpose of comparing the signature of Chidambaram contained in the parent deed dated 31.03.2003 with receipts and identification card with the signature found in Will dated 10.04.2004 and get an opinion from the Expert.

4. The learned II Additional Subordinate Judge, Erode, after affording an opportunity to the respondents, by an order dated 17.04.2013, dismissed the application filed by the petitioners, by observing as already the signature of Chidambaram was sent to Expert opinion and thereafter, report has also been received and therefore, sending the same document for the second time for comparison of signature, is unnecessary.

5. Today, when the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the petitioners submitted that, in an earlier occasion when the alleged Will was sent to the Handwriting Expert, the petitioners are minors. Therefore, protecting their rights, sending the same document for the second time, is necessary. However, the learned II Additional Subordinate Judge, Erode, without appreciating the same, had dismissed the application filed by the petitioners, which is erroneous in law.

6. On the other hand, the learned counsel appearing for the respondents would contend that sending the Will dated 10.04.2004 for the second time, is unnecessary. Further, it is an established fact that the petitioners are attempting to protract the proceedings.

7. Heard the rival submissions made by the learned counsel appearing on either side.

8. Both the learned counsel appearing on either side have fairly conceded that, as per the order passed in I.A.No.12 of 2007, the Will dated

10.04.2004 has already been sent to the Handwriting Expert for getting opinion. Further, in the report given by the Handwriting Expert, the signature found in the disputed Will did not tally with the admitted signature of Chidambaram. Only in the said occasion, the petitioners have filed the application before the trial Court stating that comparing the signature of Chidambaram with receipts dated 31.03.2003, is very much necessary to prove the Will dated 10.04.2004.

9. In this occasion, it is necessary to borne in mind that the Will has to be proved only under the provisions contemplated under the Indian Evidence Act and Indian Succession Act. Furthermore, the petitioners seek the relief of partition and separate possession. Hence, it is the duty of the 1st respondent / plaintiff to prove his case. But here the petitioners / defendants 2 and 3 are claiming the property through Will dated 10.04.2004. Only in the said circumstances, they wanted to send the alleged Will dated 10.04.2004 for the opinion of the Handwriting Expert.

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10. In the affidavit filed in support of this petition, the petitioners have not stated anything about the receipts and identification card, in which, the signature of Chidambaram is found. Further, they have not

stated about the said document at the time when I.A.No.12 of 2007 was decided. Therefore, the said circumstances would establish the fact that the petitioners / defendants 2 and 3 are attempting to protract the proceedings.

11. Moreover, the petitioners are having an opportunity to examine the Expert, who gave the opinion already. Without adopting the said mode, request the trial Court to send the alleged Will to the Handwriting Expert for the second time, is unnecessary. Therefore, the order dated 17.04.2013 passed by the learned II Additional Sub Court, Erode, cannot said to be perverse and this Court finds no material irregularity.

12. Since the suit is filed in the year of 2004, the attempt made by the petitioners as above, is nothing but to protract the proceedings. Hence, it is appropriate to issue some directions to the learned II Additional Sub Court, Erode, to dispose of the suit in a time framed manner. Accordingly, the learned II Additional Sub Court, Erode, is directed to dispose of the suit in O.S.No.263 of 2004 as early as possible, preferably within a period of four(4) months from the date of receipt of a copy of this order.

