

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

CRP.(PD)No.4229 of 2018

and

CMP.No.23206 of 2018

Thamizhmani

.. Petitioner

vs.

1.Indira

2.Radha

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order dated 06.10.2018 in I.A.No.256 of 2018 in O.S.No.441 of 2015 passed by the I Additional Subordinate Judge, Villupuram.

For Petitioner : Mr.T.K.Saravanan

For Respondents : Mr.C.Prabakaran for R2
No appearance for R1

ORDER

The above Civil Revision Petition is filed challenging the order passed by the I Additional Subordinate Judge, Villupuram in I.A.No.256 of 2018 in O.S.No.441 of 2015 in and by which, the learned Judge has condoned the delay in receiving the documents filed by the first defendant after the evidence of the second defendant has come to an

2. The brief facts which are necessary to dispose of this Civil Revision Petition are as follows:

(i) The first respondent/plaintiff had filed a suit for partition of her 1/3 share in the suit schedule of property, which she would contend belongs to her father. The first defendant had filed a written statement more or less adopting the plaintiff's case. After the examination of the second defendant as DW1, the first defendant had come forward with an impugned application seeking to condone the delay in filing two documents, namely, sale deeds dated 28.05.1972 and 28.01.1975 which are sale deeds standing in the name of Viruthambal, the mother of the parties in the suit.

(ii) In the affidavit filed in support of the said application, the deponent namely the husband of the first defendant had contended that a portion of the suit schedule property had been allotted to the share of his father-in-law Subramani in a partition and from and out of the income from those properties, some properties were purchased in the name of his wife Viruthammal. However, all the properties, though, purchased in the name of Viruthammal, were treated as joint family properties. The two documents have been produced only to highlight this fact.

(iii) The second defendant had also submitted a detailed counter, wherein, it is stated that the entire exercise is only to fill up the lacunae. The second defendant also contended that the documents that are now sought to be filed is not supported by any pleadings and therefore, the same cannot be received and consequently, the delay cannot be condoned. The learned I Additional Subordinate Judge, Villupuram by her order dated 06.10.2018, was pleased to allow the said application.

3. Challenging the same, the second defendant is before this Court.

4. Mr.T.K.Saravanan, learned counsel appearing on behalf of the revision petitioner/second defendant would submit the following arguments (a) the wrong provision of law has been quoted, (b) the documents are not supported with pleadings and (c) no prior permission has been obtained for the examination of the third party witness.

5. Mr. C.Prabakaran, learned counsel appearing on behalf of the second respondent/first defendant would contend that even in the written statement, the defendants had stated that the properties were all being enjoyed as joint family properties, despite the fact that, some

of them stand in the name of Viruthambal, since the said Viruthambal has no means of her own to purchase the property. Therefore, the contention is that the documents now sought to be filed is not supported by pleadings is erroneous. He would further submit that quoting a wrong provision of law is not fatal to the case and that it is only the husband of the first defendant who is sought to be examined.

6. Heard the learned counsel appearing on both sides and perused the papers available on record.

7. As rightly pointed out by the learned counsel appearing for the second respondent/first defendant, the documents which are sought to be now produced is only to show that certain properties have been procured in the name of Viruthambal and the source of income is the joint family income.

8. In the written statement of the first defendant, she has stated as follows:

"Allegations in the plaint that suit properties are the joint family properties of plaintiff, this defendant and the second defendant, that the properties do not belong to Vridhambal Ammal, the properties have been enjoyed by the members as joint family properties are all true. The said Vridhambal Ammal have no means to purchase any

property of her own and the properties have been purchased from and out of the income from the joint family properties.”

9. The quoting of wrong provision of law appears to be a typographical error. However, the content of the affidavit in petition would clearly show that the same is filed invoking the provisions of the order VIII Rule 3 of the Code of Civil Procedure.

10. It is also represented that it is the husband of the first defendant who has to be examined on the side of the first defendant and it appears that he is the person who has been authorized in this behalf and who has knowledge about the facts. Therefore, considering the above, I do not find any infirmity in the order passed by the learned I Additional Subordinate Judge, Villupuram.

11. Consequently, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No

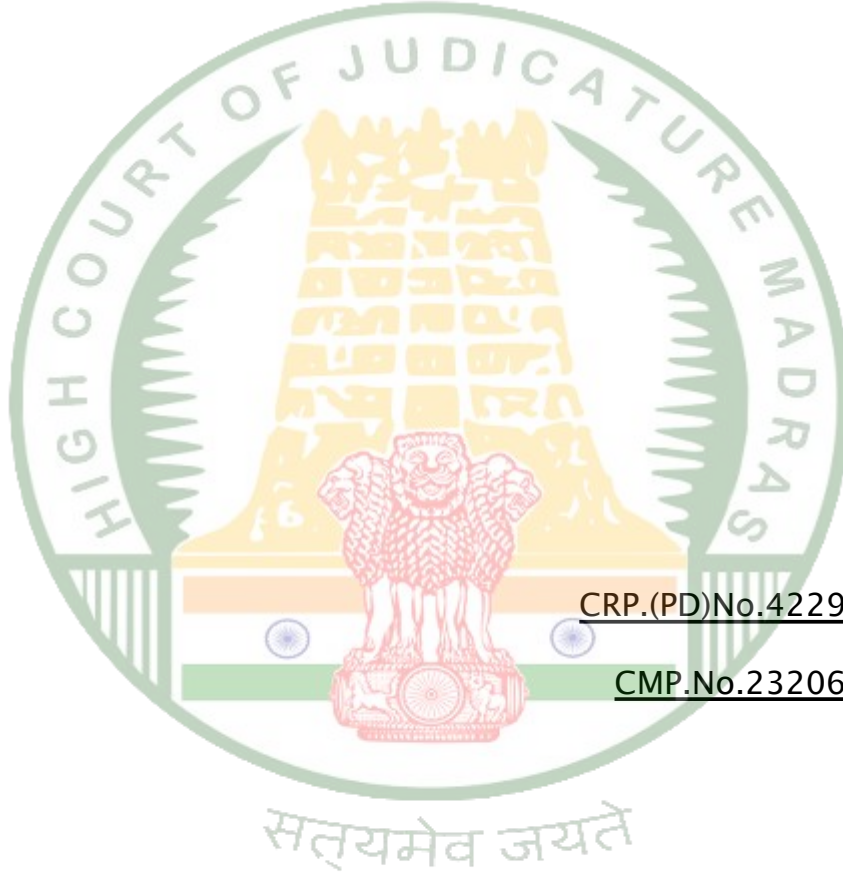
Speaking order / Non-speaking order

P.T.ASHA, J.

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To

The I Additional Subordinate Judge,
Villupuram



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