

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2021

PRONOUNCED ON : 22.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(N.P.D)No.1778 of 2021

and

C.M.P.No.13752 of 2021

K.G.Rathinasabapathy(died)

1.R.Krishnaveni

2.R.Sivaselvakumar

...Petitioners

Janakiammal (died)

Vs.

1.Sellathal

2.Nandakumar

3.Selvakumar

4.Deenadayalu

5.Kamaladevi

6.Sivakumar

7.Kumaravel

...Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 26.04.2021 made in I.A.No.126 of 2014 in O.S.No.530 of 2004 on the file of the Ld.District Munsif Court, Dharapuram by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondents : Mrs.Hema sampath, Senior Advocate for
Mr.S.Arjun for R1.

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.126 of 2014 in O.S.No.530 of 2004 on the file of the Learned District Munsif Court, Dharapuram, on 26.04.2021.

2.The deceased Janakiammal, filed a suit in O.S.No.530 of 2004 against the respondents/defendants seeking the relief of partition of 1/4 share in the suit properties. The suit was originally filed in the year 1999 as O.S.No.14 of 1999 on the file of the Sub Court, Dharapuram. Subsequently, it was transferred to District Munsif Court, Dharapuram and re-numbered as O.S.No.530 of 2004. The suit was decreed on 12.10.2006. No appeal was filed against this judgment and therefore the judgment and decree passed in O.S.No.530 of 2004 became final. Janakiammal filed I.A.No.126 of 2014

as first petitioner impleading her daughter Sellathal as second petitioner under Order 26 Rule 13 and Section 151 of C.P.C., for appointment of an Advocate Commissioner to ear-mark, divide and allot her 1/4 share in the suit properties. The reason for impleading her daughter Sellathal is that she had executed a registered settlement deed dated 14.06.2007 and a will dated 16.04.2010, to settle and bequeath her 1/4 share in the suit properties. Therefore, she filed this petition along with her daughter Sellathal. Subsequent to filing of this petition Janakiammal died. This petition was contested by the respondents 2 and 7. On considering the oral and documentary evidence produced in the enquiry for passing final decree, the learned District Munsif, District Munsif Court, Dharapuram allowed the petition and appointed one Mr.M.Vishwanathan, B.A.B.L, as an Advocate Commissioner to inspect suit properties along with the qualified surveyor and suggest the mode of division of the properties as per the preliminary decree. The Advocate Commissioner was directed to file a report plan and the surveyor's plan. Against the said order, this Civil Revision Petition is preferred.

3.The learned counsel for the petitioners submitted that the petitioners are the wife and son of Janakiammal's son K.G.Rathinasabapathy. K.G.Rathinasabapathy was the eighth defendant in the suit. There is no reason for excluding him from inheriting the properties of the deceased Janakiammal. The first respondent Sellathal's husband is an Advocate. Taking advantage of his position as an Advocate, the settlement deed and will had been created. The attesters in both the documents are same persons. Persons in one place travelled to Dharapuram and Coimbatore to attest the documents. There is discrepancy in the evidence as to the place where Janakiammal resided during the last ten years. One Periyasamy is responsible for creating these documents. What is the necessity for creating a settlement deed and then a will? The first respondent was not aware of the suit in O.S.No. 530 of 2004, its related proceedings and the properties for which the suit was filed. That was the reason why a settlement deed was created first and then will was created in respect of the properties left out in the settlement deed. Petitioner's father was alone taking care of his mother. The first respondent had never taken care of the deceased mother. The attester to these documents are closely related to the first

respondent. With the help of interested witnesses, the settlement deed and will had been created to destroy the rightful claim of petitioner's father and the petitioners. Allotment of share on the basis of settlement deed and will to the first respondent is not correct and therefore the order of the Learned District Munsif, Dharapuram is liable to be set aside.

