

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.888 of 2019
&
C.M.P.No.5775 of 2019

1.Nataraj

2.Marasamy

3.Mani

4.Mathaiyan

5.Lakshmi

6.Sengottaiyan

7.Subramani

8.Kuruvammal

9.Angammal

10.Iyyammal

11.Sumathi



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...Petitioners

Vs

1.Thangamuthu

2.Arumugam

3.Rangasamy

4.Kamatchi

5.Pathrammal

6.Pavalakodi

7.Selvan

8.Madhesh

9.Arunagiri

10.Kaveri

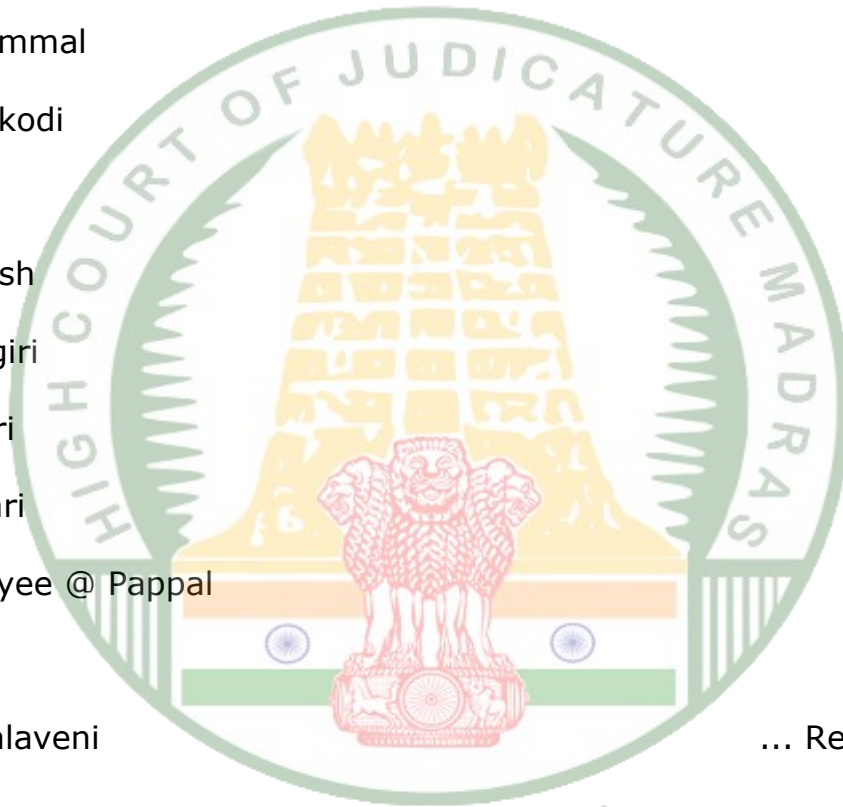
11.Singari

12.Sithayee @ Pappal

13.Jaya

14.Kamalaveni

... Respondents



Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 08.02.2019 made in I.A.No.3 of 2019 in O.S.No.27 of 2009 on the file of the learned I Additional District Munsif Court, Bhavani.

For Petitioners : Mr.R.Vinothraja

ORDER

The above Civil Revision Petition is filed challenging the order passed in I.A.No.3 of 2019 in O.S.No.27 of 2009, which was the application filed by the respondents 1 and 2 herein for condoning the delay in producing a Will dated 03.01.1982. This application has been allowed by the learned I Additional District Munsif, Bhavani. The facts in brief are as follows:

2.The plaintiffs who are the revision petitioners before this Court have filed a suit for a partition and separate possession of their 25/270th share in the suit schedule property. The 3rd respondent has filed a written statement in which they had contended that there was a Will dated 03.01.1982, executed in their favour by one Muthu Gounder, who had died on 15.02.1982 through whom the plaintiffs are also claim a right.

3.When the matter was posted for evidence of the defendants the application subject matter of the revision has been taken. In the affidavit that has been filed in support of the said application, the

respondents 1 and 2 would contend that even in their written statement they had referred to the said Will and they had also taken steps through Court to direct the attesting witness to produce the documents. However the said documents was in the custody of one Devaraj, who had fallen ill and was bed ridden and was therefore unable to produce the said documents, immediately after receiving the documents from him, once he had revived, this application has been moved. The said application was contested by the plaintiffs who would submit that a categorical case has been set up and that the Will is not registered and has been created for a purpose of the suit.

4.The learned I Additional Judge had considered the reopen and recall petition along with the petition questioned herein and by a common order allowed the said application on costs. Challenging the same the revision petitioners/plaintiffs are before this Court.

5.Mr.R.Vinothraja, learned counsel for the petitioners would contend that the respondents 1 and 2 had not followed the procedure for filing the documents and the same has been taken at an highly belated stage, namely, when evidence had commenced.

6. Heard the counsel and perused the papers. From a perusal of the statement given in the written statement of the 3rd defendant who is the 1st respondent herein and the petitioner in the impugned application, reference has been made to the Will even as early as on 05.03.2010. The revision petitioners have in their reply statement refuted the said documents.

7. From a perusal of the affidavit, it is seen that the Will was in the custody of one Devaraj and they had issued a summons to him to produce the same. The said Devaraj had fallen ill and was in need of constant personal assistance thereby unable to move out and as soon as he recovered, he had handed over the Will and therefore the said application was being moved. It is seen that the Will has been mentioned in the written statement itself and since the plaintiffs refute its genuineness the validity of the said Will has to be proved by the defendants 2 and 3 and this Court cannot shut out their right to prove their case. The learned District Munsif has rightly allowed the said application and I find no infirmity in the order particularly because the Will has to be proved in the manner known to law and is

admittedly stand proved on its production. The revision petitioners are no way prejudiced by the same. That apart, it is seen that the defendants side evidence has to be proved.

