

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.421 of 2018
and CMP No.2262 of 2018

G.Saroja

...Petitioner

Vs.

1. G.Savithiramma
2. G.Sunandhamma
3. G.Susilaama
4. G.Krisna Reddy
5. G.Narayana Reddy
6. G.Gopal Reddy

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 06.12.2017 in I.A.No.75 of 2017 in O.S.No.76 of 2012 passed by the learned Additional District Judge, Hosur.

For Petitioner : Mr.T.Arockia Dass

For Respondents :Mr.C.Prabakaran (for R4 to R6)
Mr.V.Subramanian (for R2 and R3)

ORDER

The 1st plaintiff in O.S.No.76 of 2012 has come up with this revision challenging an order dismissing her application in I.A.No.75 of 2017 seeking to refer the disputed Will for expert opinion.

2. The suit is one for partition filed by the petitioner and respondents 1 to 3 as plaintiffs against their brothers. While admitting the relationship, the defendant, resisted the suit contending that his father Guruvareddy has left a Will dated 28.07.1987, in and by which he had bequeathed the property to his sons and therefore, the daughters have no right over the said property.

3. The plaintiff had in fact filed an earlier application, before commencement of trial, in I.A.No.181 of 2013 seeking to refer the document for expert opinion. While the said application was pending, the suit itself is dismissed for default. Therefore, the application was also closed. After restoration of the suit, the plaintiffs came forward with the present application seeking reference of the Will to the handwriting expert for comparison of the thumb impression of Guruvareddy in the Will with

the thumb impression found in the Thumb impression Register maintained by the Sub Registrar Office, Hosur, while he executed two sale deeds on 19.08.1985.

4. The application was resisted by the defendants contending that the earlier application having been dismissed, the present application is not maintainable. It was their further contention that the plaintiffs have not filed an application to call for the Thumb Impression Register from the Sub Registrar Office, Hosur. Last but not the least, the application was termed as belated.

5. The learned Additional District Judge, Hosur, who heard the application dismissed the application on the ground that the plaintiffs have not applied to call for the Thumb Impression Register from the Sub Registrar's Office, Hosur and the application is belated. Aggrieved, the 1st plaintiff has come up with this Civil Revision petition.

6. I have heard Mr.Mr.T.Arockia Dass, learned counsel appearing for the petitioner and Mr.C.Prabakaran, learned counsel appearing for contesting respondents 4 to 6 and Mr.V.Subramanian, learned counsel appearing for respondents 2 and 3. The 1st respondent though served, does

not appear either in person or through counsel duly instructed.

7. I do not think that the order of the trial Court could be sustained. The learned District Judge had by dismissing this application denied himself an opportunity to have a best evidence available. Only defence that is raised by the defendants is the Will, executed by Guruvareddy. The plaintiffs have, even before the commencement of trial applied for referring the document for expert opinion. Only mistake committed by the plaintiff is that they had not filed an application to summon the Thumb Impression Register from the Sub Registrar's Office, Hosur. The Court has enough powers to summon the register and refer the same for expert opinion by appointing a Commissioner. These kind of applications which are basically to place the best evidence before the Court, filed before trial, ought not to be dismissed on technicalities.

8. I am therefore of the opinion that the order of the trial Court has to be set aside. This Civil Revision petition is allowed and the trial Court is directed to summon the Thumb Impression Register relating to the two documents referred to in the petition from the Sub Registrar Office, Hosur, and appoint a Commissioner to take the documents to the experts for expert

opinion. The summoning of the thumb impression register as well as appointment of Commissioner shall be done within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2020

