

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.139 of 2017

&

C.M.P.No.625 of 2019

1.Mr.R.T.Dhinakar

2.Mr.Jampala Gangadhar Prasad ...Petitioners

Vs

1.P.Durga Prasad

2.K.Kalpana ... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India to strike off the plaint filed in O.S.No.202 of 2011 on the file of the Additional District Munsif Court, Poonamalle.

For Petitioners : Mr.G.Ethirajulu

For Respondents : Mr.P.Chandrasekar

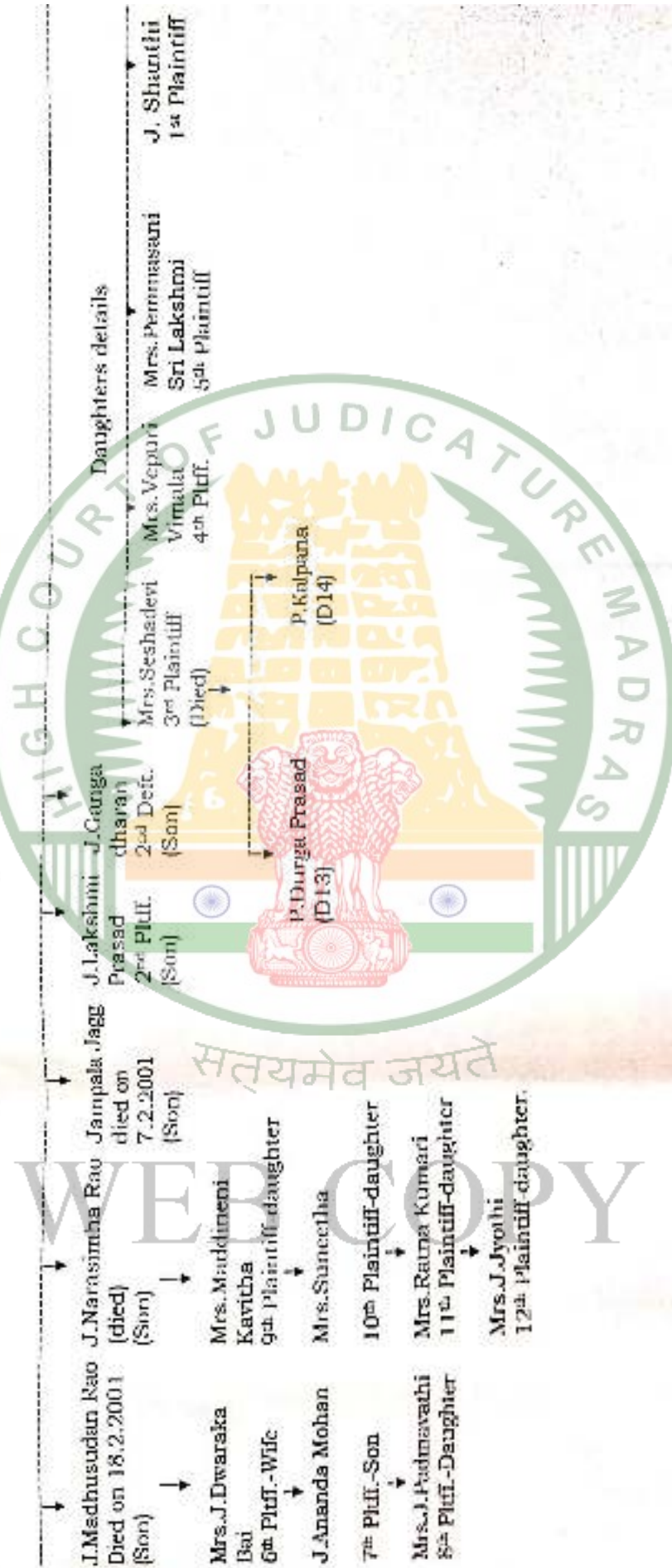
ORDER

The above Civil Revision Petition is filed invoking the superintending Jurisdiction of this Court under Article 227 of the Constitution of India to strike of the plaint filed in O.S.No.202 of 2011 on the file of the Additional District Munsif, Poonamallee. The defendants 1 and 2 are the revision petitioners before this Court. The parties are referred to in the same array as in the suit for ease of reference.

