

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.3248 of 2014

and

CRP (PD) No.3249 of 2014

and

MP No.1 of 2014

1. Muthusamy

2. Mysamy

...

Petitioners in
both CRPs

versus

Seerangammal

...

Respondent in both CRPs

Prayer in CRP (PD) No.3248 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.01.2014 made in I.A. No.873 of 2013 in O.S. No.734 of 2010 on the file of the I Additional District Munsif Court, Erode.

Prayer in CRP (NPD) No.3249 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.01.2014 made in I.A. No.874 of 2013 in O.S. No.734 of 2010 on the file of the I Additional District Munsif Court, Erode.

For Petitioners in both CRPs

: Ms. Yogalakshmi
for Mr.M.Guruprasad

For Respondent in both CRPs

: Mr. Ma.P. Thangavel

COMMON ORDER

The instant Civil Revision Petitions have been filed challenging the order dated 28.01.2014 passed by the I Additional District Munsif Court, Erode and I.A. Nos.873 and 874 of 2014 in OS. No.734 of 2010.

Brief facts leading to the filing of the instant Civil Revision Petitions :

2. The petitioners are the defendants in the suit O.S. No.734 pending on the file of the I Additional District Munsif Court, Erode. The respondent is the plaintiff in the suit. She filed a suit for declaration and injunction against the petitioners. The first petitioner is the brother of the respondent and the second petitioner is the son of the first petitioner.

3. A written statement was filed by the petitioners in the suit and after framing of issues by the Trial Court, trial also commenced. During the course of trial, the petitioners have filed I.A. No.874 of 2013 in O.S. No.734 of 2010 under Order 26 Rule 10(A) and Section 151 of CPC read with the Section 45 of the Evidence Act to send for the MP Book Order copy available in BDO office, Erode which bears

the Left Thumb Impression of Paappal, W/o. Perumal, who obtained grant, through H.S.D.S. No.619/1402 to construct her house at Kaarapparai, Thindal.

4. I.A. No.873 of 2013 was filed by the petitioners in O.S. No.734 of 2010 under Rule 75 of the Civil Rules of Practice to send M.P. Book Order copy available in BDO office, Erode which bears the Left Thumb Impression of Paappal, W/o. Perumal, who obtained grant, through H.S.D.S. No.619/1402 to construct her house at Kaarapparai, Thindal.

5. The respondent has claimed in the plaint filed in O.S. No.734 of 2010 that a registered Will was executed by her mother Paappal in her favour and by virtue of the same, she is the absolute owner of the suit schedule property. According to her, the first petitioner, who is her brother and the second petitioner, who is her brother's son do not have any right over the suit schedule property. But according to the petitioners, who are the defendants in the suit no Will was executed in favour of the respondent by Paappal and the alleged Will is a fabricated document and fraud has been played upon by them. Both the Interlocutory applications referred to above were filed by the petitioners to prove their claim that the alleged Will is a bogus

document.

6. A counter affidavit was filed by the respondent both in I.A. Nos.873 and 874 of 2013 denying the allegations made by the petitioners in support of affidavit filed in I.A. Nos.873 and 874 of 2013.

7. By separate orders both dated 28.01.2014, the learned I Additional District Munsif, Erode dismissed both applications on the ground that even though the petitioners alleged impersonation, they have failed to cross examine PW2 or PW3 with regard to the identity of the first petitioner's deceased mother found through the photograph attached with Ex. A5. Aggrieved by the dismissal of I.A. Nos.873 and 874 of 2013 in O.S. No.734 of 2010, these Civil Revision Petitions have been filed under Article 227 of the Constitution of India.

8. Heard Ms.Yogalakshmi, learned counsel for the petitioner and Mr.Ma.P. Thangavel, learned counsel for the respondent.

Discussion :

9. As seen from the pleadings, a categorical stand has been

taken by the petitioners in the suit O.S.No.734 of 2010 that no Will has been executed by Paappal in favour of the respondent / plaintiff. It is their case that the alleged Will is a fabricated document and impersonation has been committed by the respondent / plaintiff.

