

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P (PD).Nos.133 and 134 of 2012

and

M.P.No.1 of 2012

1.G.Krishnakumar (died)

2. G.Senthil Murugan

3. K.Leelavathy

4. K.Subbulakshmi

5. K.Padma Priya

6. C.Rajakuruba Abirami

7. K.Saravana Bhavan

.. Petitioners in
both CRP's

(Appellants 3 to 7 brought on record
as Lrs of the deceased first appellant
viz., G.Krishna Kumar vide order of Court
dated 12.08.2020 in CMP.Nos. 27346, 27349
& 27353 of 2019 in CRP.No.133 of 2012 and
CMP.Nos.27370, 27372 & 27366 of 2019 in
CRP.No.135 of 2012)

...Vs...

1. T.Rajesh Ayyappan

..Sole Respondent in
CRP.No.133 of 2012

..1st Respondent in
CRP.No.134 of 2012

2. J.Ganapongothai

3. G.Brinda Devi

4. U.Thani Arasu

5. T.Uma Rani

6. U.Ranjitha

7. D.Vijayalakshmi

8. K.Leelavathi

9. S.M.Abarna

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10.M/s.A.B.Screens,
No.12/22, Valipalayam 2nd Street,
Tiruppur-1.

... Respondents in
C.R.P.(PD)No.134
of 2012

PRAYER in both CRP's: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 23.11.2011 in I.A.Nos.1555, 1389 of 2011 in O.S.No.385 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore, Tiruppur.

For Petitioner : Mr.Bharath Chakravarthy
(in both CRP's)
For Respondent : No appearance
(in both CRP's)

COMMON ORDER

These Civil Revision Petitions have been filed against the Fair and Decretal Order dated 23.11.2011 in I.A.Nos.1555 and 1389 of 2011 in O.S.No.385 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore, Tiruppur.

2. Though the respondents entered appearance through counsel, there is no representation on behalf of them today.

3. The learned counsel appearing for the petitioners would submit that T.Rajesh Ayyappan,(the respondent in C.R.P(PD)No.133

of 2012 and the first respondent in C.R.P.(PD)No.134 of 2012) filed a suit against the petitioners and others for partition in O.S.No.385 of 2006. In the said suit, the first petitioner filed a written statement. After framing of issues the suit was listed for trial. At that time, the petitioners filed two applications before the trial Court one in I.A.No.1555 of 2011, for return of original Will and another application in I.A.No.1389 of 2011 for stay of proceeding until the probate is obtained from the Court. The learned counsel for the petitioner would submit that since the Will was executed in Apollo hospital when the executor was in treatment and as it is executed in Chennai it has got to be probated. Though the suit is filed in the year 2006 due to some reasons, they could not file application immediately. However, they filed application in I.A.No.1555 of 2011 to return the Ex.B5 - Will marked in the suit and other application in I.A.No.1389/2011 for stay of proceeding until the probate is obtained from the Court. The learned trial court dismissed both these applications without considering the fact that the probate has to be obtained by the petitioners.

4. Heard the learned counsel for the petitioner and perused the records.

5. Admittedly, T. Rajesh Ayyappan (the respondent in C.R.P.(PD)No.133 of 2012 and the first respondent in C.R.P.(PD)No.134 of 2012) filed a suit against the petitioners and others and the suit is based on Will. Admittedly the Will was executed in Chennai and the same has not been probated. Therefore during trial the petitioners filed an application to return the Ex.B5- the Will. It is well settled proposition of law that if the property covered under the Will is situated in Chennai or the Will was executed in Chennai, the will has got to be probated. However, the Will not been probated and the petitioners filed application before this Court for probate. Though the petitioners filed the application in I.A.No. 1555/2011 before the trial Court to return Ex.B5-Will to produce the same before this Court in probate O.P. to obtain probate, the trial Court failed to consider the said fact and dismissed the application. Therefore though the applications are filed belatedly that may not be a sole ground to disallow the relief sought for in the applications. Therefore the orders passed by the trial Court in I.A.Nos. 1555 of 2011 and 1389 of 2011 are liable to be set aside.

6. Accordingly, the order passed by the trial Court in I.A.No.1555 of 2011 and I.A.No.1389 of 2011 are set aside and

these Revisions are allowed. The trial court is directed to take xerox/ the certified copy of the will and keep it in the file and Ex.B5 shall be returned to the petitioners and after getting the order from this court in the probate O.P., the same shall be filed in the suit. However, till such time the proceedings in O.S.No.385 of 2006 shall stand stayed. Since the suit was filed in the year 2006 and the petitioners filed the applications in the year 2011 i.e., after seven years, the petitioners have to compensate the inconvenience caused to the sole respondent in C.R.P.(PD)No.133 of 2012 and the first respondent in C.R.P.(PD)No.134 of 2012 with costs. Therefore, the petitioners are directed to pay a sum of Rs.25,000/- to the first respondent on or before 10.09.2020 failing which the Civil Revision Petition shall stand dismissed automatically without any further reference to this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Post the matter on 11.09.2020 for compliance.

