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C.R.P.No.2539 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

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

C.R.P.No.2539 of 2019

and

CMP No.16762 of 2019

Jayalakshmi @ Subbulakshmi Petitioner

Vs

S. Velusamy Gounder (Died)

1. V. Kumaraswamy
2. V. Shanmugam
3. K. Ponnammal
4. N.M. Velusamy

.... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and final order dated 09.04.2019 passed by the learned I Additional District Judge, Coimbatore in I.A.No.497 of 2018 in A.S.No.25 of 2017.

For Petitioner : Mr. Mouli L.
For R1 & R2 : Mr. P. Mathivanan
For R3 & R4 : Notice served

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 09.04.2019 passed in I.A.No.497 of 2018 in



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A.S.No.25 of 2017 on the file of the I Additional District Judge, Coimbatore, thereby dismissing the petition filed under Section 45 of the Indian Evidence Act, to undergo DNA Test along with the second and third respondents herein.

2. The petitioner filed a suit for partition as against the respondents. The petitioner also issued pre-suit notice and the same was received by the first defendant. He issued a reply notice and categorically denied that the petitioner was not born to him. After institution of the suit, the first defendant also filed written statement and had taken a specific stand that she was not born to him. The petitioner had failed to prove her birth to the deceased first defendant. Though she was examined as P.W.1 and in support of her contention she also examined P.Ws.2 and 3. However, P.W.2 was not present before the Trial Court for cross-examination. Hence, her evidence was closed and P.W.3 also was not supporting the case of the plaintiff. Hence, the suit was dismissed. Aggrieved by the same, the petitioner filed an appeal suit.

3. Pending appeal, the petitioner had taken an application to go for DNA Test along her brothers, since their father died, while



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pending the suit. On receipt of the pre-suit notice, the deceased first defendant already replied that she was not born to him. Thereafter, he filed a written statement stating the same. However, the petitioner had not taken any application to go for DNA Test to prove her birth through the deceased first defendant.

4. After dismissal of the suit, that too on the ground that the petitioner failed to prove her birth through the deceased first defendant and in the appeal suit that too after one year from the filing of the appeal, the petitioner had taken the said present application to go for DNA test. Therefore, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

5. In the result, this Civil Revision Petition stands dismissed. The Appellate Court is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
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To

The I Additional District Judge,
Coimbatore.



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G.K.ILANTHIRAIYAN, J.

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