

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.4258 of 2018
and
C.M.P.No.23334 of 2018

Vijaya

...

Petitioner

Vs

Murugan

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.10.2018 passed in I.A.No.10 of 2016 in O.S.No.435 of 2012 by the learned II Additional Subordinate Judge, Salem.

For Petitioner : Mr. Sugumar C.D.

For Respondent : Mr.R.Marudhachalamurthy

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned II Additional Subordinate Judge,

Salem, in I.A.No.10 of 2016 in O.S.No.435 of 2012 whereby the learned Judge has dismissed a post trial amendment filed by the plaintiff.

2. When the matter was posted for cross examination of the defendant's side evidence, this application has been filed. The suit has been filed on the premise that the original owner of the suit property is one Sampath, who had three wives and the plaintiff traces title to the property of the said Sampath through his second wife Sellammal and the defendant through the 3rd wife Veerayi. When the matter was listed for the cross examination on the side of the defendant, the impugned petition came to be filed to amend the Plaint and ultimately for the purpose of marking of the Will dated 07.01.2009 which is said to be executed by one Alamelu and which has been referred to by Alamelu's sister-in-law Chinnammal, who has been examined on the side of the defendant and it was only when she came to give evidence according to the plaintiff, she had come to know about

the existence of this Will. The learned II Additional Subordinate Judge had dismissed the said application by contending that the matter is a post trial amendment and that apart, it has been filed only with the sole aim of protracting the proceedings. The learned Judge has further observed that the plaintiff has filed an amendment petition which is not only seeking to introduce a new document but also trying to change the date of death of the deceased Sampath and therefore, the same could not be permitted to be allowed.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the material available on record.

4. From a reading of the orders of the learned II Additional Subordinate Judge, Salem, it is clear that the amendment petition has been filed when the matter was listed for cross examination on the side of the defendant. The petitioner under

the guise of the amendment is now (a) seeking to amend the date of death of the said Sampath and (b) restraining to introduce a document for which at a later point of time there is every chance of the applicant filing an application to reopen the trial of the suit. Therefore, there is no necessity to interfere with the order of the Court below. There is ultimately a suit proceed on the footage that the plaintiff is the granddaughter of the said Sampath. I find no infirmity in the orders passed by the trial Court.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.03.2019

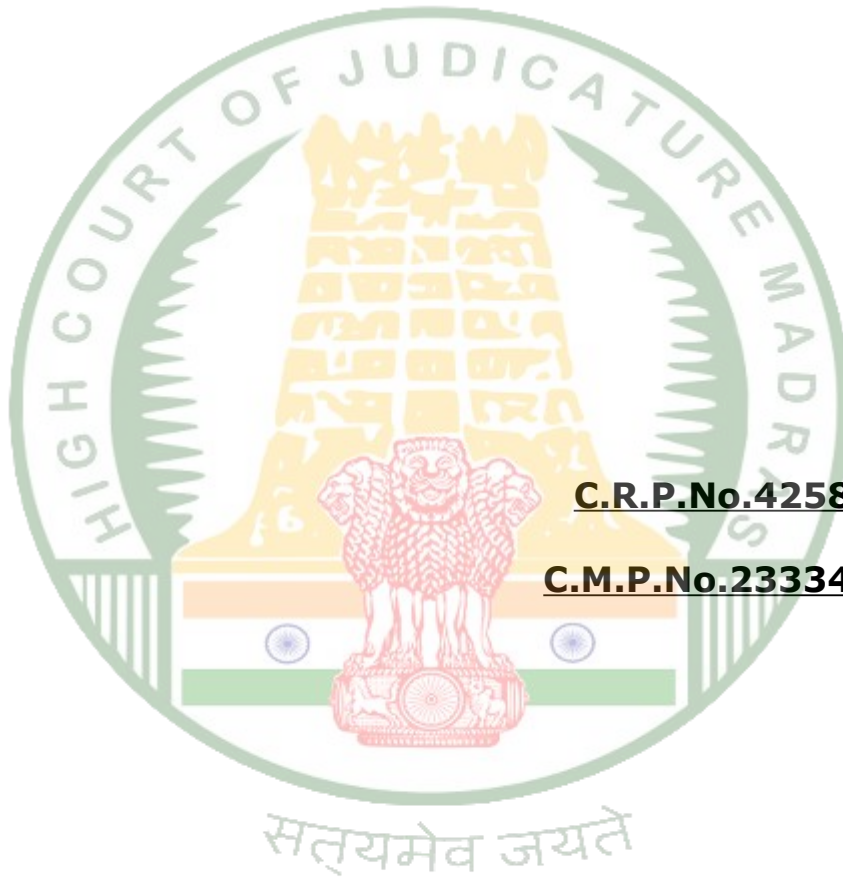
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To
The II Additional Subordinate Judge,
Salem.

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P.T. ASHA, J,

mps



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