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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMP(MD) .No.2504 of 2019

in

C.R.P. (MD) .No.SR27802 of 2018

1.Susi @ Susila  
2.Amutha  
3.Suresh

... Petitioners/Petitioners

Vs.

Deivanai (Died)  
1.Paramasivam  
Ponnusamy (Died)  
Sivakami (Died)  
2.Sundar  
3.Chitra

... Respondents/Respondents

**PRAYER in C.M.P. (MD) .No.2504 of 2019:** Civil Revision Petition filed under Section 151 of the Code of Civil Procedure, to dispense with the production of the original fair order dated 23.12.2016 in E.P.No.49 of 2016 in E.A.No.16 of 2010 in E.P.No.11 of 2009 in O.S.No.189 of 1997 on the file of the Principal District Munsif cum Judicial Magistrate Court, Lalgudi.

**PRAYER in C.R.P(MD)NO.SR27802 of 2018:** Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 23.12.2016 in E.A.No.49 of 2016 in E.A.No.16 of 2010 in E.P.No.11 of 2009 in O.S.No.189 of 1997 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Lalgudi.

For Petitioner : Mr.S.Muthukrishnan

### **O R D E R**

This Civil Miscellaneous Petition has been filed to dispense with the production of original fair order dated 23.12.2016 in E.A.No.16 of 2010 in E.P.No.11 of 2009 in O.S.No.189 of 1997 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Lalgudi.

2.The Civil Revision Petition has been preferred against the fair and decreetal order dated 23.12.2016 in E.A.No.49 of 2016 in E.A.No.16 of 2010 in E.P.No.11 of 2009 in O.S.No.189 of 1997, on the file of the Principal District Munsif Cum Judicial Magistrate Court, Lalgudi.



3.This petition has been filed by one Susi @ Susila and others, who are the objectors, has claimed herself as wife of Subramanian and her husband Subramanian and her husband's brother viz., Ponnusamy, whereas the plaintiff Deivanai executed a will and based on the said will, she filed a suit, in which, she has not impleaded her husband and her husband's brother as necessary party.

4.In the affidavit, the first petitioner contended that one Deivaani, W/o.Sadaya Mudaliar has filed a suit for recovery of possession and for future profits in O.S.No.653 of 1981 before the District Munsif Court, Trichy, against the father-in-law of the first petitioner viz., one Ponnusamy and the said suit was transferred to Lalgudi and renumbered as O.S.No.189 of 1997. In the said suit, the petitioners further contended that the said Deivanai and her husband was living at Cyleon and after the demise of her husband, she returned to India on 14.10.1980 and asked the defendant to return the property, but the defendant refused to do so. Hence, she filed the said suit for the aforesaid relief.

5.During the pendency of the said suit, the plaintiff wrote a Will in favour of one Paramasivam and subsequently, she died in the year 1982 and after the demise of the plaintiff, the suit was continued by one Paramasivam and the first petitioner's father-in-law also died in the year 2002, leaving behind two sons and one daughter. After the demise of the first petitioner's father-in-law, without adding the first petitioner's husband as a party to the suit. The first petitioner's in-laws colluded with the plaintiff and suppressed the pendency of the suit and obtained a decree on 16.09.2002. Against the said decree, the first petitioner's in-laws filed an appeal in A.S.No.184 of 2003 before the Sub Court, Trichy and the same was dismissed on 16.12.2004. The first petitioner came to know about the said proceedings only after the filing of the execution petition and immediately, the first petitioner filed E.A.No.16 of 2010 to prove her right in the suit schedule property. Further, she filed another E.A.No.49 and 50 of 2016 under Order 18 Rule 17 C.P.C., to recall R.W.1 to cross examine him and the same was dismissed by the execution Court on 23.12.2016. Against the said dismissal order, the present Civil Revision Petition has been filed.

6.The petitioners have filed the civil revision petition before this Court and the same was returned due to mistake in the fair and decretal order. Hence, in filing the civil revision petition, there was a delay of 472 days has been occurred, because the said return was not represented in time. Further, the first petitioner states that the delay is neither wilful nor wanton. If the delay is not condoned, the first petitioner and her family members will be put to irreparable loss and hardship.

7.The learned counsel appearing for the petitioners contended that the fair order passed in E.A.No.49 and 50 of 2016, is a common order and she applied only one copy and the same was produced in



other civil revision petition. Since only one copy is available, the first petitioner has filed this petition to dispense with the Xerox copy of the said order in the revision petition.

8.E.A.Nos.49 ad 50 of 2016 were filed by the first petitioner to recall R.W.1 to cross examine him. The Executing Court has observed the contention raised by the first petitioner that when E.A.No.16 of 2010 was posted for argument, the said petitions were filed. Though the second respondent has claimed his right through Will dated 27.07.1981, which was obtained from the Sub-Registrar Office, he has not marked the said Will through him and it was marked by R.W.2 viz., Kandasamy. Hence, the first petitioner could not cross examine R.W.1. The Executing Court, after verifying the records, has given a finding that P.W.1, who is the plaintiff, in his proof affidavit that the deceased Deivanai has no right to execute the Will in favour of the second respondent and further the said Will cannot restrict the right of the petitioners and that Paramasivam/R.W.1 clearly deposed before the Court regarding the Will dated 27.07.1981 and that R.W.2 was cross-examined with regard to the registration of Will and his signature, dismissed the said petitions. Aggrieved against the same, the petitioner has preferred the Civil Revision Petition.

9.The grievance of the first petitioner is that she could not cross examine R.W.1 regarding the Will is not a proper and the said petition was not considered by the Execution Court.

10.In the grounds of revision, the learned counsel appearing for the petitioners contended that the registered Will, which was obtained as a certified copy from the Registrar Office in the name of the first respondent was not marked by him. Hence, in the cross examination of the first respondent, the petitioner is not eligible to elicit question relating to the Registered Will dated 27.07.1981.

11.Since E.A.Nos.49 and 50 of 2016 were filed only with an intention to prove the case of the petitioner, the order of the Execution Court is very much reasonable, which does not require any interference by this Court.

12.In the result, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, the Civil Revision Petition is rejected at SR stage.

sd/  
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The Principal District Munsif  
cum Judicial Magistrate Court,  
Lalgudi.

2. The Record Keeper,  
Vernacular Section, (2 COPIES)  
Madurai Bench of Madras High Court,  
Madurai.

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