

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.576 of 2018
and CMP No.3106 of 2018

K.Subramaniam

.. Petitioner

Vs.

1. R.Thangaraj
2. N.Jayalakshmi
3. A.Amaravathi
4. K.Thangavel
5. R. Selvaraj
6. Muhayee
7. L.Sakunthala
8. S.Chellammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution

of India, praying to set aside the fair and decreetal order dated 29.11.2017 made in I.A.No.1108 of 2017 in O.S.No.575 of 2012 on the file of the Principal District Munsif, Erode.

For Petitioner : Mr. R.Arun Dattan

For Respondents : Mr. Sharath Chandran
for M/s.Govind Chandrasekhar
for RR 1 to 3

RR 4 to 8 are given up

ORDER

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

This Revision is at the instance of the sixth defendant in OS No.575 of 2012, a suit for partition filed by the fourth respondent herein claiming 1/6th share in the suit properties.

2. According to the fourth respondent/plaintiff, the suit properties belonged to one Kasianna Gounder, who died on 01.04.1984. While the plaintiff and defendants 5 to 8 are the children of Kasianna Gounder,

defendants 1 to 4 are the children of Deivanai, a daughter of Kasianna Gounder, who died on 19.01.2008. The sixth defendant contested the suit claiming that the deceased Kasianna Gounder had left a Will dated 18.03.1983, in and by which, he had bequeathed the suit properties to himself after giving a life estate to Nachaammal, his wife, who died on 07.07.1993. Therefore, the sixth defendant claimed exclusive right to the suit properties.

3. Pending suit the plaintiffs filed IA No.1108 of 2017 seeking to refer the Will for Expert Opinion by comparing the thumb impression found in the Will along with that of thumb impressions of Kasianna Gounder found in the office of the Sub Registrar, when he executed a Sale Deed on 04.10.1943. Before filing this application, the plaintiff filed IA No.397 of 2017 seeking to summon the finger prints that were obtained at the time of registration of the Sale Deed dated 04.10.1943 from the office of the Sub Registrar. The said application was allowed.

4. It is stated that a Civil Revision Petition has been filed against the order in CRP No.3507 of 2017 and the same is pending at the stage of

adjourned admission. Since there was no stay, the document that was summoned, viz., the finger print Registrar was produced before the Court by the concerned Sub Registrar. Thereafter, the Trial Court has allowed the application for comparison. Aggrieved by the order allowing the application for comparison, the petitioner viz., the sixth defendant has come up with this Civil Revision Petition.

5. I have heard Mr.R.Arun Dattan, learned counsel appearing for the petitioner and Mr.Sharath Chandran, learned counsel appearing for Mr.Govind Chandrasekhar, for the respondents 1 to 3. The other respondents have been given up in the Revision.

6. No doubt, it is for the propounder to prove the Will by examining the attesting witnesses as provided under Sections 68 to 71 of the Evidence Act, but it is always open to the person who denies execution of the Will to demonstrate before Court that the Will is a forged instrument. The plaintiff had taken steps in that direction well in time and I do not find that the plaintiff can be blamed for either attempting to delay the proceedings or taking upon

the burden of proving that the Will is not true on himself. The comparison sought for is that of a thumb impression, therefore the main contention that the original thumb impression that is sought to be compared is 40 years prior to the disputed thumb impression cannot also hold water.

7. In view of the above, I do not find any material irregularity or illegality in the order of the Trial Court. The Civil Revision Petition therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.09.2020

jv

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

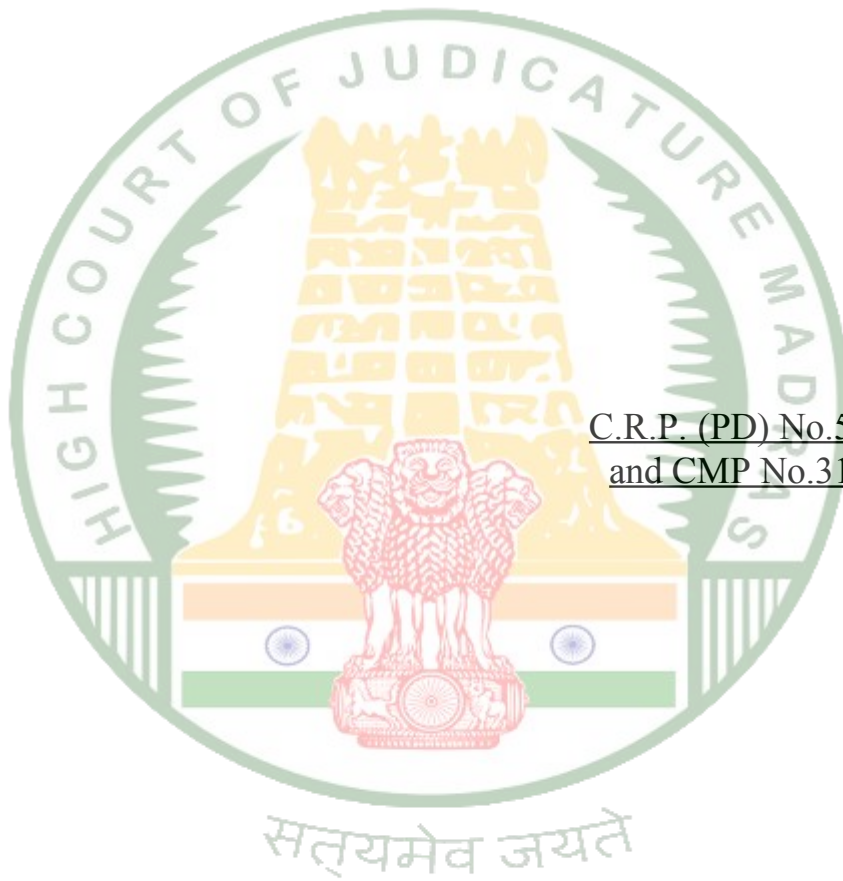
To

1. The Principal District Munsif, Erode.
2. The Section Officer, V.R.Section,
High Court of Madras.

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R.SUBRAMANIAN, J.

jv



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