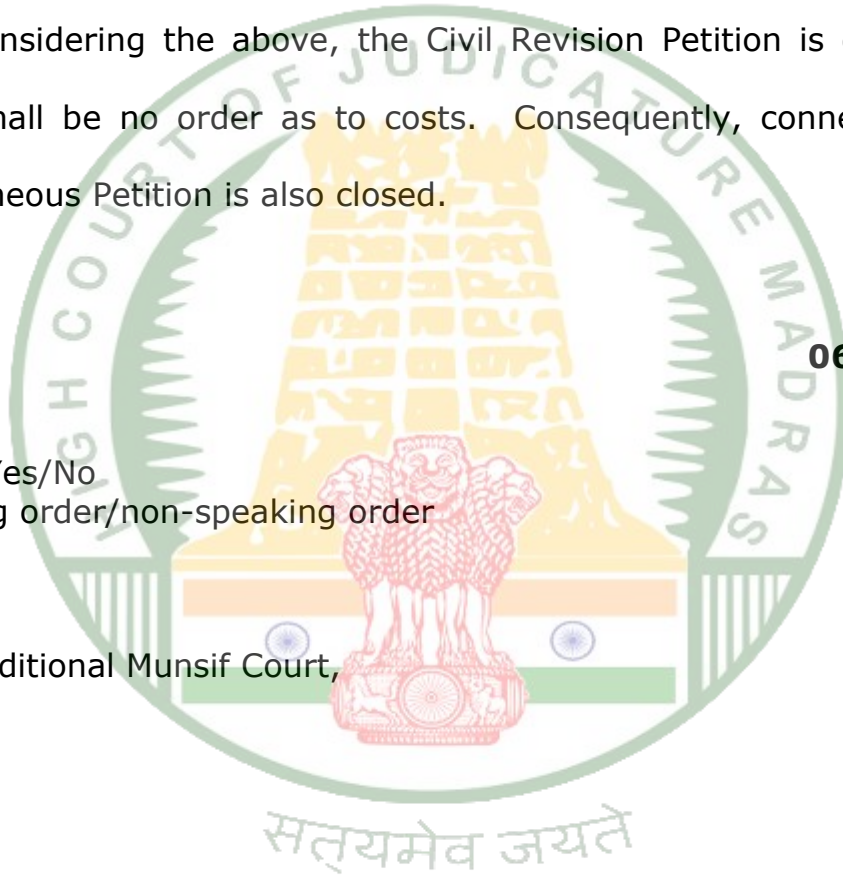
Considering the above, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

06.03.2019

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Index : Yes/No
Speaking order/non-speaking order

To,

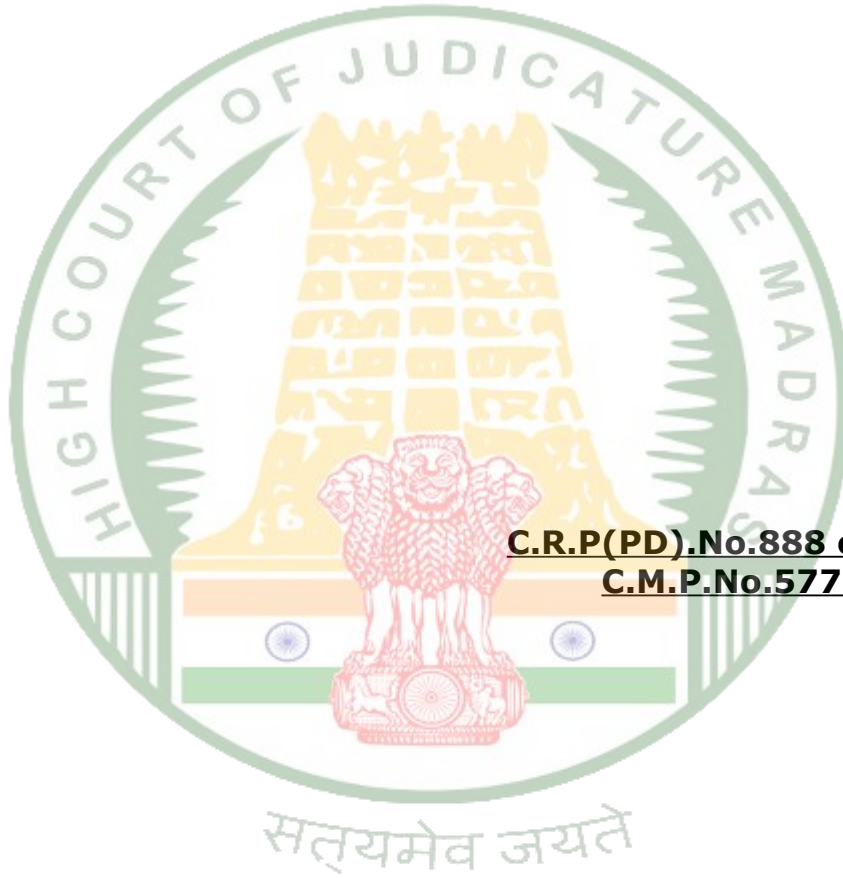
The I Additional Munsif Court,
Bhavani.



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P.T.ASHA, J.,

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