

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2232 of 2018
and CMP No.14029 of 2018

Loganathan

.. Petitioner

Vs.

S.M.Rasu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.208 of 2018 in OS.No.21 of 2012 on the file of Subordinate Court, Perundurai dated 07.04.2018.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr. Karthi Marimuthu
for M/s.I.C.Vasudevan

ORDER

This matter is taken up for hearing through Video-Conferencing.

The defendant in OS No.21 of 2012 is on revision, aggrieved by the order of the Trial Court made in IA No.208 of 2018, wherein, the Court rejected his application for condonation of delay in producing the death certificate of one Nallammal.

2. The suit in OS No.21 of 2012 is one for partition. According to the plaintiff, the suit properties originally belonged to one Ammakannu wife of Angapappa Mudaliar, who had transferred the same in favour of one Natesa Mudaliar, under the Sale Deed dated. 15.09.1967. Natesa Mudaliar had married one Chellammal and through her, he had four children. Natesa Mudaliar died on 31.07.2001 and Chellammal died on 25.01.2003, leaving behind one Vellingiri, Loganathan, Vijayalakshmi, the first defendant, and Chinthamani. According to the plaintiff, the three siblings of the first defendant viz. Vellingiri, Vijayalakshmi and Chinthamani had sold their share to him under two Sale Deeds dated 03.02.2003 and 18.06.2007.

Therefore, according to the plaintiff, he is entitled to 3/4th share. It is the

further contention of the plaintiff that the first defendant had filed a suit in OS No.196 of 2007 claiming a right over the suit properties under an unregistered Will said to have been executed by Chellammal, it is also stated that the said suit is pending.

3. The suit is being resisted by the defendant contending that the Natesa Mudaliar had executed a Will in favour of Chellammal in the year 1995 and Chellammal in turn had executed a Will in favour of the defendant on 01.12.2002. Therefore according to the defendant, the other siblings had no right over the suit properties and the sales by them in favour of the plaintiff will not confer any title on the plaintiff. An additional written statement was also filed setting up the Will of 1995 said to have been executed by Natesa Mudaliar.

4. The suit has taken up for trial and the evidence of the plaintiff was over. Thereafter, the defendant as D.W.1 has filed his proof affidavit on 09.03.2018. In the proof affidavit, the defendant had deposed about the existence of one Nallammal, who, according to him, is the first wife of

Natesa Mudaliar. It is also contended that the Vellingiri was born to Natesa Mudaliar through the first wife Nallammal. After filing the proof affidavit, the defendant filed the above Application in IA No.208 of 2018 seeking leave to produce the death certificate of Nallammal.

5. The Trial Court rejected the said application on the ground that there is no reference to the very existence of Nallammal in any of the pleadings of the defendant and the application having been taken out after the closure of the evidence of P.W.1, the same is highly belated.

6. I have heard Mr.A.Sundaravadhanan, learned counsel appearing for the petitioner and Mr.Karthi Marimuthu, learned counsel appearing for M/s.I.C.Vasudevan, for the respondent.

7. Mr.A.Sundaravadhanan, learned counsel appearing for the petitioner would vehemently contend that the document in question is very vital for establishing his case. Therefore the Trial Court was not right in dismissing the application.

8. I am unable to countenance the submissions of the learned counsel for the petitioner. Even though the petitioner has filed a written statement and an additional written statement also there is no plea regarding the existence of the said Nallammal in either of the written statements. The status of Vellaingiri as the son of Natesa Mudaliar is not disputed. Even assuming he was born to Nallammal, still as a son of Natesa Mudaliar, he will be entitled to succeed to the estate of Natesa Mudaliar. The defendant sets up two Wills, one said to have been executed by the father in the year 1995 and the other said to have been executed by the mother in the year 2002.

9. Having accepted the fact that the property belonged to Natesa Mudaliar and the vendors of the plaintiff are his siblings, the defendant can succeed only if he is able to establish the wills propounded by him. The document in question the death certificate of Nallammal will not in any way help the defendant to prove his case. The document has also not been filed

in time. It has been filed after the closure of the evidence of the plaintiff. It not only prejudices the case of the plaintiff, it is also takes the plaintiff by surprise.

10. Hence I do not see any reason to interfere with the order of the Trial Court in dismissing the application. The Civil Revision Petition fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

04.08.2020

jv

Index: Yes/No

Internet: Yes/No

speaking order/Non speaking order

To

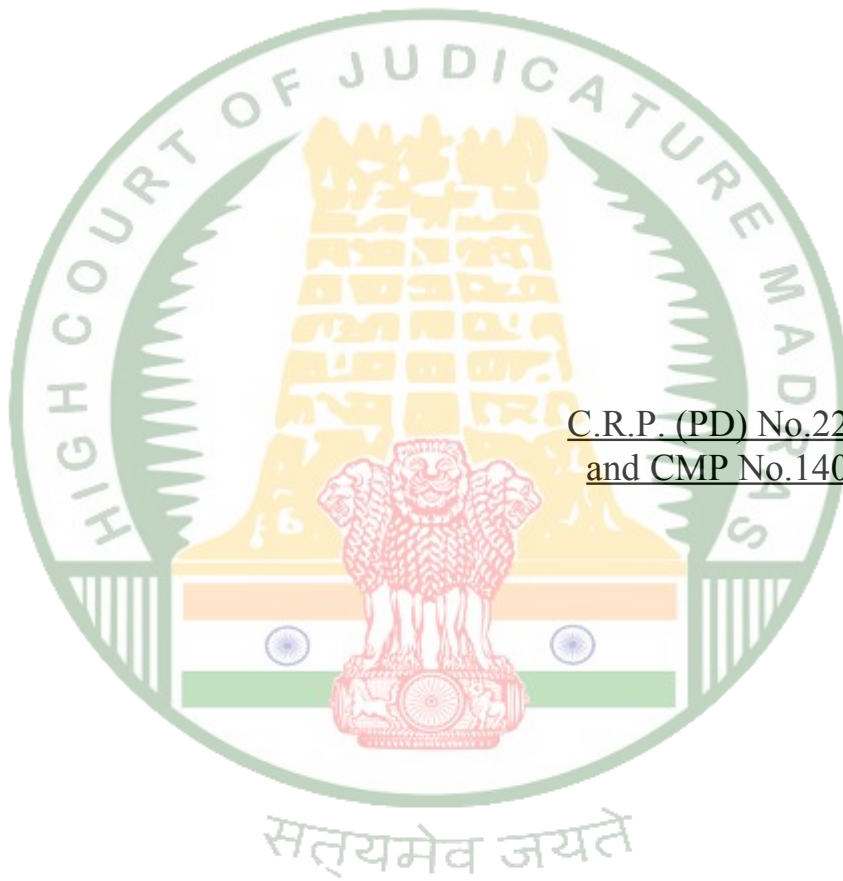
The Subordinate Court,
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