

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.1763 of 2018 &
C.M.P.No.9842 of 2018

1.Madhu
2.Shantha

....

Petitioners

Vs.

1.Vasantha
2.Loganathan

....

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the District Munsif, Mettur in I.A.No.538 of 2017 in O.S.No.47 of 2011, by an order dated 20.10.2017.

For Petitioners : Mr.R.Thirumoorthy

For Respondents : Mr.A.Sundaravadhanam for R-1

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ORDER

This Civil Revision Petition arises out of the order passed by the District Munsif, Mettur in I.A.No.538 of 2017 in O.S.No.47 of 2011, dated 20.10.2017.

2. The petitioners are the defendants 2 and 3 in O.S.No.47 of 2011. The first respondent herein instituted the suit against the petitioners and the second respondent for partition claiming 1/3rd share in 'A' schedule property.

3. The case of the plaintiff is that the defendants 1 and 2 and the plaintiff are the sons and daughter of Pachamuthiammal and Kolandai and the said Kolandai died long back, and their mother Pachamuthiammal occupied the 'A' schedule property, having an extent of 3 cents about 50 years ago and constructed a thatched house and she died intestate. Their another son Muthu died long back and his legal representatives are not known to the plaintiff for the past about 7 years. She has further stated that 'B' schedule property having the same extent is her absolute property. Though the plaintiff sought for partition and a panchayat was also held on

30.01.2011, the defendants did not agree for division of 'A' schedule property and hence, the suit.

4. The third defendant is the wife of the second defendant. The second defendant filed a detailed written statement, in which, he has admitted that 'A' schedule property belonged to their mother Pachamuthiammal. According to him, his mother through a Will dated 21.03.1992 bequeathed 'A' schedule property in favour of the third respondent. The plaintiff and her husband are the witnesses to the Will. After the death of the said Pachamuthiammal, the third defendant became the owner of the property and she has been in possession and enjoyment of the same. Hence, the plaintiff is not entitled for partition. It is also stated that the plaintiff is aware of the legal-heirs of the deceased Muthu, but they were not added as parties to the suit and hence, the suit is bad for *non-joinder* of necessary parties.

5. Pending suit, the petitioner filed present Interlocutory Application seeking amendment of plaint. She wanted to include the averments in the plaint in para 9 (a) stating that the Will dated 21.03.1992 is a forged one and the signature of the plaintiff and her husband were also

forged. The Will dated 21.03.1992 is not legally acted upon and not binding on the plaintiff. She also sought for a prayer to declare that the alleged Will dated 21.03.1992 is null and void and cannot be enforced in the Court of law.

6. The application was resisted by the petitioners contending that this petition was filed belatedly to prolong the litigation. The plaintiff is having full knowledge about the Will and she gave consent for the Will, because the third defendant was looking after the deceased Pachamuthiammal. Now because of the increase of the land value, the present suit has been filed. The learned Judge allowed the Application on payment of cost of Rs.1,000/-. Challenging the same, the present Revision has been filed.

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

8. In the instant case, it is seen that the first respondent herein has filed the suit for partition claiming 1/3rd share in the 'A' schedule property. It is further seen that the second defendant filed the written

statement on 02.12.2012 and the same was adopted by the third defendant. In the written statement, they admitted that the mother of the plaintiff and defendants 1 and 2 viz., Pachamuthiammal was the absolute owner of the 'A' schedule property, but she bequeathed the property to the third defendant through a Will dated 21.03.1992. It is the case of the defendants that the plaintiff and her husband were the witnesses to the Will and it was acted upon after the death of said Pachamuthiammal. In the plaint, as mentioned above, it has been stated that the original owner Pachamuthiammal died intestate and the plaintiff is having 1/3rd share in the 'A' schedule property. After filing of the written statement by the defendants 1 and 2, the plaintiff wanted to include the prayer disputing the the Will as forged one and the signature of the plaintiff and her husband was also not true, as aforementioned.

9. It is relevant to mention that in view of the defence taken by the defendants in the written statement, the plaintiff should be given a right to challenge the Will, for which, she sought for amendments in the plaint. It is pertinent to note that the defendants 2 and 3 claim title of the property through a Will, dated 21.03.1992, therefore, the burden of proof is on them to establish that the Will is genuine and it was acted upon, for

which, necessary issues will be framed by the trial Court. Hence, the amendment seeking prayer to declare the Will as null and void, in my considered view, is not at all necessary and unwarranted. It is settled legal position that without pleading, the parties will not be permitted to lead evidence.

