

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.1513 of 2018
and C.M.P.No.8114 of 2018

Thaiyalnayagi @ Damayanthi

...Petitioner

Vs

1.Rajeswari
2.Raveendra
3.Nadarajah
4.Vasugi

... Respondents

Prayer Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order passed on 05.03.2018 in I.A.No.47 of 2017 in O.S.No.13 of 2011 on the file of the Sessions Judge, Mahila Court, Perambalur.

For Petitioner : Mr.S.Vijayanand

For Respondents : Mr.R.Amizhdhu

ORDER

This Civil Revision Petition has been filed against the order dated 05.03.2018 made in I.A.No.47 of 2017 in O.S.No.13 of 2011 on the file of the Sessions Judge, Mahila Court, Perambalur.

2.I.A.No.47 of 2017 was filed by the petitioner/plaintiff to stay the suit proceedings in O.S.No.13 of 2011 on the ground that the application to revoke the probate is pending before this Court, and the same was dismissed by the Court below. Against which, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioner submitted that the 1st respondents/1st defendants filed the Original Petition No.426 of 2012 before this Court to probate the will with respect to the suit schedule property. This Court vide order dated 19.12.2012 granted probate of will in favour of the 1st respondent. Against the grant of probate, the Application No.3556 of 2013 was filed by the Revision Petitioner to revoke the probate. The said application was allowed on 02.02.2021. Subsequently, they have to contest the case. Therefore, he submits that after revocation, it is for the respondents herein to prove the will with respect to the suit schedule property before this Court in the manner known to law, thus he requests to stay the suit until the disposal of the petition filed to probate the will.

4.The learned counsel for the respondents/defendants submitted that the suit was filed for partition by the Revision Petitioner. Now the petitioner wants to stay the suit due to the pending probate proceeding before this Court. Therefore, he fairly submitted that he has no objection to stay the suit.

5.Heard the learned counsel for the petitioner as well as the respondents and perused the materials.

6.Considering the submissions and the fact that the suit schedule property and the property in the will are one and the same, it is for the respondents/defendants to prove the same before this Court. Hence, this Court is of the opinion that unless and otherwise a decision is taken in the above will by this Court, no decision can be arrived in O.S.No.13 of 2011. Therefore, it would be appropriate to stay all further proceedings in the suit till a decision is taken by this Court with regard to the entitlement of will.

7.In view of the above, O.S.No.13 of 2011 is stayed until the completion of probate proceeding pending before this Court. In case, if any decision is taken by this Court on the probate of the will, liberty is given to both the parties to approach the Court below to adjudicate the suit.

8.Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2021

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

rst

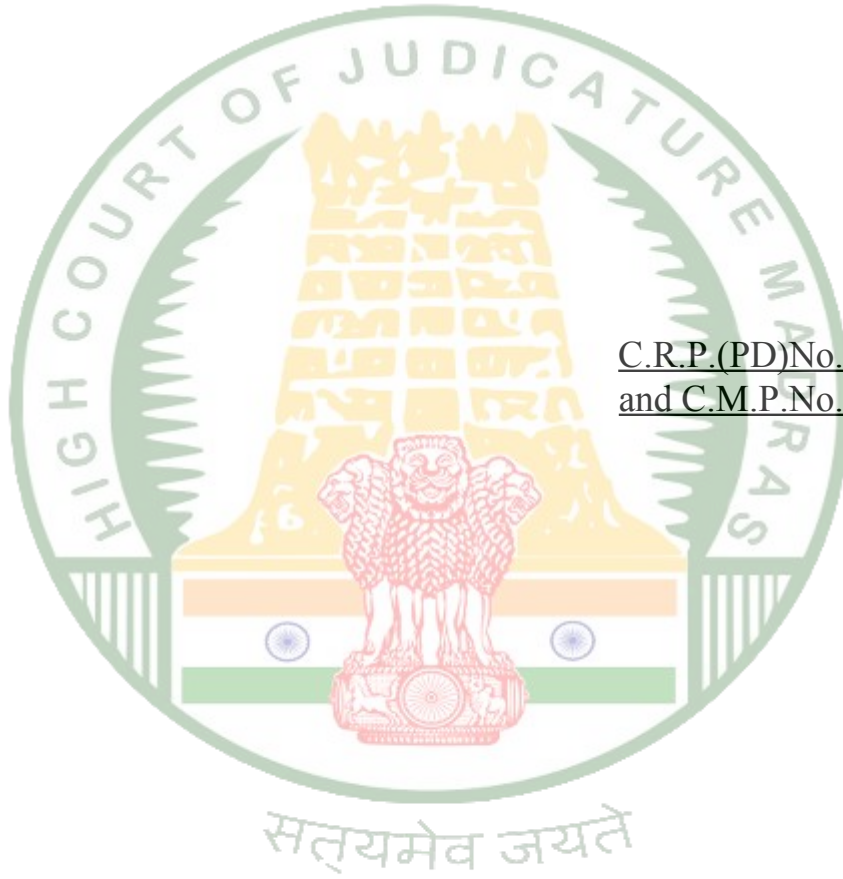
To:

The Sessions Judge, Mahila Court,
Perambalur.

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KRISHNAN RAMASAMY,J.

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