

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.2315 of 2018

and

CMP No.14407 of 2018

1. Sumathi

2. Deepa

3. Arthi

4. Minor Preethi

Rep by mother and Natural Guardian Deepa ... Petitioners

Vs

1. Rajammal (died)

2. Gandhi

(2nd Respondent is brought on record

as LR of the deceased 1st respondent

vide Court order dated 05.07.2021

made in CMP No.9653 of 2021 in

CRP (PD) No.2315 of 2018)

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.03.2017 made in I.A.No.186 of 2017 in O.S.No.46 of 2015 on the file of the Sub Court, Attur.

For Petitioners : Mr.S.Kaithamalai Kumaran

For R1 : Died (Steps taken)

For R2 : Mr.R.Prabakar

ORDER

This Civil Revision Petition is filed against the fair and

decreetal order dated 20.03.2017 made in I.A.No.186 of 2017 in

O.S.No.46 of 2015 on the file of the Sub Court, Attur, thereby dismissing the petition to re-open the suit.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for partition. After examining the both sides evidences, when the suit was posted for arguments, the petitioners filed a petition to re-open the suit for the reason that they want to examine the children of the attestors, since the registered sale deed executed in favour of him on 10.16.1974, which was marked as Ex.B7 with objections. Therefore, they are bound duty to prove the will by examining the witnesses of the attestors, since the attestors died only to prove the signatures of the attestors through their children and as such they filed a petition to re-open the suit. The Court below dismissed the petition for the reason that it was filed belatedly and also no purpose would be served the petitioners examined the children of the attestors and he would not fail to prove the Will.

3. On perusal of the affidavit filed in support of the said petition revealed that only at this juncture, the petitioners traced the legal representatives of the attestors of the Will, which was marked as Ex.B7 and only to prove the attestors signatures in the Will, they want to

examine the children of the attestors. Therefore, it would not change the nature of the suit and would not cause any prejudice to the respondents.

4. In view of the above, the order dated 20.03.2017 made in I.A.No.186 of 2017 in O.S.No.46 of 2015 on the file of the Sub Court, Attur, is hereby set aside and the Civil Revision Petition is allowed. It is made clear that the petitioners shall take immediate steps to summon the witnesses and if the petitioners failed to examine the proposed witnesses on the date fixed by the Court below, the Court below is directed to proceed with the suit in accordance with law. The Trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

05.07.2021

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Index: Yes/No

Internet: Yes/No

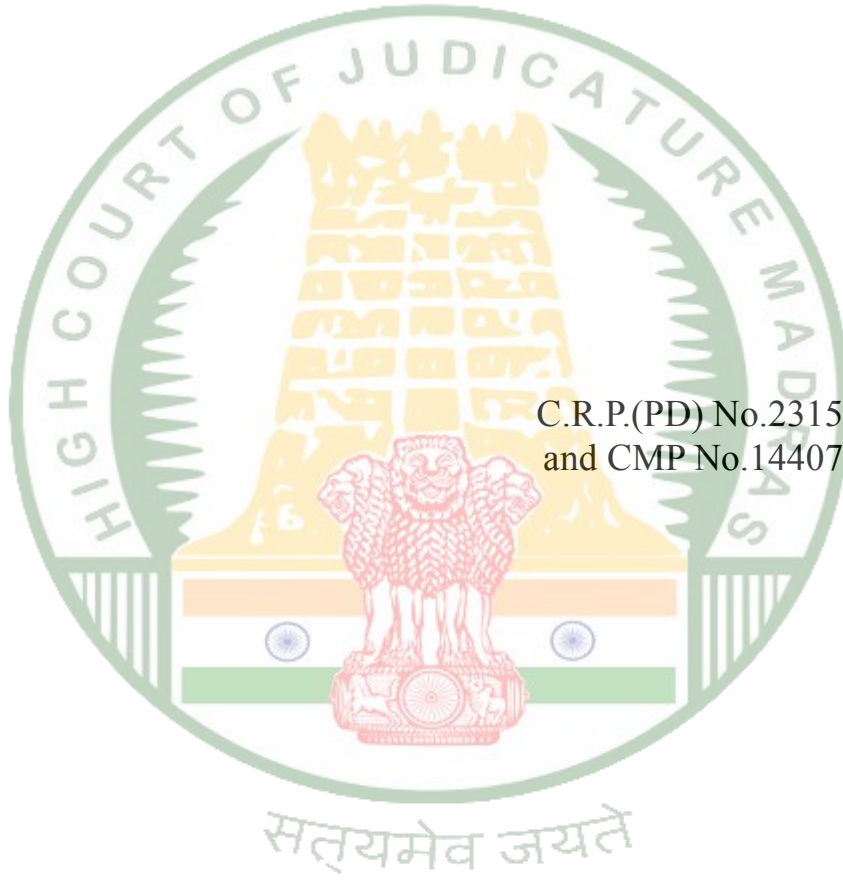
Speaking Order: Yes/No

To

The Subordinate Judge,
Attur.

G.K.ILANTHIRAIYAN,J.

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