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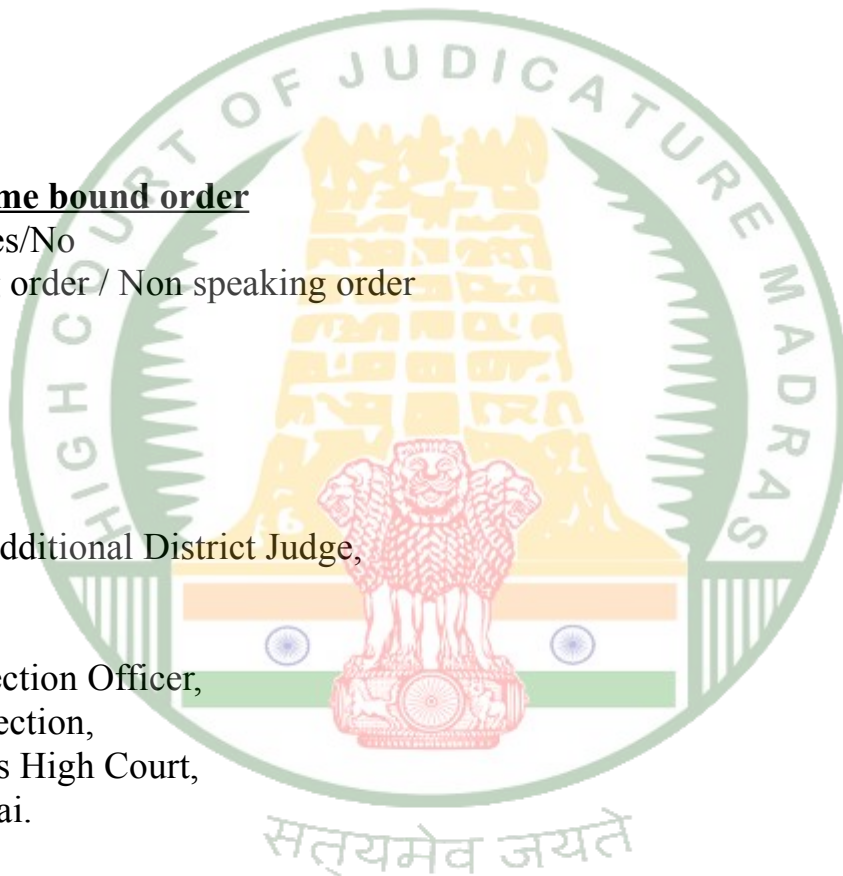
Note: Time bound order

Index: Yes/No

Speaking order / Non speaking order

To:

1. The Additional District Judge,
Hosur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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R.SUBRAMANIAN, J.

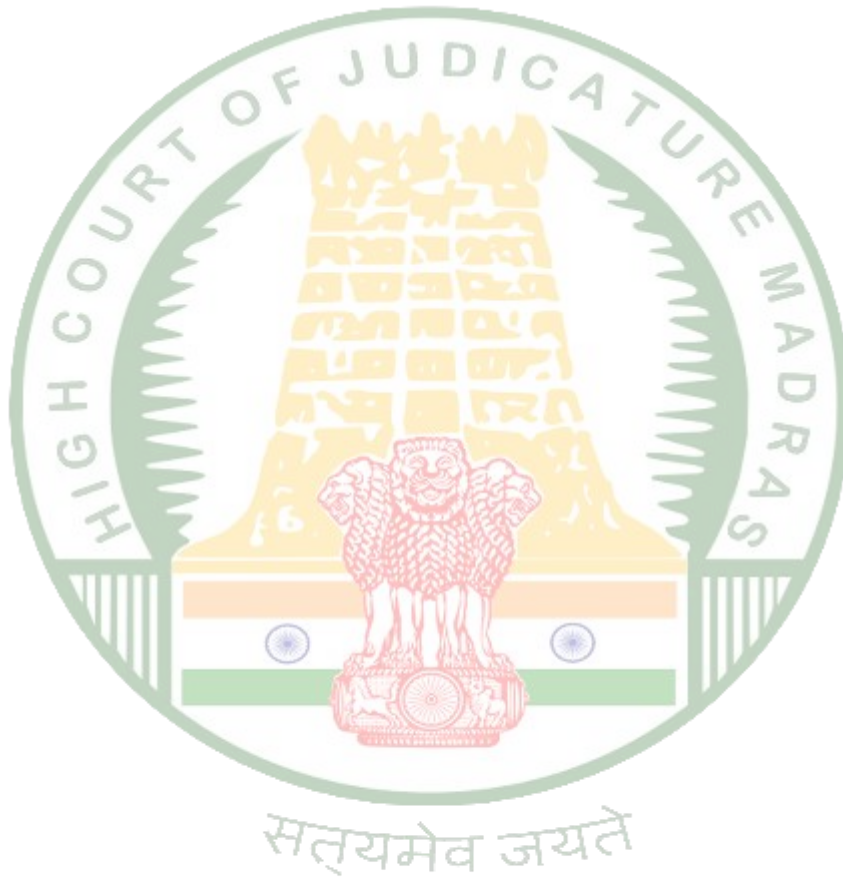
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