

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.3028, 3029 and 3030 of 2018

and

C.M.P.Nos.17599, 17605 and 17609 of 2018

1.Selvakumar
2.Sampath

... Petitioners in all the C.R.Ps

-VS-

1.Valliammal
2.Delli
3.Sankar
4.Nathan

... Respondents in all the C.R.Ps

COMMON PRAYER:

Civil Revision Petitions filed under Section 227 of the Constitution of India, to set aside the decreetal order and common fair order in I.A.Nos.1050, 1051 and 1052 of 2017 in O.S.No.138/2008 dated 27-07-2018 on the file of the District Munsif court at Chengalpet.

For Petitioners : Mr.P.Chandrasekaran

For Respondents : Mr.S.Ramesh

COMMON ORDER

The above Civil Revision Petitions arise against the common order passed in applications filed in I.A.No.1050 of 2017, which is an application filed to reopen the plaintiff side evidence,

I.A.No.1051 of 2017 is an application filed to recall P.W.3 to depose

further evidence for marking documents and the application in I.A.No.1052 of 2017, to receive the documents detailed below and mark the same as Exhibit.

2.The brief facts of the case are as follows:

(i)The revision petitioners are the plaintiffs in the Suit in O.S.No.138 of 2008 on the file of the learned District Munsif, Chengalpet. The Suit has been filed to declare the title of the plaintiff's over the A Schedule mentioned property and for consequential relief to direct the defendants to hand over vacant possession of the B Schedule property.

(ii)The respondent herein had disputed the claim of the revision petitioners/plaintiffs.

(iii)When the matter was posted for arguments, the petitions which are the subject matter of the present Civil Revision Petitions have been filed and the reason that has been given in the affidavit filed in support of these petitions is that the defendants had disputed the will dated 22.03.1989, executed by the revision petitioner's grandfather stating that the grandfather has not executed the will and the signature found in the document is not his signature. To support this contention, the petitioners had found a Sale Deed of the same date, which had been executed by the grandfather in favour of one Mr.Ram Ganesh in respect of housing

site. The document also contains names of the witnesses. Further, the revision petitioners would submit that they came in possession of the document only now and it is very vital for proving their case and therefore, the petitions came be filed.

(iv) The respondents have contested the said petitions inter alia contending that the execution of will had been disputed by the respondents even as early as in 2008 when they filed the written statement. P.W.1 had been examined in chief on 27.09.2012 and 30.10.2012 by way of first recall and thereafter, in February-March, 2017, by way of second recall application. The father of the plaintiffs was examined as P.W.3 on 07.01.2015 and cross-examined on 09.02.2015. Further though the document was in possession of the plaintiffs, they had not chosen to produce the same and no reasons has been given by the revision petitioners. They would further argue that the present Civil Revision Petitions are nothing but an attempt to fill up the lacuna.

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(v) The Trial Judge has dismissed the Applications stating that the Will could be proved by examining the witnesses and that there was no necessity for reopening and recalling and marking the new document, namely, the Sale Deed dated 22.03.1989. Challenging the same, the revision petitioners/plaintiffs are before this Court.

3. Heard, both sides and also perused the materials placed on record.

4. Mr. S. Ramesh, learned counsel appearing on behalf of the respondents would contend that the will has to be proved in accordance with the provisions of Section 68 of the Evidence Act, 1872 which reads as follows:

" Proof of execution of document required by law to be attested

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of providing its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. "

5. A reading of the above provision indicates that one of the attesting witnesses has to be compulsorily examined for proving a will and comparison of the signature with a contemporary document would not partake the provisions of Section 68 of the Evidence Act.

6. The comparison of the signature does not in any way cause prejudice to the defendants and comparison of the signature is one additional evidence, which the learned Judge has not considered. Therefore, the impugned order passed by the learned District Munsif in I.A.Nos.1050, 1051 and 1052 of 2017 in O.S.No.138/2008 is set

aside and the learned Judge is directed to receive the said Sale

Deed and send it for comparison with the disputed signature in the will. However, the plaintiff shall definitely comply with the provisions of Section 68 of the Evidence Act and without complying with the provisions of Section 68, the proof of signature will not cloth the will with legality.

7.In the result, the Civil Revision Petitions are allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

24.04.2019

Index : Yes/No

Internet : Yes / No

Speaking/non-speaking order

tsg

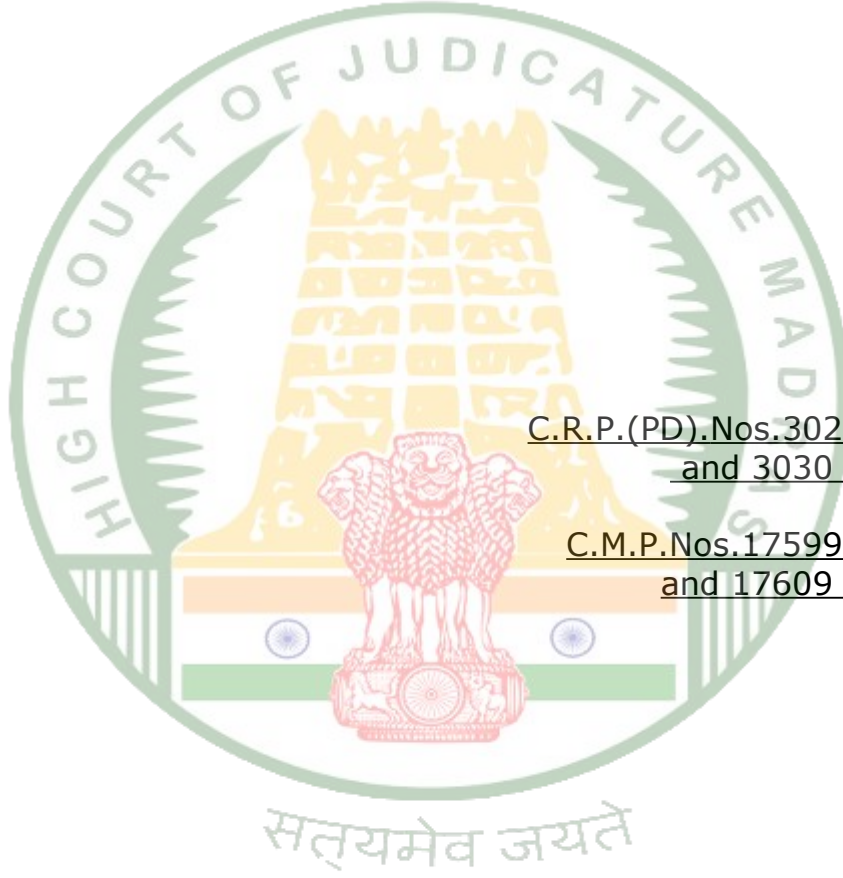
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To

1.District Munsif Court,
Chengalpet.

P.T.ASHA.J.,
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