4. In response, the learned counsel for the respondents submitted that the petitioner's father did not contest the suit and remained *ex-parte*. The settlement deed was executed for item Nos.1 to 5 of the suit properties and will was executed for item Nos.6 to 8. Petitioner's father and his father had already divided the properties and substantial amount of properties were allotted to petitioner's father. Therefore, petitioner's father was excluded in the settlement deed and will. Janakiammal died three years after the will. The attester to the will have clearly spoken about the execution of the will and that will was executed when Janakiammal was in sound and disposing state of mind. There is no suspicious circumstances brought out, creating doubt in the genuineness of the will. The petitioner's father has not chosen to give evidence. Petitioners have not produced any documents to show that

he was taking care of Janakiammal. Petitioner's father filed petition to send the will to the hand writing expert's opinion. After the dismissal of this petition, he has not taken any steps to take the matter further to disprove the will, when the respondent discharged the burden of proving the will. Witnesses had clearly and categorically stated about the execution of the will and the will is sufficiently proved. Therefore, order passed in final decree petition on the basis of settlement deed and will in favour of the first respondent is correct and therefore, the learned counsel for the respondents prayed for confirming the order of the learned District Munsif, Dharapuram and for dismissal of this Civil Revision Petition.

5.Considered the rival submissions and perused the records.

6.There is no dispute with regard to the fact that the suit was filed by Janakiammal against one Nandakumar and seven others. She claimed 1/4 share in the suit properties as the legal heir of her mother Achiathal. The suit was decreed and she was allotted 1/4 share in the suit properties. Then she filed final decree petition in I.A.No.126 of 2014 along with her daughter

Sellathal. In the affidavit filed in the final decree petition, she has very clearly stated that she had allotted 1/4 share in the suit properties in favour of her daughter through a registered sale deed dated 14.06.2007 and will dated 16.04.2010. She claims that as per these settlement deed and will her daughter is entitled to 1/4 share in the properties in pursuance to the preliminary decree. The prayer is that, she prayed for appointment of an Advocate Commissioner to ear-mark, divide and allot 1/4 share in favour of her daughter, the first respondent/second petitioner. Thus it is clear from affidavit filed by Janakiammal that she had executed a settlement deed dated 14.06.2007 and will dated 16.04.2010 vesting her right in 1/4 share in the suit properties to her daughter. During the course of enquiry in the final decree petition it appears that, Janakiammal died. Therefore, Sellathal was examined as PW1. PW2 and PW3 had also been examined. The settlement deed dated 14.06.2007 and will dated 16.04.2010 had been marked as exhibit P1 and P2. RW1 was examined as respondent.

7.The submission made by the learned counsel for the petitioners had already been extracted in the previous paragraphs. Evidence of PW1,

PW2, PW3 and RW1 had also been produced for the perusal. The entire reading of the evidence of witnesses especially PW2 and PW3 shows that though there are certain minor discrepancies in their evidence, overall, reading of the evidence supports the case of the respondents that Janakiammal had executed a settlement deed and will with the intention to settle and bequeath her properties in favour of the first respondent. She was in a sound and disposing state of mind at the time of execution of these documents. Merely because the witnesses in both the documents are same persons and they travelled from one place to the places where the settlement deed and will had been executed, does not mean that both the documents are fabricated and created document. Normally if a person wanted to execute any document, he would prefer only a known person(s) to be the attestors to the document. Only persons on whom the executant of document has faith that they would support the execution of document, in case any necessity arises, he would request those persons to become the attestors to the documents. Nobody would prefer a stranger to be an attester to a document, especially important documents like a settlement deed or will. Both the witnesses PW1 and PW2 have given cogent and convincing evidence in

support of the execution of the will. PW3 has given evidence in support of the execution of settlement deed. They have withstood the rigour of cross examination and confirmed to their evidence in chief examination. Their evidence is not saskled or dis-credited to entertain a serious doubt in execution of the will and the settlement deed. That apart, even in the affidavit filed in support of final decree petition, Janakiammal herself reiterated the execution of settlement deed and will. Therefore, this Court is of the considered view that the first respondent has succeeded in proving the execution of settlement deed dated 14.06.2007 and will dated 16.04.2010.

8.It is pointed out by the learned counsel for the respondents that in the settlement deed, it is clearly mentioned that there was a partition between petitioner's father and Janakiammal's husband Chinnasamy Gounder. Even in the will, it is reiterated that the petitioner's father was allotted several properties in the partition between him and his father. Thus, the exclusion of petitioner's father is justified by giving acceptable reason.

9.Both the parties have not produced any documents to show the

treatment given to Janakiammal and under whose custody she was at the time of her death or prior to her death. Both are giving contradictory evidence. In the absence of any document and evidence, merely on the basis of oral evidence we cannot definitely conclude that Janakiammal was residing with petitioner's father or first respondent and who was taking care of her.