13. In the result, the Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

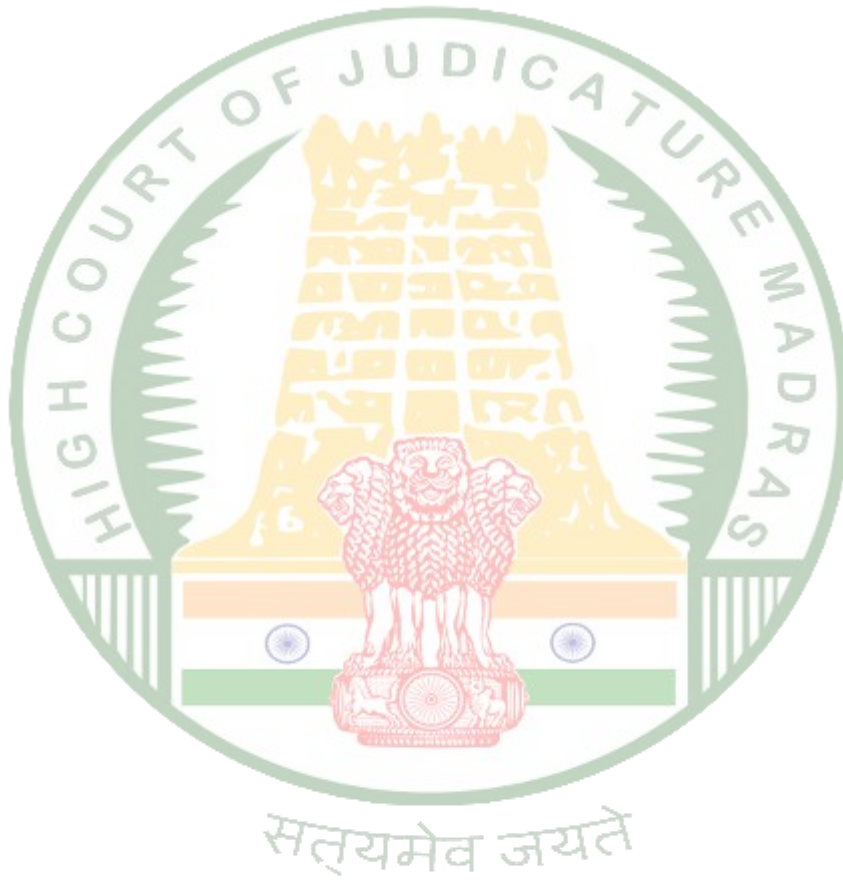
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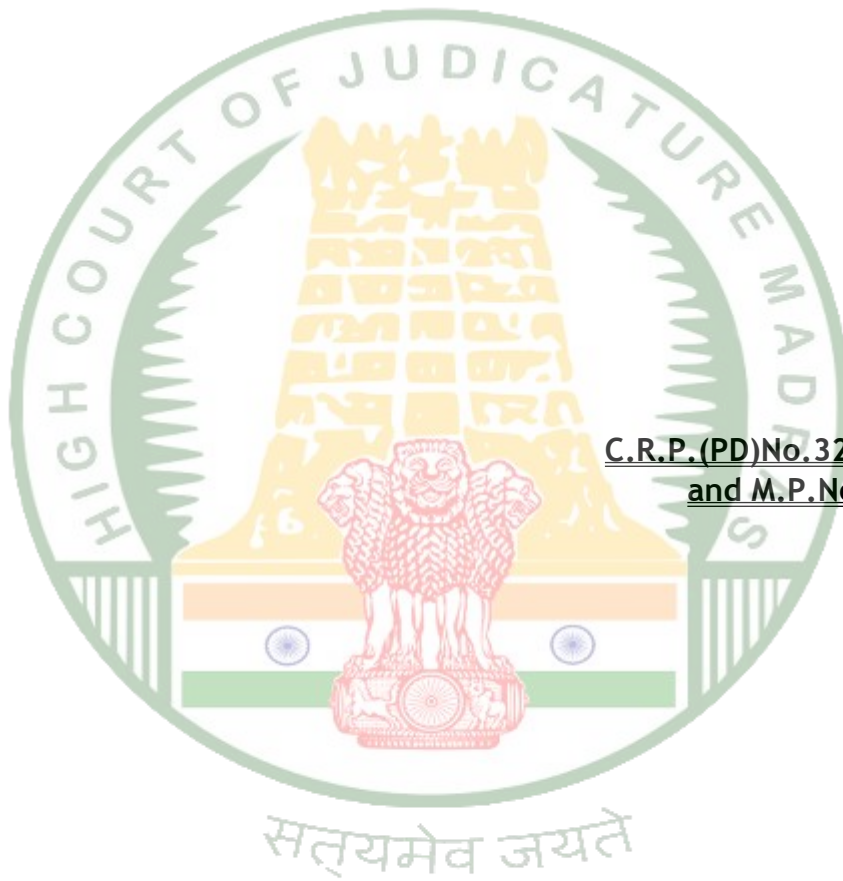
To

The II Additional Sub Court,
Erode.



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R.PONGIAPPAN, J.,
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