10. This Court has perused and examined the impugned order. As seen from the impugned order, the Trial Court has not considered the fact that the petitioners are not a party to the alleged Will executed in favour of the respondent. This being the case, they will have to collect evidence through legal means to disprove the alleged Will. The Trial Court has rejected the interlocutory applications only on the ground that the petitioners failed to cross examine PW2, who is the attesting witness under the alleged Will and PW3, who is the Scribe. Since the petitioners in unequivocal terms have categorically denied that no Will was executed in favour of the respondent by the deceased Paappal, the Trial Court ought not to have dismissed the application only on the ground that they have failed to cross examine PW2 and PW3. The petitioners can disprove the existence of the Will only through other legal means as they are not a party to the Will and a categorical stand has been taken by them that the Will is a bogus document and the signature of the Testator has been impersonated.

11. The applications filed viz., I.A. Nos.873 and 874 of 2013 even if they are allowed will not prejudice the rights of the respondent / plaintiff, as ultimately the Court is interested only in finding out the truth as regards the validity of the Will that is claimed by the respondent /plaintiff to have been executed in her favour by her mother Paappal.

12. It is also the case of the petitioners that the documents required to be brought before the Court are public documents which contains the undisputed left hand thumb impression of Paappal, who is alleged to have executed the Will in favour of the respondent / plaintiff. All these facts ought to have been considered by the Trial Court, before dismissing the applications filed by the petitioners.

Conclusion :

13. For the foregoing reasons, this Court is of the considered view that the impugned orders passed in I.A. Nos. 873 and 874 of 2013 in O.S. No.734 of 2010 are erroneous orders and they have to be set aside.

14. In the result the I.A. Nos. 873 of 2013 and 874 of 2013 in

O.S. No.734 of 2010, passed by the I Additional District Munsif Court, Erode are set aside. Accordingly, both Civil Revision Petitions are allowed.

15. In view of the long pendency of the suit, the Trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2019

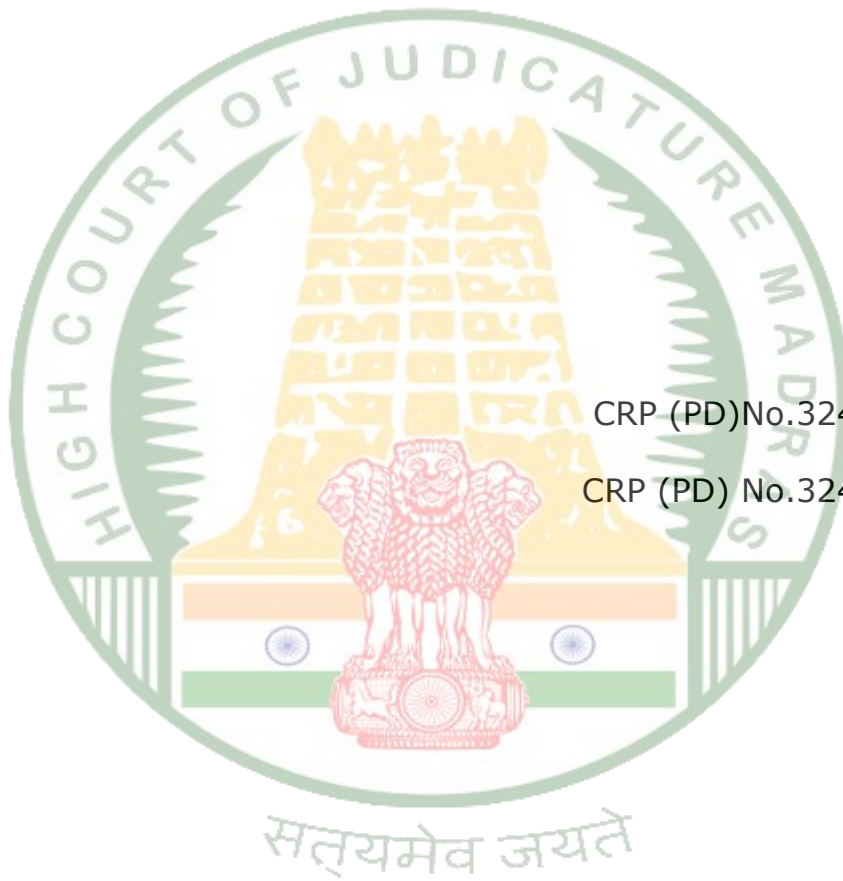
Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The I Additional District Munsif,
Erode.

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ABDUL QUDDHOSE, J.

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