

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P. (PD) No.3737 of 2019
and C.M.P.No.24537 of 2019

1.Ramakrishna Naidu
2.Manikandan

... Petitioners/Defendants
Respondents 2,7

-Vs-

1.Alamelu Ammal @ Rajalakshmi

: 1st Respondent/Plaintiff/Petitioner

2.R.Jothi

: 2nd Respondent/Proposed Paty

3.M.Seetharama Naidu

4.Kasturi

5.Raja

6.Selvaraju @ Venkatachalapathy

7.Madhavan

: Respondents/Defendants 1,3 to 6
Respondents 1,3 fto 6

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 23.01.2019 passed in I.A.No.292 of 2018 in O.S.No.21 of 2015 on the file of the Principal District Court, Villupuram.

For Petitioner : Mrs.R.Meenal

O R D E R

This revision petition has been filed against the fair and decreetal order dated 23.01.2019 passed in I.A.No.292 of 2018 in O.S.No.21 of 2015 on the file of the Principal District Court, Villupuram.

2. Before the trial Court, one Alamelu Ammal filed a suit for partition against the revision petitioners / defendants. During the pendency of the suit, the said Alamelu Ammal @ Rajalakshmi died. Even during her lifetime, she already gave Power of Attorney to and in favour of one Jothi, who is none other than the daughter of the said Alamelu Ammal to represent her in the suit. While so, since the Alamelu Ammal died, the said Jothi, not only in the capacity of Power of Attorney holder, but also in the capacity of legal heir of the said Alamelu Ammal, wanted to get impleaded as one of the party plaintiffs and accordingly, she filed I.A.No.292 of 2018 for

impleadment. The said I.A., since has been allowed through the impugned order, aggrieved over the same, the revision petitioners / defendants in the suit filed the present revision.

3. Heard the learned counsel for the petitioner, who would submit that, the said Jothi already stood as Power of Attorney for the original plaintiff Alamelu Ammal. However, it is the case of Jothi now that, during the life time of the deceased Alamelu Ammal, she bequeathed the property in favour of Jothi by way of a Will and accordingly she can maintain the suit singly. Learned counsel for the petitioners submits that by giving such a finding, the I.A., was allowed, which would have an impact on the merits of the suit, which is yet to decided.

4. I have considered the submissions made by the learned counsel for the petitioners and also perused the materials placed on record.

5. It is an admitted fact that the proposed party ie., Jothi, before the Court below, though originally stood as Power of Attorney to the original plaintiff, who is none other than her mother, the said Jothi has now come forward to implead herself as party plaintiff in her capacity as legal heir of Alamelu Ammal, as well as the owner of the property which she claim through the Will said to have been executed by the said Alamelu Ammal.

6. These factors, though have been projected by the said proposed party Jothi, the same even though has been mentioned in the impugned order, it can only be construed as a reason for accepting the impleadment only and not for any other purpose, the reason being that, the Will said to have been executed by Alamelu Ammal is genuine one or not and that it can be acted upon or not, are all matters to be decided only after a full fledged trial. Therefore, I find some force in the arguments made by the learned counsel for the revision petitioner in respect of such findings given by the Court below, which may have an impact on the prospects of the revision petitioners / defendants in the suit.

7. In that view of the matter, this Court is inclined to dismiss this Civil Revision Petition with the following observation. No costs. Consequently, connected miscellaneous petition is also dismissed.

8. The impugned order requires no interference from this Court. However, the findings given by the learned Judge in the impugned order, inasmuch as it discloses that the said proposed party Jothi, who claim to be the owner of the property based on the Will said to have been executed in her favour by her mother

Alamelu ammal, the original plaintiff is concerned, that finding shall not stand in the way of any additional issues to be framed in the main suit. It is also made clear that in this regard, if at all any request is made by the revision petitioners / defendants to file additional written statement, that can also be allowed in the facts and circumstances of the case by the Court below.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

KST

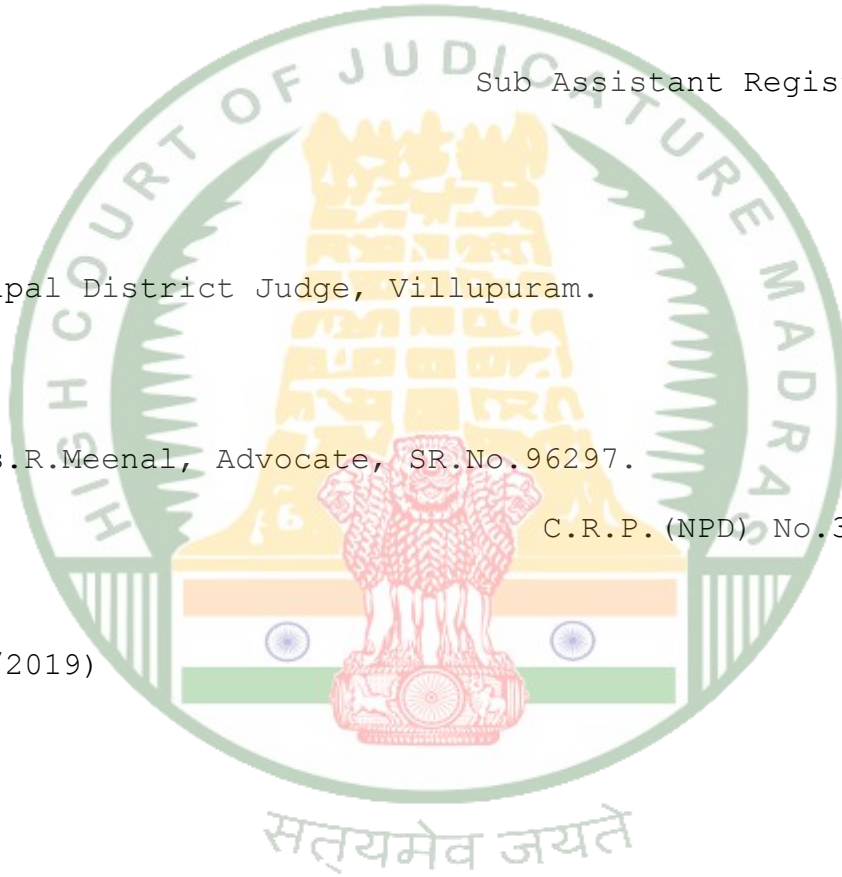
To

The Principal District Judge, Villupuram.

+1cc to Ms.R.Meenal, Advocate, SR.No.96297.

C.R.P. (NPD) No.3737 of 2019

VBA (CO)
CSR(17/12/2019)



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