

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

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

**C.R.P.(NPD) No. 3645 of 2018
and
CMP No.20283 of 2018**

1. N.Devaraj
2. N.Nandakumar

.....
Petitioners

Vs

1. Devakiammal
2. Shanthi Selvaraj
rep. by her Power of Attorney Agent
S.Vasanthamani
3. Kirthi Sridharshini
4. R.Manoharan

.....
Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 31.07.2018 made in I.A.No.68 of 2018 in A.S.No.5 of 2008 on the file of the District Judge, The Nilgiris at Udthagamandalam.

For Petitioners : Mr.Kandan Doraisami
for Mr.N.R.Anantha Ramakrishnan

For R1 to R3 : No appearance

For R4 : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 31.07.2018 made in I.A.No.68 of 2018 in A.S.No.5 of 2008 on the file of the District Judge, The Nilgiris at Udhagamandalam, thereby dismissing the petition seeking experts opinion on the Will dated 03.11.2004, which was marked as Ex.B3.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit in O.S.No. 70 of 2005 for partition and the same was dismissed. Aggrieved by the same, the defendants 1 to 3 as well as the plaintiffs filed Appeal Suits in A.S.Nos. 5 and 6 of 2008. Both the appeals were allowed and remitted back the suit to the Trial Court for fresh disposal. Aggrieved by the said Judgment and Decree, the fourth defendant filed Civil Miscellaneous Appeals in CMA Nos.1055 and 1056 of 2009 before this Court and by the Judgment and Decree dated 13.07.2016, this Court allowed the appeals and the First Appellate Court is directed to dispose of the appeals on fresh consideration on the basis of the evidence available on record.

3. While pending the appeal suits, the petitioners herein filed a petition in I.A.No.68 of 2018 to send Ex.B3 - Will dated 03.11.2004 to a hand writing expert opinion. When the suit was filed in the year 2005, the husband of the first defendant executed a Will dated 03.11.2004. After demise of her husband, she executed sale deed in favour of the petitioner herein. Even then, the petitioners herein did not challenge the same and did not ask for any hand writing expert opinion. When the Civil Miscellaneous Appeals were allowed by this Court and thereafter, in the year 2018, the petitioners filed a petition in I.A.No.68 of 2018 seeking expert opinion of the Will dated 03.11.2004, which was marked as Ex.B3.

4. That apart, the contemporary documents to be compared with the said Will as requested by the petitioners are the Will dated 09.03.1981 and 07.02.1998. The contemporary documents should be before two years or after two years of the Will dated 03.11.2004. Therefore, those documents cannot be compared with Ex.B3-Will dated 03.11.2004. Further, this Court never directed the First Appellate Court

to let in fresh evidence. Only on the basis of the evidence available on record, the First Appellate Court is directed to dispose of the appeals. Therefore, the Court below rightly dismissed the petition.

5. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. The First Appellate Court is directed to dispose of the Appeal Suits within a period of three months from the date of receipt of a copy of this order.

6. With the above direction, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.07.2021

Lpp
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

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To

1.The District Judge,
The Nilgiris at Uthagamandalam

2. The Section Officer,
V.R.Section,
High Court, Madras.



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C.R.P.(N.P.D).No.3645 of 2018

G.K.ILANTHIRAIYAN.J,

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and
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