

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.2736 of 2014
and
M.P. No.1 of 2014

1. Malathy
2. Kanimozhi

... Petitioners

Vs

1. N.R. Raja
2. Saravanan
3. The Special Officer,
Periyanaicken Palayam Co-operative
Primary Agriculture and
Rural Development Bank (PARD)
9/11, Railway Feeder Road,
Periyanaicken Palayam
Coimbatore – 641 020.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.02.2014 in I.A. No.734 of 2013 in O.S. No.349 of 2008 on the file of III Additional Sub Judge, Coimbatore.

For petitioners : Mr.G. Rajan

For respondents : Mr.Sai Bharath for R1
Mr.L.P. Shanmuga Sundaram for R3
No appearance - R2

ORDER

The instant Civil Revision Petition has been filed, challenging the order, dated 14.02.2014 passed by the III Additional Subordinate Judge of Coimbatore in I.A. No.734 of 2013 in O.S. No.349 of 2008.

Brief facts leading to the filing of the instant Civil Revision**Petition are as follows :-**

2. The petitioners are the 1st and 2nd defendants in the suit O.S. No.349 of 2008. The suit was filed by the 1st respondent against the petitioners seeking for partition and for permanent injunction. I.A. No.734 of 2013 was filed by the petitioners in the final decree proceedings under Order 26 Rule 9 CPC read with Section 45 of the Indian Evidence Act seeking for a direction for comparison of the 1st petitioner's mother-in-law's signature (Marammal) found in the loan document in No.326 of 2000 with that of the original specimen signatures along with the relevant documents and also to appoint an Advocate Commissioner for obtaining the report from the handwriting expert.

3. It is the case of the petitioners, as seen from the affidavit filed in support of I.A. No.734 of 2013 in O.S. No.349 of 2008 that the alleged Will executed by the first petitioner's mother-in-law Marammal in favour of the respondent is a fabricated and forged Will obtained by the respondent by way of coercion and undue influence. A counter statement has also been filed by the first respondent / plaintiff in I.A. No.734 of 2013 stating that even though the written statement was filed in the suit as early as on 20.11.2008, the petitioners did not file any petition earlier for obtaining the report from the handwriting expert with regard to the genuineness of the signature of the author of the Will viz., Marammal, but had chosen to file an application in the year 2013, after a delay of five long years. Further in the counter statement, the first respondent / plaintiff has denied that Marammal has availed loan from the 4th defendant bank, as alleged by the petitioners. The Trial Court by its order dated 14.02.2014 dismissed I.A. No.734 of 2013 in O.S. No.349 of 2008. Aggrieved by the dismissal, the petitioners, who are defendants 1 and 2 in the suit have filed the instant civil revision petition under Article 227 of the Constitution of India.

4. Heard Mr.G. Rajan, learned counsel for the petitioner; Mr. Sai Bharath, learned counsel for the 1st respondent and Mr.L.P. Shanmuga Sundaram, learned counsel for the 3rd respondent.

5. The following prayer has been sought for in I.A. No.734 of 2013 in O.S. No.349 of 2008

For the reasons stated in the accompanying affidavit the petitioner / 1st defendant pray that this Hon'ble Court may kindly be pleased to pass an order for comparison of her mother-in-law's (Late Mrs.Marammal) signatures found in the Loan document in No.326 of 2000 with that of the original specimen signatures along with the relevant documents and also appoint an Advocate Commissioner for obtaining the report from the handwriting expert opinion.

6. In the impugned order, the Trial Court has duly considered the prayer sought for in I.A No.734 of 2013 and thereafter, has observed that the prayer is vague as the petitioners have not clearly stated that the disputed Will of Marammal, dated 18.11.2005 has to be sent for comparison. The Trial Court has also observed that even though the petitioners contend that Marammal had obtained a loan on 27.04.2005 from the 4th defendant bank and the said loan document have to be sent for comparison, the 4th defendant bank in their written statement have stated that the deceased Natarajan alone had obtained a mortgage loan and not Marammal. Further, the Trial Court has also observed that the document No.326 of 2000, which was

referred by petitioners in the prayer column of I.A. No.734 of 2014, no further particulars have been given by the petitioners regarding the nature of the said document. The Trial Court has also observed that the alleged Will in favour of the respondent / plaintiff has to be proved by the first respondent / plaintiff, legally. This Court is in agreement with the view taken by the Trial Court for not entertaining the application filed by the petitioners in I.A. No.734 of 2013 in O.S. No.O.S. No.349 of 2008.

7. For the foregoing reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court. Accordingly, there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

27.06.2019

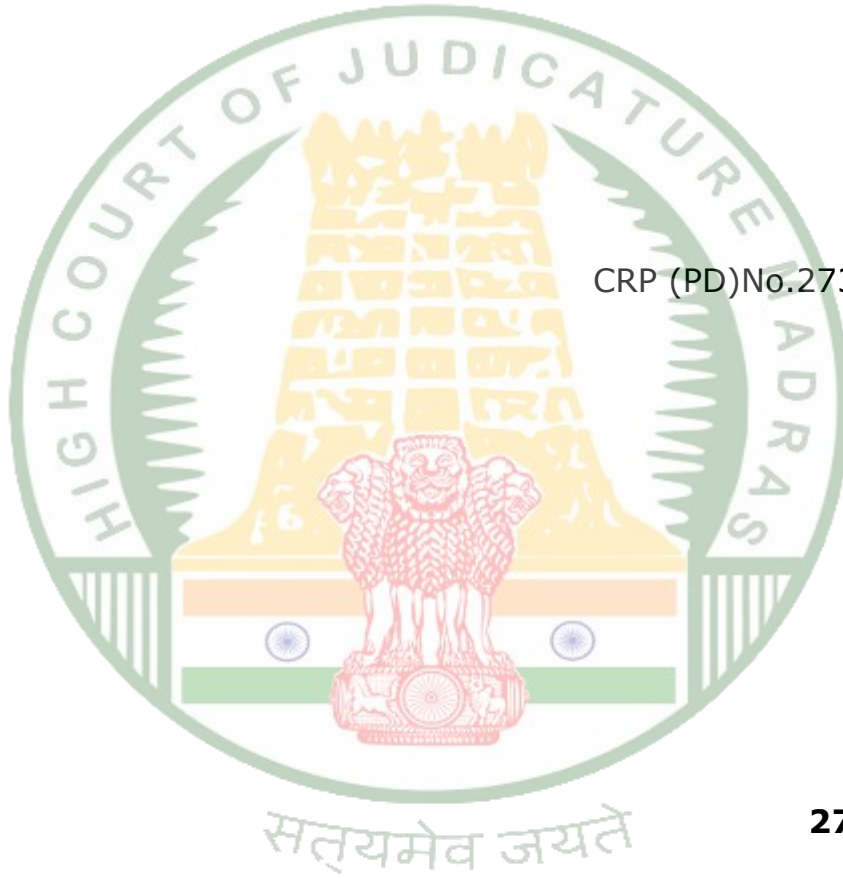
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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

vsi2

To
The III Additional Sub Judge,
Coimbatore.



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