10. With regard to the allegation that the first respondent was not aware of the location of the properties, availability of properties and therefore settlement deed and will had been executed, settlement deed was said to have been executed for item Nos.1 to 5 of the suit properties and will was executed for item Nos.6 to 8 properties. It is not known why two documents have been executed. The fact remains that Janakiammal had executed the settlement deed 14.06.2007 and the will dated 16.04.2010 and the execution of these documents have been proved. Therefore, this Court finds no reason to interfere with the order dated 26.04.2021, in I.A.No.126 of 2014 in O.S.No.530 of 2004 passed by the learned District Munsif, Dharapuram in appointing Advocate Commissioner to suggest the mode of

division as per the preliminary decree passed and the order is confirmed.

11.Resultantly, this Civil Revision Petition is dismissed. No costs.

Connected miscellaneous petition is closed.

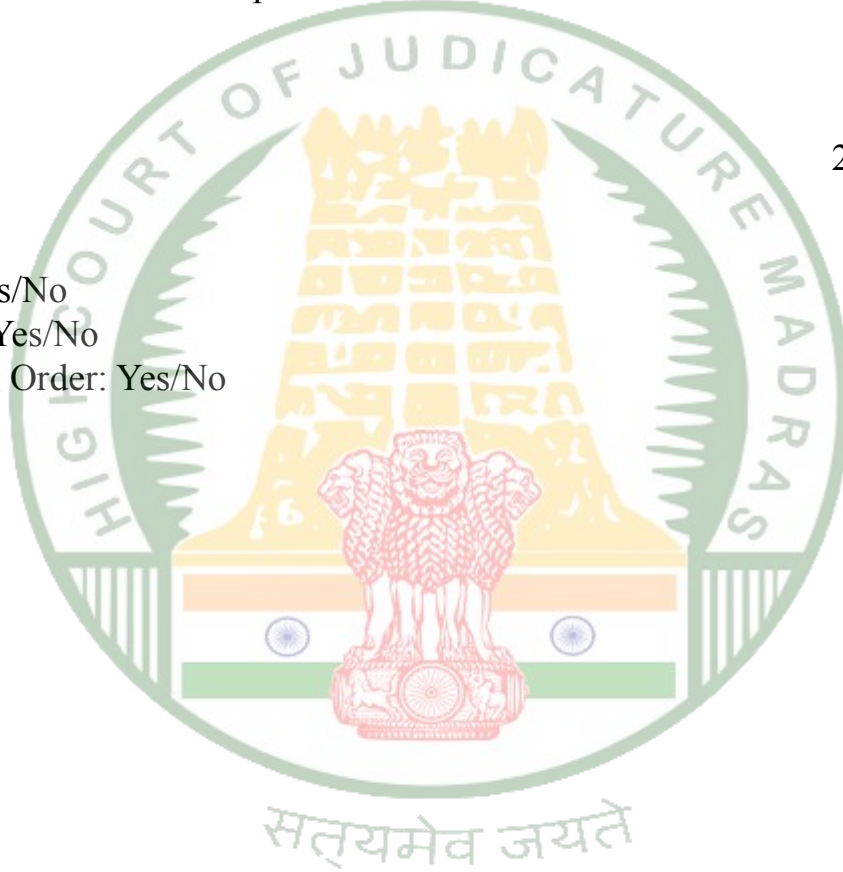
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Index: Yes/No

