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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11..02..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL REVISION PETITION NO.566 OF 2020

&

C.M.P.NO.2938 OF 2020

AND

CIVIL REVISION PETITION NO.567 OF 2020

Chitra ... Petitioner in both CRPs/
Petitioner/1st Defendant

-Versus-

1.Kumutham .. 1st Respondent in both CRPs/
1st Respondent/Plaintiff

2.Vijayammal

3.V.S.Mani ... 2nd & 3rd Respondents in both CRPs/
2nd & 3rd Respondents/2nd & 3rd Defendants

Prayer in C.R.P.No.566 of 2020:

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 13.01.2020 made in I.A.No.20 of 2020 in O.S.No.32 of 2013 by the Subordinate Judge, Udumalpet by allowing this civil revision petition.

Prayer in C.R.P.No.567 of 2020:

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 13.01.2020 made in I.A.No.21 of 2020 in O.S.No.32 of 2013 by the Subordinate Judge, Udumalpet, by allowing this civil revision petition.

For Petitioner : Mr.A.Thiyagarajan
for petitioner in both CRPs



COMMON ORDER

The revision petition in CRP No.566 of 2020 has been directed against the order dated 13.01.2020 passed by the learned Subordinate Judge, Udumalpet, Tiruppur District, dismissing the application in I.A.No.20 of 2020 in O.S.No.32 of 2013 filed by the petitioner seeking to reopen the evidences of D.W.2 and D.W.3 while the other revision petition in CRP No.567 of 2020 has been directed against the order dismissing the application in I.A.No.21 of 2020 filed by the petitioner seeking to recall D.W.2 and D.W.3.

2. The petitioner is the 1st defendant in the suit. The 1st respondent herein filed the said suit for partition. The petitioner is the sister of the 1st respondent. In the said suit, the petitioner claims right over the suit property by means of a registered will executed by her mother. In order to prove the Will in dispute, the petitioner has examined the attesting witnesses to the Will as D.W.2 and D.W.3 respectively. After the evidence on the side of the defendants was closed and when the case has been posted for arguments, the petitioner had chosen to file the application under revision seeking to re-open the evidences of D.W.2 and D.W.3 and to recall them so as clarify their evidence regarding the execution of the Will in dispute. The court below on considering the facts and circumstances of the case and also the legal position dismissed the application. Challenging the same, the 1st defendant is before this court with the instant revision petition.

3. These civil revision petitions are coming up today for admission.

4. The learned counsel appearing for the petitioner would contend that even though both the attesting witnesses had given evidence that they had seen the testator signing the Will in question and thereafter only they attested the Will, the petitioner wanted to get further clarification from them regarding the execution of the Will. But, the court below without considering the necessity dismissed the application.

5. I have considered the submissions made by the learned counsel for the petitioner and also perused the records carefully.

6. Attesting witnesses to the Will in question had already been examined as D.W.2 and D.W.3 respectively. After the evidence on the side defendants was closed and when the suit was posted for arguments, the 1st defendant came out with the application under revision for re-open and recall. The court below dismissed the application holding that after the evidence



was closed and when the suit was posted for arguments, the petitioner came forward with the application only in order to fill up the lacuna. On going through the available on record, this court finds no infirmity in the reasoning given by the court below in refusing to order for re-open and recall the evidences of D.W.2 and D.W.3. This court is also of the considered view that the application was filed only in order to fill up the lacuna in the evidence of D.W.2 and D.W3 and therefore, the order impugned in the revision petition does not call for any interference at the hands of this court. The revision petitions are devoid of merits and the same are liable only to be dismissed.

In the result, the civil revision petitions are dismissed and the order passed by the court below is confirmed. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS III-MDU)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Subordinate Judge, Udumalpet,
Tiruppur District.

+lcc to Mr.A.Thiyagarajan, Advocate, S.R.No.10671

C.R.P.Nos.566 & 567 of 2020

VGI(CO)
CS/14/07/2020