

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)Nos.479 & 481 of 2020
and C.M.P.No.2602 of 2020

V.Hemalatha

...

Petitioner
[in both CRPs]

versus

1.K.Sarguna Sundari
2.K.Jawahar Raj

...

Respondents
[in both CRPs]

Common Prayer in Both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.1 of 2019 and I.A.No.2 of 2019 in O.S.No.363 of 2014, dated 10.09.2019 on the file of I Additional District Judge, Coimbatore.

For Petitioner : Mr.M.Rajasekar
[in both CRPs]

COMMON ORDER

These civil revision petitions have been filed by the petitioner seeking to set aside the order in I.A.No.1 of 2019 in I.A.No.2 of 2019 in O.S.No.363

of 2014, dated 10.09.2019 on the file of I Additional District Judge, Coimbatore.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.363 of 2014 for preliminary decree and for the division of the suit property described hereunder into three equal shares and for allotting one such share to the plaintiff with respect to good and bad soil by metes and bounds by appointing a commissioner and for partition against the respondents. Subsequently, a written statement was filed by the defendants and issues have been framed and both sides evidence were also closed and finally, the suit was posted for arguments. At this stage, the revision petitioner/plaintiff has filed an application in I.A.No.1 of 2019 under Order XXVI Rule 10(A) r/w Section 45 of the Indian Evidence Act and Section 151 of CPC., to appoint an Advocate Commissioner to sent for Ex.B.1 for fingerprint expert opinion to compare the admitted signature found in Book No.1 and find out the signature of the petitioner's father and the revision petitioner/plaintiff has also filed an application in I.A.No.2 of 2019 under Section 75 of the Civil Rules of Practice Act and Sec.151 of CPC to direct the Sub Registrar, Thondamuthur, to bring Book No.I to enable the petitioner to compare the

signature found in Ex.B1. The trial Court had dismissed both the applications by its order dated 10.09.2019. Aggrieved by the same, the revision petitioner has come forward with the present CRPs.

3.On perusal of records, it is seen that the respondents are claiming the title based on the unregistered Will dated 24.11.2011. Claiming that the signature found in Ex.B.1 not belongs to the petitioner's father namely Kalingarathinam, the petitioner has earlier filed an application in I.A.No.258 of 2018 for examination of the disputed signature found in Ex.B1 by sending the document of Ex.B1 to a handwriting expert opinion and the same was dismissed by the Court below on 15.11.2018. Pursuant to the order passed by the Court below, the petitioner has filed CRP.No.245 of 2019 before this Court and the same was also dismissed by this Court. It is contended by the learned counsel for the petitioner that the petitioner's father had already executed a sale deed dated 02.12.2013 in favour of one Subbulakshmi. At that time, the petitioner's father has signed in Book No.1, which is maintained by the Sub-Registrar's Office. Hence, the petitioner has filed applications in I.A.No.1 of 2019 under Order XXVI Rule 10(A) r/w Section 45 of the Indian Evidence Act and Section 151 of CPC., to appoint

an Advocate Commissioner to sent for Ex.B.1 for fingerprint expert opinion to compare the admitted signature found in Book No.1 and find out the signature of the petitioner's father and I.A.No.2 of 2019 under Section 75 of the Civil Rules of Practice Act r/w Section 151 of CPC to direct the Sub-Registrar, Thondamuthur, to bring Book No.I to enable the petitioner to compare the signature found in Ex.B1. It is the submission of the learned counsel for the petitioner that no prejudice would be caused to either parties when the document of Ex.B1 send to handwriting expert, but the petitioner has filed the aforesaid interlocutory applications at the time of argument.

4.Further, Section 68 of the Indian Evidence Act deals with how a Will must be substantiated. Further, Section 69 of the Indian Evidence Act states how the Will must be proved in the event of the death of the persons who signed the Will. One of the persons viz., Periyasamy, who signed the Will was marked as DW2 and Thangavel, who prepared the Will was marked as DW3. The petitioner has the right to put forward a discussion as to the credibility of the testimony of the aforesaid witnesses. It is not admissible for the petitioner to request the appointment of an Advocate Commissioner to send for the examination of the signature expert.

5.Considering all the above facts, the trial Court has rightly dismissed the Interlocutory Applications filed by the revision petitioner. At this stage, if the present applications are allowed, this will stall the entire proceedings in the suit. Therefore, this Court finds no merits in the present Civil Revision Petitions and the same are liable to be dismissed.

6. With the above observations, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.03.2020

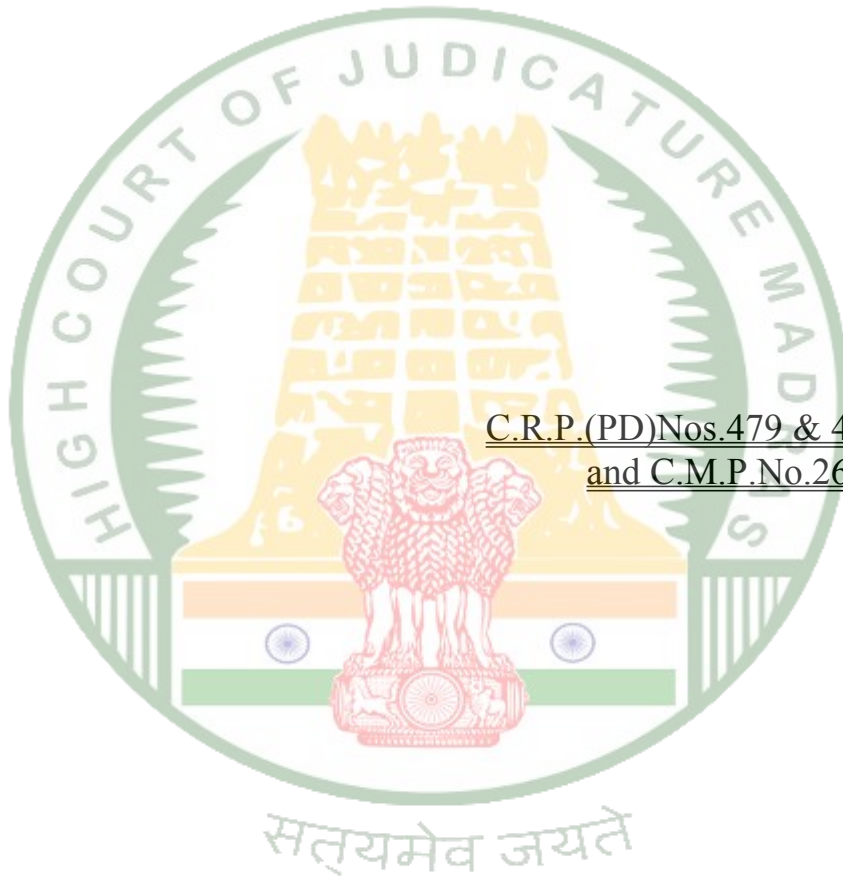
Index : Yes / No
Internet : Yes
Speaking order / Non-speaking order
msm/ak

To
I Additional District Judge,
Coimbatore.

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D.KRISHNAKUMAR, J.

msm



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