10. In the light of the above discussion, this Civil Revision Petition is partly allowed. The plaintiff is permitted to amend the plaint with regard to the genuineness of the Will in the plaint. Hence, the plaintiff is entitled to include para '9A' in the plaint and the prayer in respect of 'declaration' sought for by the plaintiff is rejected. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

11.08.2021

Index : Yes / No
Internet : Yes

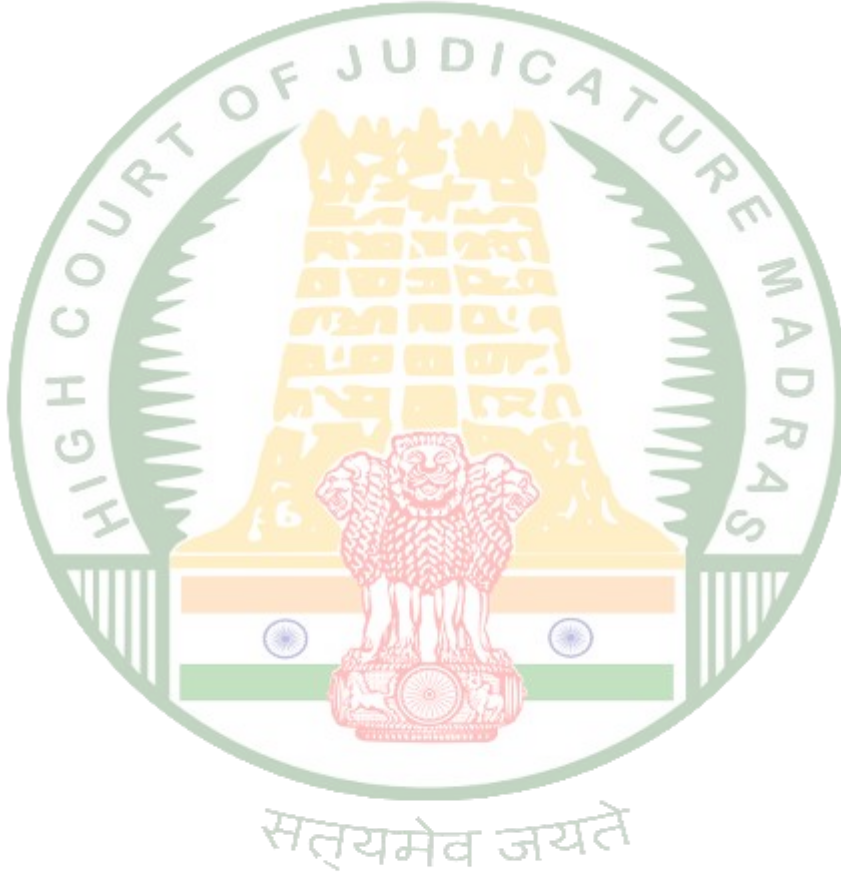
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To

The District Munsif,
Mettur.

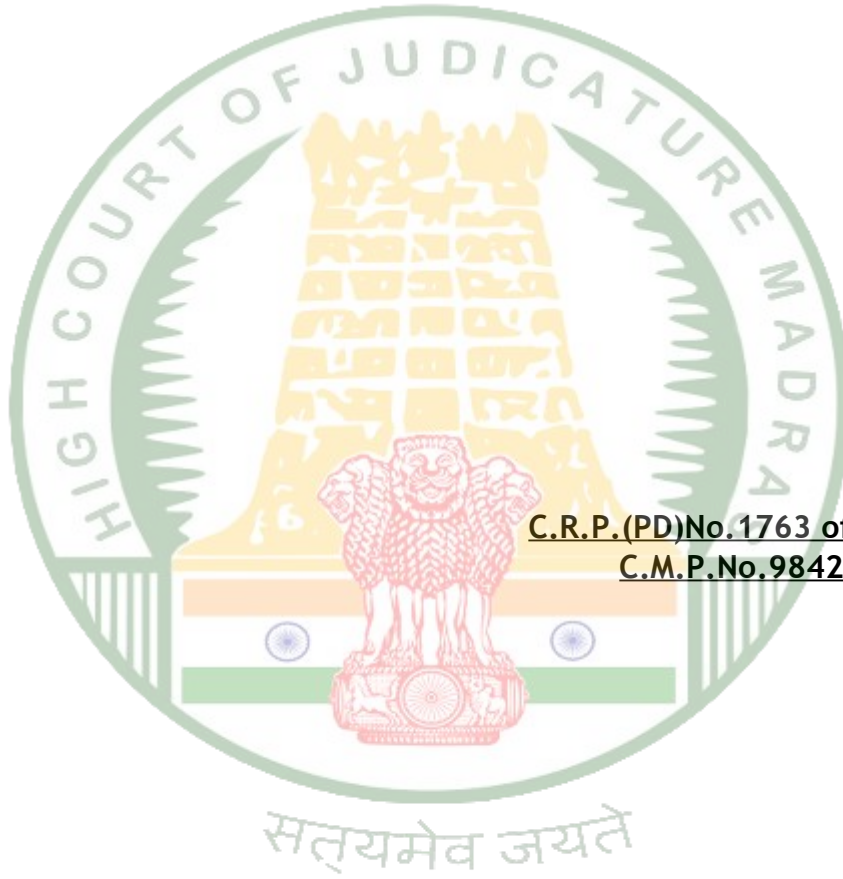


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