

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos.2212 & 2214 of 2017

and

CMP.No.10537 of 2017

CRP.PD.No.2212 of 2017

Pavayammal(died)

..Petitioner

Vs.

Eswari(died)

1.N.P.Sadhasivam

2.Saraswathi

3.K.Subramani

4.M.Dhavamani

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 01.06.2017 made in IA.No.376 of 2017 in OS.No.69 of 2012 on the file of the learned Sub Court, Bhavani.

For Petitioner : Mr.R.Vinoth Raja

For Respondents : Mr.V.Anandhamoorthy

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For Petitioner : Mr.R.Vinoth Raja

For Respondents : Mr.V.Anandhamoorthy

COMMON ORDER

These civil revision petitions are filed against the fair and decretal order dated 01.06.2017 made in IA.No.376 of 2017 in OS.No.69 of 2012 and against the fair and decretal order dated 01.06.2017 made in IA.No.377 of 2017 in OS.No.69 of 2012 on the file of the learned Sub Court, Bhavani thereby allowing the respondents to file their reply for the additional written statement and also allowing the petition for amendment.

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2. In the both the civil revision petitions, the petitioner is the second defendant and the respondents are the plaintiffs. The respondents filed suit for partition. While pending the suit, the first defendant died and

her share also included in the suit since the suit is for partition. The suit was filed on 28.04.2012. The petitioner filed additional written statement on 06.02.2017. That apart, the respondents failed to state resurvey No. for the suit property. and also failed to state the zero while describing the measurement of the property. Therefore, it would not change the cause of action or the suit properties. In respect of permission to file reply statement for the additional written statement, the petitioner filed additional written statement on 06.02.2017.

3. On perusal of the additional written statement revealed that the Will dated 03.11.2011 has been executed by the deceased Palaniappa Mudaliar in favour of the first deceased defendant for an occupation right till her death and afterwards ultimate beneficiary right goes to the petitioner herein. Further revealed that unless and otherwise the Will dated 03.11.2011 is set aside or avoided by the respondents under law, the said Will is enforceable by law as it is a valid document. Therefore, the respondents necessarily have to file reply for the additional written statement. Further by filing of reply for the additional written statement would not cause any hardship to the petitioner and also it would not stall the trial court from proceeding further. Therefore, both the courts below

rightly allowed both the petitions and this Court finds no infirmity or illegality in the orders passed by the court below.

4. Accordingly, both the civil revision petitions are dismissed. However, considering that the suit is of the year 2012, the trial court is directed to dispose of the suit within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

08.03.2021

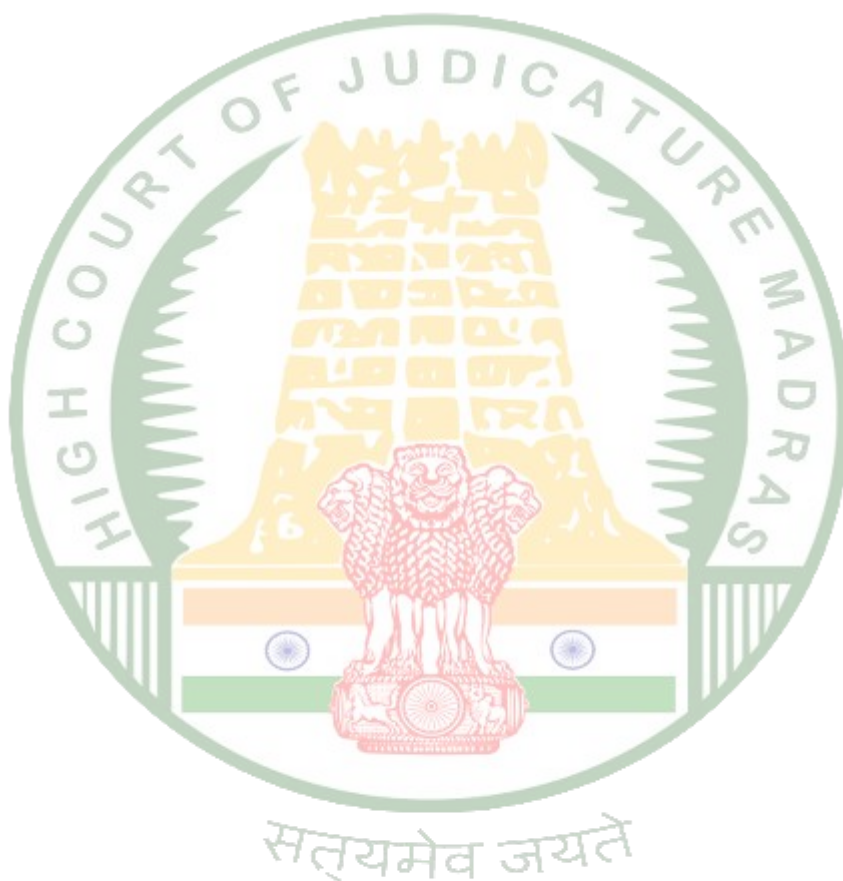
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To

The Subordinate Judge,
Bhavani.



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G.K.ILANTHIRAIYAN,J.

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