Internet: Yes/No

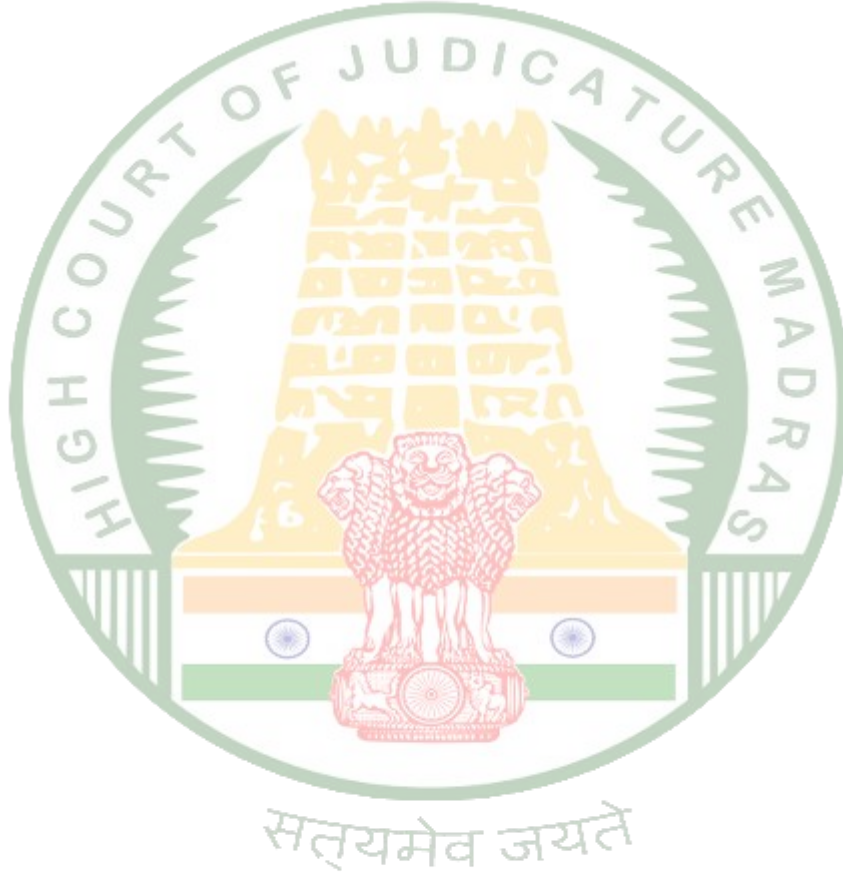
Speaking Order: Yes/No



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To

1. The District Munsif,
District Munsif Court,
Dharapuram.
2. The Section Officer,
VR Section,
High Court of Madras.

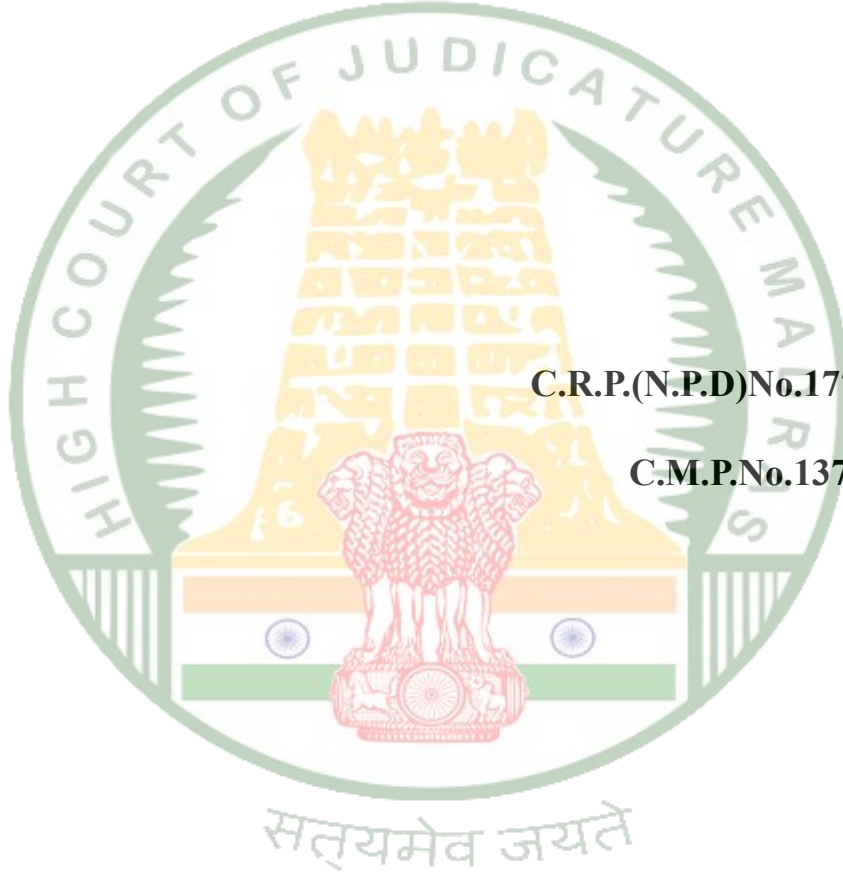


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