

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU

**C.R.P. (PD) No. 1881 of 2015
and
M.P. No. 1 of 2015**

S.Sumathi

... Petitioner

-VS-

1. S.Parameshwari

2. Meenakshi

3. The Catholic Syrian Bank,
Cutchery Street Branch,
Rep. by its Branch Manager,
Cutchery Street,
Erode.

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and final order dated 14.10.2014 passed in C.M.A. No. 2 of 2014 on the file of the I Additional Sub Court, Erode reversing the fair and final order dated 29.11.2013 passed in I.A. No. 898 of 2013 in O.S. No. 439 of 2013 on the file of the Principal District Munsif Court, Erode and allow the Civil Revision Petition.

For Petitioner : Mr. S.Kaithamalai Kumaran

For Respondents : Ms. K.Ponmani
for M/s. Zeenath Begum (for R1)

No appearance (for R2 and R3)

ORDER
(through video conference)

The Civil Revision Petition arises out of the order dated 14.10.2014 in C.M.A. No. 2 of 2014 passed by the I Additional Sub Court, Erode (hereinafter referred to as the 'First Appellate Court' for short) setting aside the order dated 29.11.2013 in I.A. No. 898 of 2013 in O.S. No. 439 of 2013 passed by the Principal District Munsif Court, Erode (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S. No. 439 of 2013 before the Trial Court for the sake of clarity and convenience.

2. There is no representation for the First and Third Defendants when the matter is called at 11.05 a.m.

2. Heard Mr. S.Kaithamalai Kumaran, Learned Counsel for the Second Defendant and Ms. K.Ponmani, Learned Counsel appearing for the Plaintiff and perused the materials placed on record, apart from the pleadings of the parties.

4. The Plaintiff and the Second Defendant are the daughters of the First Defendant. The father of the Plaintiff and the Second Defendant and the husband of the First Defendant, viz., Muthu Rowthar, died intestate on 27.04.2013 and the Plaintiff and the First and Second Defendants succeeded to his estate as Legal Heirs. The said Late Muthu Rowthar had a savings bank account No. 022-249686-190001 with locker facility with the Third Defendant, viz., Catholic Syrian Bank, Cutchery Street Branch, Erode. After the demise of the said Late Muthu Rowthar, disputes arose between the Plaintiff and the First and Second Defendants. The Plaintiff has instituted the suit in O.S. No. 439 of 2013 for permanent injunction restraining the Third Defendant not to allow the First and Second Defendants to withdraw the money of the said Late Muthu Rowthar in the savings bank account No. 022-249686-190001 and the term deposits held by him or open the locker number 7 held by him with the Third Defendant until the Legal Heirs jointly apply for the same and for costs. An application in I.A. No. 898 of 2013 had been filed by the Plaintiff for temporary injunction restraining the Third Defendant not to allow the First and Second Defendants to withdraw the money of the said Late Muthu Rowthar in the savings bank account No. 022-249686-190001 and the term deposits held by him or open the locker number 7 till the disposal of the suit. The Trial Court had permitted the First and Second Defendants to take the currency notes of

Rs. 2,46,500/- each (totaling Rs. 4,93,000/-) out of Rs. 7,39,500 available in the locker in the presence of the Advocate Commissioner. The Second Defendant was also permitted to take custody of the jewels in the locker for use during the marriage of her son in the presence of the Advocate Commissioner and return the same on or before 18.12.2013. Further, the Trial Court had restrained the First and Second Defendants from withdrawing any other money or jewel or other things from the locker in other respects. The Plaintiff filed the appeal in C.M.A. No. 2 of 2014 before the First Appellate Court challenging the aforesaid order insofar as it permitted the First and Second Defendants to take custody of the cash of Rs. 2,46,500/- each and the jewels. The First Appellate Court by order dated 14.10.2014 allowed the said appeal and had set aside that part of the order impugned in the said appeal. The Second Defendant has preferred the present Civil Revision Petition challenging the same.

5. Learned Counsel for the Second Defendant, on instructions, states that the Second Defendant had taken custody of the jewels from the locker and she has also returned the same in the presence of the Advocate Commissioner. Insofar as the articles in the locker is concerned, this Court is of the view that it would not be appropriate at this stage for any of the parties to take custody of any of the articles including currency notes in the locker till the partition of the

property of the said Late Muthu Rowthar is decided. In such circumstances, the impugned order is confirmed and the First and Second Defendants shall remit the amount of Rs. 4,93,000/- taken by them from the locker to the Third Defendant, who shall invest the same in an interest fetching fixed deposit initially for a period of one year and renewable automatically from time to time. Similarly, the remaining currency notes of Rs. 2,46,500/- in the locker shall also be invested by the Third Defendant in a separate interest fetching fixed deposit initially for a period of one year and renewable automatically from time to time. In the event of the Third Defendant finding that the currency notes in the locker have been demonetized, the Third Defendant shall take necessary steps for regularizing the same in accordance with the relevant rules for investing the said amount in fixed deposit.

6. It is brought to notice that the Plaintiff has subsequently filed another suit in O.S. No. 36 of 2014 before the Principal District Court, Erode on 10.04.2014 seeking comprehensive relief of partition of all properties of Late Muthu Rowthar including jewels and currency in the locker and the amount lying in the savings bank account and fixed deposits maintained with the Third Defendant. The Plaintiff had reserved such right at para No. 9 of the plaint in the earlier suit in O.S. No. 439 of 2013. It is also stated that the Defendants have filed their

Written statement in O.S. No. 36 of 2014 before the Principal District Court, Erode. In such circumstances, as it has become redundant to prosecute the suit in O.S. No. 439 of 2013, this Court in the exercise of powers conferred under Section 151 of the Code of Civil Procedure, 1908, disposes that suit with a clarification that all the contentious issues raised therein are left open to be decided in the suit in O.S. No. 36 of 2014 before the Principal District Court, Erode between the same parties. The entire records in O.S. No. 439 of 2013 shall be sent by the Principal District Munsif Court, Erode to the Principal District Court, Erode forthwith to be treated as part of the records in O.S. No. 36 of 2014 in that Court. It is made clear that depending upon the outcome of the decision in O.S. No. 36 of 2014 before the Principal District Court, Erode, the jewels in the locker and the amount in the savings bank account and the fixed deposits maintained with the Third Defendant shall be appropriated to the concerned persons. The Principal District Court, Erode shall frames issues, if not already done, and immediately commence recording of evidence and ensure that there is atleast one effective hearing every week showing progress of the case. The Principal District Court, Erode shall expeditiously dispose of the suit in O.S. No. 36 of 2014 on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

7. In the upshot, the Civil Revision Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.03.2021

vjt

Index: Yes/No

Note: Issue order copy by 08.04.2021.

To

1. The Branch Manager,
Catholic Syrian Bank,
Cutchery Street Branch,
Cutchery Street,
Erode.
2. The I Additional Sub Court,
Erode.
3. The Principal District Munsif Court,
Erode.
4. The Principal District Court,
Erode.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.

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P.D. AUDIKESAVALU, J.

vjt



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