

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2590 of 2019
and
C.M.P.No.12424 of 2019.

Parvathi
W/o late Balakrishnan .. Appellant

-vs-

1. Varadharajan
S/o Govindaraj
2. Ganesh Murugan
S/o Govindaraj
3. Jamuna
W/o late M.G.Raja
4. Regional Transport Officer
Salem West Regional Transport office
Thirumagal Bye-pass
Salem .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Order XLIII, Rule 1(s) of the Code of Civil Procedure, against the fair and decretal order dated 30.1.2019 made in I.A.No.512 of 2017 in P.O.P.No.181 of 2017 on the file of the II Additional District Court, Salem.

For Appellant :: Mr.A.E.Ravi Chandran

JUDGMENT

Parvathi, W/o Balakrishnan has come to this Court questioning the correctness of the impugned decretal order dated 30.1.2019 passed in I.A.No.512 of 2017 in P.O.P.No.181 of 2017, wherein the learned II Additional District Judge, Salem, dismissing the petition filed under Order XL, Rule 1 read with Section 151 of the Civil Procedure Code for appointment of Receiver and also to remove the respondents 1 to 3 from the possession and custody of the schedule mentioned property,

namely, the bus bearing Registration No.TN 33 R 3620 running under the name and style of 'President and Sameen' in Route No.5 from Salem old bus stand to Kannankurichi, has directed the respondents 1 to 3 to maintain true and proper accounts of the operation of the schedule mentioned property, namely, the bus bearing Registration No.TN 33 R 3620 till the disposal of the suit. The reason given by the learned II Additional District Judge, Salem clearly shows that even according to the appellant, her husband Balakrishnan, his mother Lakshmiammal and brothers M.G.Raja, Varadharajan, the first respondent and Ganesh Murugan, the second respondent had entered into a partnership agreement on 1.3.99 to operate the bus in Salem town route No.5 from Salem bus stand to Kannankurichi and the original registration certificate relating to the bus stood in the name of Govindaraj, father of Balakrishnan and after his death on 25.1.2008, the permit was transferred to his wife Lakshmiammal, mother of Balakrishnan. According to the appellant, Balakrishnan also died on 17.1.2013 and his mother Lakshmiammal on 2.3.2015 and after their death, the respondents 1 to 3 were operating the bus and after the death of Balakrishnan, the respondents 1 to 3 and their mother Lakshmiammal have not paid any amount to the appellant towards her share and they never rendered any account. Even after the death of Lakshmiammal, the respondents 1 to 3 have not paid any money nor rendered true and proper accounts to the appellant. Therefore, taking note of the allegation made by the appellant that the respondents 1 to 3 are trying to transfer the permit of the bus to third parties for a price of Rs.1,20,000/-, after issuing legal notice on 19.5.2015 to the respondents 1 to 3 to render true and proper accounts, finding no response, the appellant came forward with the suit seeking an order for appointment of Receiver. Since a detailed counter affidavit was filed by the respondents 1 to 3 denying all the allegations including the relationship of the appellant with the deceased Balakrishnan, making it clear that Balakrishnan was a bachelor and he never married the appellant and after Balakrishnan also died in the year 2013 at Attur and Lakshmiammal also died on 2.3.2015 and thereafter the appellant also kept quiet for almost five years, it was held that the same would show that she was fully aware of even the death of Balakrishnan. In the light of the above finding, the trial Court has dismissed the interlocutory application with a direction to the respondents 1 to 3 to maintain true and proper accounts of the operation of the schedule mentioned property, namely, the bus bearing Registration No.TN 33 R 3620 till the disposal of the suit. Therefore, this Court, finding no justification or merit, is inclined to dismiss the present appeal. Accordingly, the civil miscellaneous appeal stands dismissed.

2. Since the P.O.P.No.181 of 2017 is pending for a long time, the trial Court is hereby directed to dispose of the P.O.P.No.181 of 2017 on merits expeditiously, preferably within a period of six months from the date of receipt of a copy of this order. Consequently, C.M.P.No.12424 of 2019 is also dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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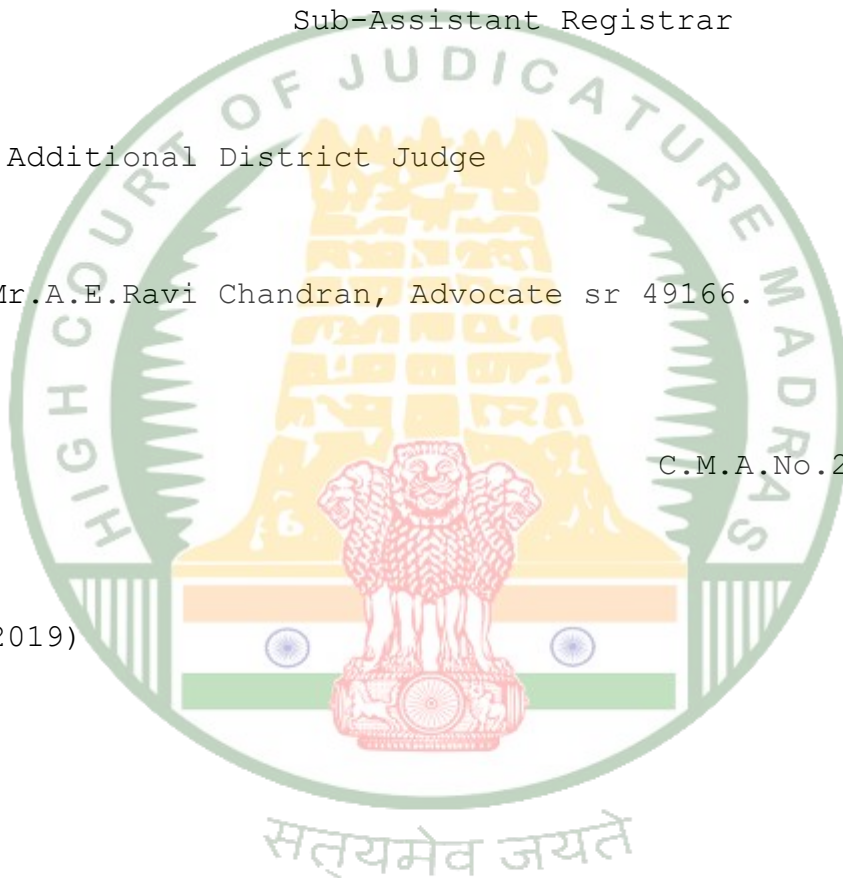
To

1. The II Additional District Judge
Salem

+1 CC to Mr.A.E.Ravi Chandran, Advocate sr 49166.

C.M.A.No.2590 of 2019

NRJK(CO)
SP(13/08/2019)



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