

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 13.03.2019**

CORAM :

**THE HON'BLE MR. JUSTICE N. SATHISH KUMAR**

**C.R.P. (PD) No.48 of 2017**

**and**

**C.M.P.No.310 of 2017**

Shanthi

... Revision Petitioner

Vs.

N.Sivasamy Gounder

... Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 12.09.2016 made in I.A.No.351 of 2016 in O.S.No.59 of 2008 on the file of the V Additional District Court at Coimbatore.

For Petitioner : Mr.S.Mukunth  
for M/s.Sarvabhauman Associates

For Respondent : Mr.A.Thiyagarajan

**ORDER**

The revision is directed against the order of the V Additional District Judge, Coimbatore, made in I.A.No.351 of 2016 in O.S.No.59 of 2008, allowing the application, filed by the respondent/defendant to receive the certified copy of the Will, dated 31.03.1950.

2.The suit in O.S.No.59 of 2008 has been filed by the revision petitioner against her own father, who is the respondent herein, for partition. It is the specific case of the respondent in the suit that, the suit property has been bequeathed to him by his grandfather by a registered Will, dated 31.03.1950, however, the original Will was misplaced by his father, despite his due diligence, and he could not trace the Will, despite his best efforts. Hence, the respondent has filed an application before the trial Court seeking permission to produce the certified copy of the Will.

3.The above application was opposed by the revision petitioner contending that there are no particular details as to the date, when the original Will was misplaced and the steps taken to trace the Will.

4.The trial Court, after considering the rival submissions, allowed the application, as against which, the present revision has been filed.

5.The learned counsel appearing for the revision petitioner vehemently contended that, for filing secondary evidence, the respondent has not complied with the mandatory provisions contained under Section 65 of the Indian Evidence Act. Without establishing those ingredients, secondary evidence cannot be received. Secondary evidence can be admitted in evidence only on the ground that the original document is either lost or

destroyed, whereas, the trial Court had failed to consider this aspect and had allowed the application.

6.The learned counsel appearing for the respondent would contend that, it has been clearly stated in the affidavit, filed in support of the impugned application, about the misplacement of the Will by the father of the respondent. Once it has been established that the Will has been lost and could not be found, normally, secondary evidence is admissible under law. Therefore, he contended that the trial Court has rightly exercised its discretion in allowing the application.

7.I have perused the order of the trial Court. The suit has been filed by the revision petitioner for claiming partition from her father. It is the specific case of the respondent that the suit property is an absolute property of the respondent on the basis of the Will, executed by his grandfather on 31.03.1950. He has therefore, filed an application to produce the certified copy of the above on the ground that the original Will has been misplaced by his father and the same could not be traced out. It is not unusual under the provisions of law that, a secondary evidence is admissible, when the original document is either lost or destroyed. It is the contention of the revision petitioner that the respondent has not pleaded loss of the Will, whereas, he has only pleaded misplacement of the Will and therefore, secondary evidence

cannot be admitted. However, such contention in my view cannot be appreciated.

8.It is stated that the Will was executed in the year 1950 and there is a specific contention in the affidavit of the respondent that the father of the respondent has misplaced the original Will, which could not traced out, despite the best efforts put by the respondent. It is also contended that the Will is a registered document. When a party relies upon a registered document and comes before the Court contending that the original is not with him and he could not trace it out, normally, secondary evidence is admissible. The Will in the case is dated 31.03.1950. Therefore, the contention of the respondent, that the Will has been misplaced by his father and could not be traced out, could be probable, since, securing a document, which is more than 50 years old by the legatee or a person from rural background is very difficult.

9.Therefore, I am of the view that, when the respondent has established sufficient cause for non-production of original document, the Court has rightly exercised its discretion in allowing the certified copy of the document as secondary evidence and such an order cannot be found fault with. Ultimately, I find no error or illegality in the order passed by the V Additional District Judge, Coimbatore, in I.A.No.351 of 2016 in O.S.No.59 of

2008.

10. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

**13.03.2019**

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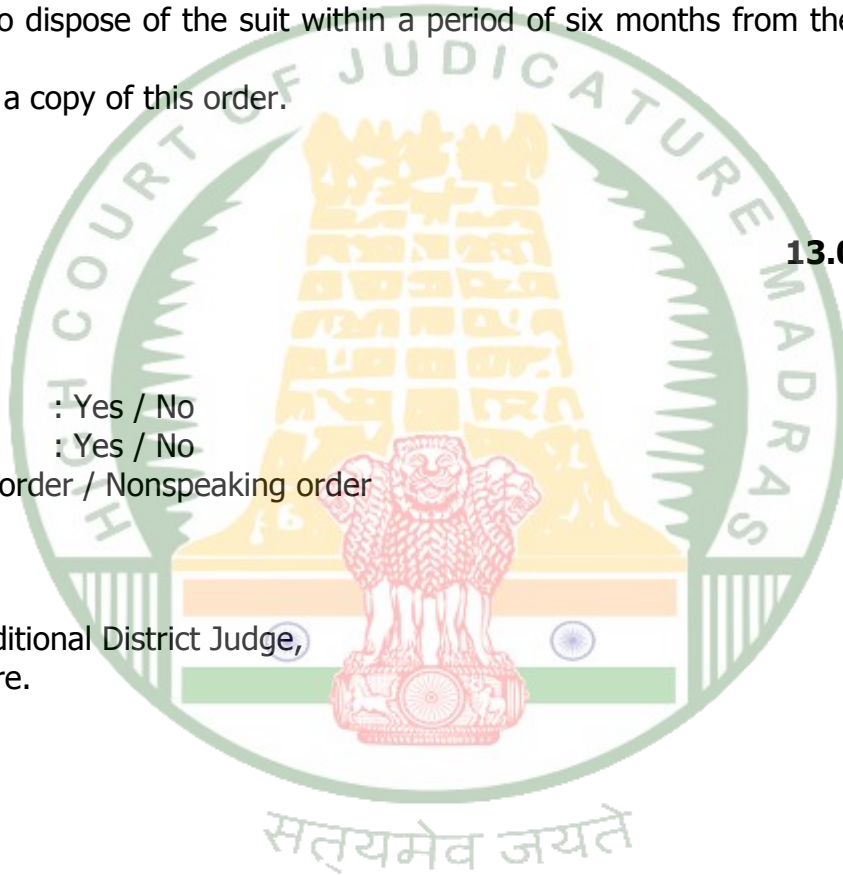
Index : Yes / No

Internet : Yes / No

Speaking order / Nonspeaking order

To

The V Additional District Judge,  
Coimbatore.



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**N. SATHISH KUMAR, J.**

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