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19.08.2020

Index : Yes/No
Internet : Yes/No
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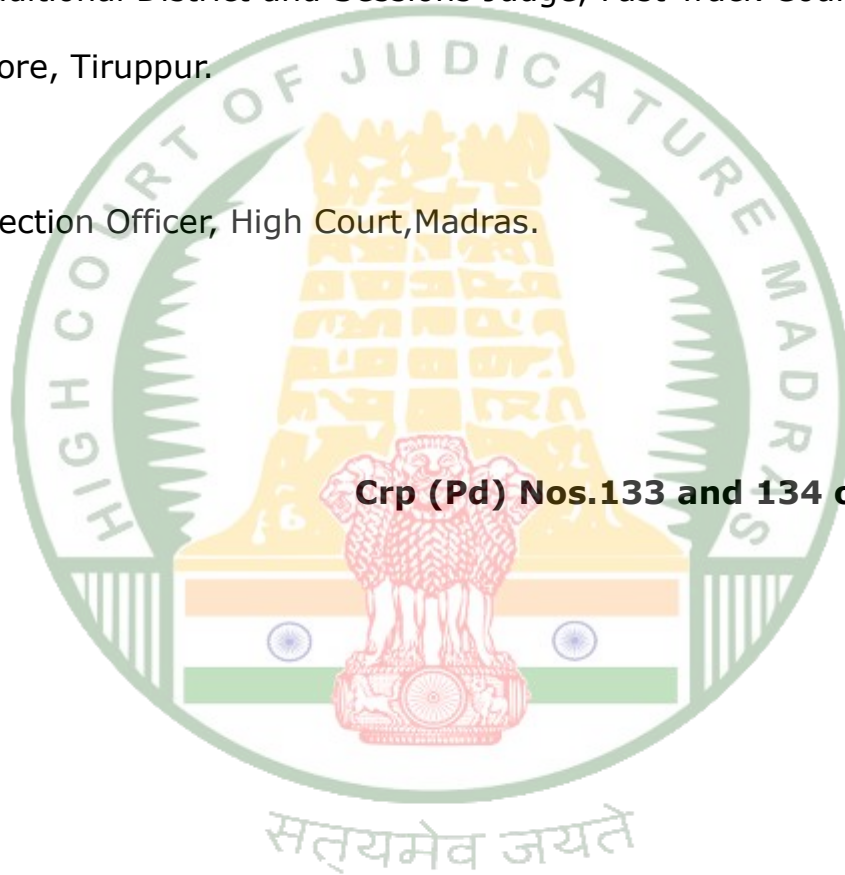
P. VELMURUGAN, J.

arr

To

1.The Additional District and Sessions Judge, Fast Track Court No.IV,
Coimbatore, Tiruppur.

2. The Section Officer, High Court,Madras.



Crp (Pd) Nos.133 and 134 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). Nos.133 & 134 of 2012
and M.P. Nos. 1 & 1 of 2012

C.R.P.(PD).No.133 of 2012

1.G.Krishnakumar (died)
2.G.Senthil Murugan
3.K.Leelavathy
4.K.Subbulakshmi
5.K.Pdama Priya
6.C.Rajakuruba Abirami
7.K.Saravana Bhavan
..... Petitioners
(P3 to P7 brought on record as Lrs of the
deceased 1st petitioner viz., G. Krishnakumar
vide order of this Court dated 12.08.2020
in C.M.P.Nos.27346, 27349 & 27353 of 2019
in C.R.P.No.133 of 2012 and C.M.P.Nos.27370,
27372 & 27366 of 2019 in C.R.P.No.134 of 2012)
Vs

T.Rajesh Ayyappan .. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.12.2011 made in I.A. No.1555 of 2011 in O.S. No.385 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court No. IV, Coimbatore at Tiruppur.

For Petitioners : Mr. Saikrishnan
for M/s. Sai Bharath and Ilan

For Respondent : No appearance

C.R.P.(PD).No.134 of 2012

- 1.G.Krishnakumar (died)
- 2.G.Senthil Murugan
- 3.K.Leelavathy
- 4.K.Subbulakshmi
- 5.K.Pdama Priya
- 6.C.Rajakuruba Abirami
- 7.K.Saravana Bhavan

... Petitioners

(P3 to P7 brought on record as Lrs of the deceased 1st petitioner viz., G. Krishnakumar vide order of this Court dated 12.08.2020 in C.M.P.Nos.27346, 27349 & 27353 of 2019 in C.R.P.No.133 of 2012 and C.M.P.Nos.27370, 27372 & 27366 of 2019 in C.R.P.No.134 of 2012)

Vs

- 1.T.Rajesh Ayyappan
- 2.J.Ganapongothai
- 3.G.Brinda Devi
- 4.U.Thani Arasu
- 5.T.Uma Rani
- 6.U.Ranjitha
- 7.D.Vijayalakshmi
- 8.K.Leelavathi
- 9.S.M.Abarna

- 10.M/s.A.B.Screens,
No.12/22, Valipalayam 2nd Street,
Tiruppur – 1.