2.The suit O.S.No.202 of 2011 has been filed by the daughters of one Jampala Seetharamaiah and one Lalitha Bai. The genealogy of the family of Sri Jampala Seetharamaiah is shown herein below:

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Mr. J. Sentharamaiah (Predeceased)
Mrs. J. Lalitha Bai (died on 2.8.2007)



3.The disputes relate to the property purchased by Jampala Jaggu one of the sons of the said Jampala Seetharamaiah and Lalitha Bai, who died on 07.02.2001. The property which is the subject matter of the suit is a vacant site comprised in Survey No.351/1A1A2, Sri Ram Nagar, Nirkundram Village, Ambattur Taluk, Thiruvallur District. The suit has been instituted by the daughters of the said Jampala Seetharamaiah and Lalitha Bai and also the children of the other sons of the Jampala Seetharamaiah and Lalitha Bai. The ranking has been described as in the genealogy. The suit is proceeded on the following:

i)The suit property was purchased by Jampala Jaggu under a registered sale deed 23.02.1987, the said Jampala Jaggu had considerable wealth as he was employed in the Cinema field. However he had died a bachelor at very young age. Plaintiffs have instituted the plaint with the statement that Jampala Jaggu had executed a will bequeathing his property (the suit property) on the 1st plaintiff.

ii)The suit was originally filed against the 2nd defendant who is the son of Jampala Seetharamaiah and Lalitha Bai and the 1st defendant who had purchased the property from the 2nd defendant on 20.08.2004.

iii)The settlement deed has been fraudulently obtained by the 2nd defendant from the mother.

iv)The settlement deed contains false statements as the 2nd defendant was only legal heir, whereas the plaintiffs are also legal heirs of the said Jampala Jaggu and therefore entitled to the share in the property. The settlement deed executed in favour of the 2nd defendant and subsequent sale deed executed in favour of the 1st defendant is per se illegal and void.

4.The relief that was ultimately claimed in the suit was for a declaration that the settlement deed 20.08.2004 and the sale deed dated 11.12.2009 has to be declared as null and void and for a permanent injunction restraining the defendants, their

servants agents or any one acting under them dealing with the property.

5.The detailed written statements had been filed by the 1st defendant. The contents of which is not extracted here as it is not relevant for the issue now under consideration. Meanwhile, all the plaintiffs barring the 3rd plaintiff had filed a memo in which they have stated that the will which has been projected in the suit is not genuine will and that the settlement deed which has been executed in favour of the 2nd defendant was a valid document and that they were withdrawing from the above suit.

6.However the children of the 3rd plaintiff who have been brought on record on her demise and described as defendants 13 and 14 have taken out an application to transpose themselves as plaintiffs 13 and 14. At this stage the revision petitioners have moved the present Civil Revision Petitioner to strike off the plaint.

7.Mr.G.Ethirajulu, learned counsel appearing for the revision petitioners made a following submissions:

- i)Case rests only on the will. Plaintiff states action taken to probate will but no proof of the same is produced.
- ii)All other plaintiffs have stated that the will is not genuine.
- iii)The plaintiffs state that they are the legal heirs of Jampala Jaggu contrary to Section 8 of the Succession Act
- iv)Reserve their right from any other case.
- v)No partition asked for.
- vi)No Averments made out to claim prima facie right.
- vii)Abuse of process of Court
- viii)No clarity on the basis on which the claim is made.

8.He also relied upon the Judgement in ***K.K.Modi Vs. K.N.Modi and others*** reported in **(1998) 3 SCC 573** and drew the attention of this Court particularly to the contents of Paragraph No.42 to 44, with emphasis being made on the factum

that when the Court comes to the conclusion that the suit is nothing but an attempt to relitigate the suit should definitely be struck off

9.Per contra Mr.P.Chandrasekar, learned counsel appearing on behalf of the respondent would contend that the defendants are not only relying upon the Will of late Jampala Jaggu but were also relying upon the fact that the settlement deed has been fraudulently obtained and therefore any transfer that has been effected by the 2nd defendant on the basis of fraudulent settlement deed would not confer any right upon the 2nd defendant or 1st defendant who claims under him.

10.Heard the arguments of both parties and perused the papers. From a reading of the plaint it is not clear on what basis defendants 13 and 14 have filed the application to transpose themselves and seek to assert the case of the original plaintiffs, right to the property. If they were to claim a right as per the will

then the very propounder of the will namely the 1st plaintiff has in very categoric terms not only filed a memo that the will was not a genuine will but has also filed a memo and entered the box on 07.01.2014 reiterating the contents of the said memo where she has clearly acknowledged that her mother had the right to deal with the property and therefore the settlement deed and subsequent deeds were both valid and that the 1st defendant is in possession and enjoyment of the suit property.

