

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.No.4048 of 2019 and

C.M.P.No.26577 of 2019

1.S.M.Shanmugam
2.Siashankar

...Petitioners

Vs

1.Thamilselvi,
2.Rajamani,
S.M.Pushpamani (Died)
3.Amutha,
4.Senthilkumar,
5.Sampoornam,
6.Gomathi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the Fair and Final order passed in I.A.No.1 of 2019 in O.S.No.198 of 2012 on the file 1st Additional Sub Judge, Erode dated 13.09.2019.

For Petitioner : Mr.V.S.Kesavan
For R1 & R2 : Mr. Guruprasad

सत्यमेव जयते
O R D E R

This Civil Revision Petition has been filed to set aside the order in I.A.No.1 of 2019 in O.S.No.198 of 2012 on the file 1st Additional Sub Judge, Erode dated 13.09.2019.

2.The Revision petitioners are the defendants 1 and 3 in the said suit in O.S.No.198 of 2012. The respondents 1 & 2/plaintiffs filed the suit for partition of 2/10 share in the suit property along with prayer of permanent injunction against the defendants. Thereafter, the respondents/plaintiffs filed I.A.No.1 of 2019 dated 13.09.2020 to re-open the petition to examine one Samiyappan. Hence, the petition filed.

3.After hearing both sides, the learned trial Judge allowed the I.A.No.1 of 2019 on 13.09.2019.

4.Aggrieved against the order of the learned trial Judge in I.A.No.1 of 2019, the revision petitioner has preferred the present revision.

5.The learned counsel for the Revision Petitioners submitted that the Revision Petitioners are the defendants 1 and 3 in the suit. The respondents 1 & 2/plaintiffs was filed the suit for partition of 2/10 share in the suit property along with prayer of permanent injunction against the defendants. In the suit, trial was conducted, on the defendant side four witnesses were examined. The I.A.No.1 of 2019 was filed by the plaintiffs/respondents 1 and 2 to re-open the witness- one Samiyappan, who stood as a witness to Will. If the case was re-opened to examine the witness-Samiyappan, the defendants will be prejudiced and the order of the trial Court is unsustainable and unjust and the learned counsel for the revision petitioner reiterated other grounds raised in the Revision Petition and thus pleaded to set aside the order of the trial Court and to allow the Revision Petition.

6.The learned counsel for the respondents 1 & 2/Plaintiffs submitted that the suit was filed by the respondents 1 & 2/plaintiffs for the relief of partition of 2/10 share in the plaint schedule property and also prayed for permanent injunction against the defendants. In the suit the plaintiffs side evidence was closed, defendants side witnesses were examined. At that stage the petitioners/defendants 1 & 3 filed the petition to re-open the case for the purpose of examining one Samiyappan in order to show the falsification of Will dated 09.01.2001 which was obtained by the defendants. The trial Court allowed the petition on the ground that the suit is pending for seven years in order to dispose the case earlier and for complete adjudication the trial Court allowed the petition. Hence, the trial Court order is sustainable and pleaded to dismiss the Revision Petition.

7.Heard the learned counsel for the parties and perused the materials available on record.

8.The plaintiff filed the suit claimed 2/10 share in the suit property. It is the suit for separate partition. The defendant based on Will dated 09.01.2011 executed by one Muthusamy contested the case and disputed the claim of the plaintiff. According to the plaintiff, Muthusamy gounder already executed the Will dated 06.11.1996. Thereafter, he canceled it on 06.07.2000. Under these circumstances the defendant created the Will dated 09.01.2001. One of the attesting witness is one Samiyappan. He was not examined by the defendants, if he was examined, the truthfulness of the Will will come out. Therefore, the plaintiffs filed a re-open petition to examine one

Samiyappan. In order to adjudicate the dispute fully, parties has to be permitted to let in evidence in the interest of justice and to adjudicate the dispute completely. I find no error in the order. Hence, confirmed the order of the trial Court and dismiss the revision petition.

9. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

-sd-

Assistant Registrar

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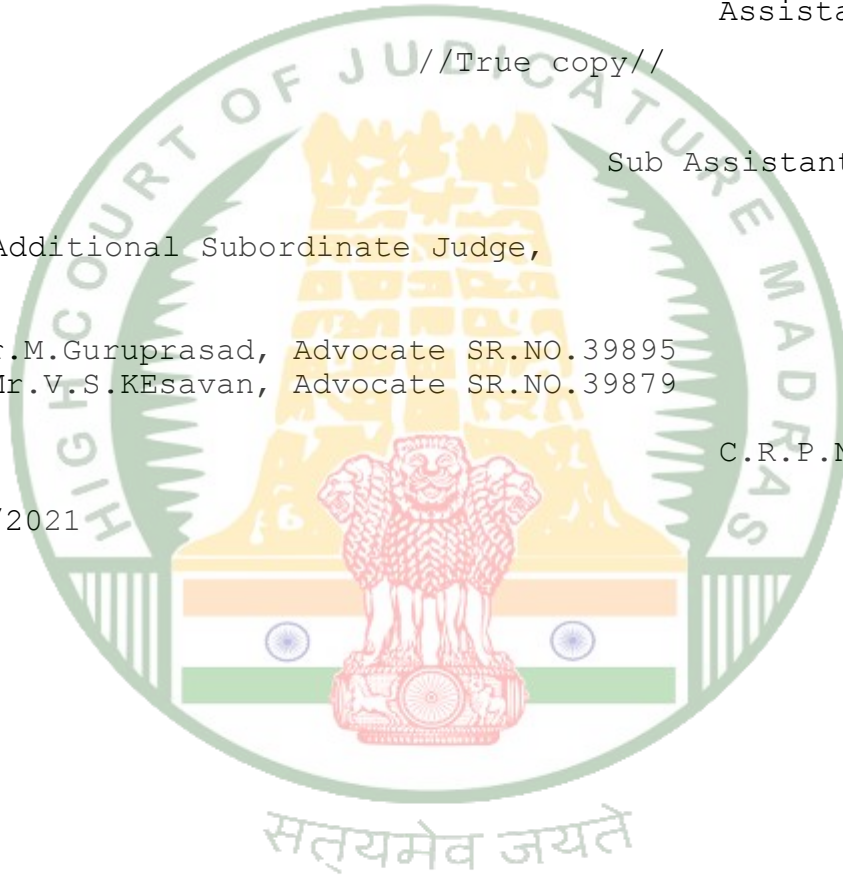
Sub Assistant Registrar

To
1 The 1st Additional Subordinate Judge,
Erode.

+ CC To Mr.M.Guruprasad, Advocate SR.NO.39895
+1 cc To Mr.V.S.KEsavan, Advocate SR.NO.39879

C.R.P.No.4048 of 2019

KV(CO)
RRI 22/01/2021



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