- 11.M/s.Sathya Roadways,
No. 12/22, Valipalayam 2nd Street,
Tiruppur – 1.
 - 12.K.G. Mess,
rep. By Rajkumar,
No.19, Kamatchiamman Koil Street,
Tiruppur – 4.
 - 13.M/s.P.R.Company,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
 - 14.M/s.Sangavi Compactors,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
 - 15.M/s.Sun Cartons,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
 - 16.M/s.Excell India Kinit Finishers,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
 - 17.M/s.Best Printing,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
 - 18.M/s.Greenland Tex Printers,
No.4/127, Govindaraj Spinning Mill Compound,
Palladam Road,
Tiruppur 5.
- .. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.12.2011 made in I.A. No.1389 of 2011 in O.S. No.385 of 2006, on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur.

For Petitioners : Mr. Saikrishnan
for M/s. Sai Bharath and Ilan

For Respondent : No appearance (For R1)

Dismissed vide court order
dated 29.08.2019 (For RR2, 3, 5,
6, 8, 9, 16)

COMMON ORDER

These matters are heard through "Video Conferencing".

The learned counsel appearing for the petitioners submitted that as per the order of this Court dated 19.08.2020, the petitioners have paid the cost of Rs.25,000/- to the 1st respondent and complied with the order. He has also filed a memo to that effect.

2. Recording the submission made by the learned counsel

appearing for the petitioners, no further order is necessary in this Civil Revision Petition and the petition is closed. Consequently, connected Miscellaneous Petitions are closed. No costs.

29.03.2020

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V.M.VELUMANI, J.

gsa

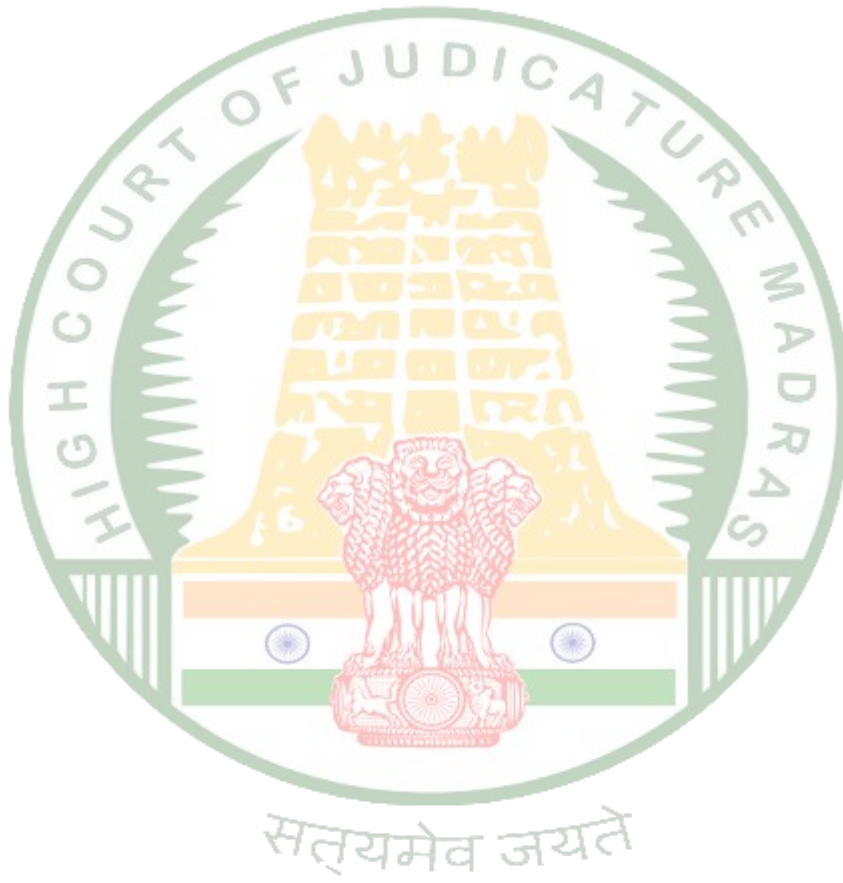
To

The Additional District and Sessions Judge,
Fast Track Court No. IV,
Coimbatore, Tiruppur.



C.R.P.(PD). Nos.133 & 134 of 2012
and M.P. No. 1 of 2012

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