11. This statement has been also corroborated by other plaintiffs therefore the linear argument fails. The next basis on which the right has been projected is that the plaintiffs are the legal heirs of Jampala Jaggu and therefore the mother was not entitled to deal with the property. The said Jampala Jaggu the original owner of the property had died a bachelor therefore under the provisions of Section 8 of the Hindu Succession Act, 1956 the first class heir is his mother therefore on the death of the said Jampala the mother Lalitha Bai became the absolute

owner of the property. In exercise of her absolute right as the owner she has executed the settlement deed dated 20.08.2004 registered as document No.4786 of 2004 on the file of the SRO Virugambakkam bequeathing the property on the 2nd defendant. The argument by the other legal heirs was that the settlement deed is a forged document since there is no mention about other legal heirs is incorrect since in the settlement deed the mother has only stated that she has two sons namely the 2nd defendant and the deceased Jampala Jaggu therefore she has in very clear terms said that she wanted her son namely the 2nd defendant to inherit the property of the other son.

12. Therefore it is coupled with the fact that all the other plaintiffs have filed a memo acknowledging the fact that the mother had the absolute right to execute the settlement deed and that the settlement deed has been acted upon would clearly show that the claim now put forward by the defendants 13 and 14 lacks bonafides. The fact that the nature of their claim itself

shows that the suit does not have the necessary cause of action and therefore taking into account the Judgement in ***K.K.Modi Vs. K.N.Modi and others*** reported in **(1998) 3 SCC 573** the suit O.S.No.202 of 2011 is struck off the file of the Additional District Munsif, Poonamallee.

In the result, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

06.02.2019

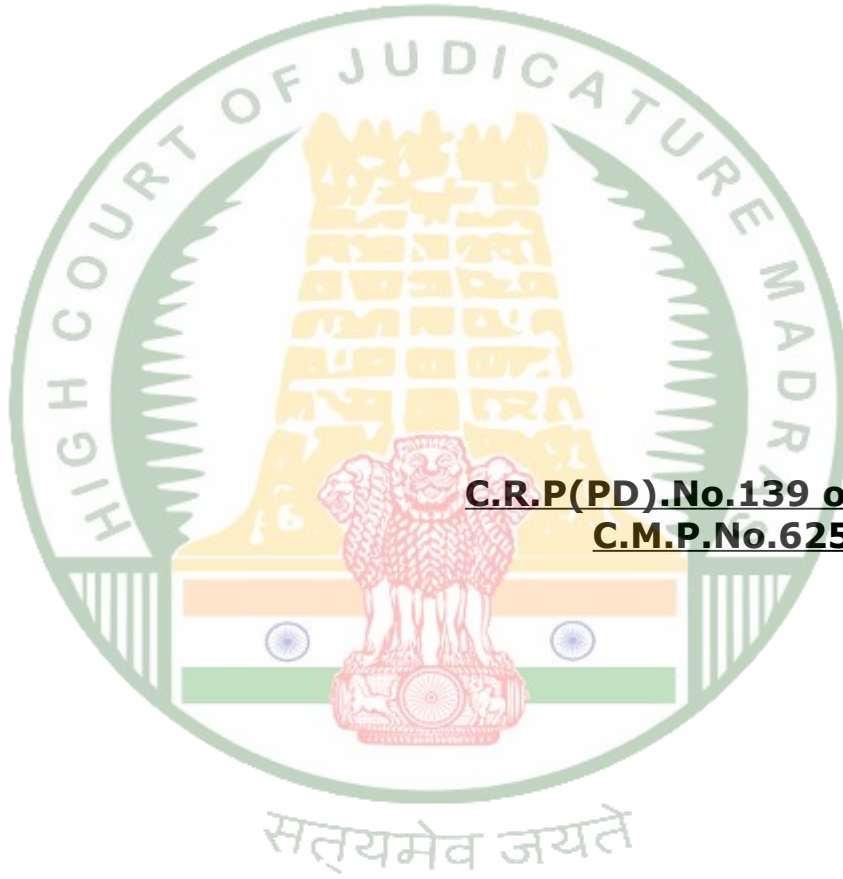
kan
Index : Yes/No
Speaking order/non-speaking order

To
The Additional District Munsif Court,
Poonamalle.

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P.T.ASHA, J.,

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