



C.R.P.No.1841 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

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

C.R.P.No.1841 of 2019
and C.M.P.No.12196 of 2019

1. Nataraj
2. Marasamy
3. Mani
4. Mathaiyan
5. Lakshmi
6. Sengottaiyan
7. Subramani
8. Kuruvammal
9. Angammal
10. Iyyammmal
11. Sumathi

.. Petitioners

Vs.

1. Rangasamy
2. Thangamuthu
3. Arumugam
4. Kamatchi
5. Pathrammal
6. Pavalakodi
7. Selvan
8. Madhesh
9. Arunagiri
10. Kaveri
11. Singari
12. Sithayee @ Pappal



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13. Jaya

14. Kamalaveni

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 12.04.2019 made in I.A.No.9 of 2019 in O.S.No.27 of 2009 on the file of the learned First Additional District Munsif Court, Bhavani by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

For Respondents

R1, R4 to R7, 10

and 14 : Notice served, No appearance

R2 and R3

: Mr.S.Lakshmanasamy

R8, R9,

R11 to R13

: No appearance, Not ready in notice

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 12.04.2019 made in I.A.No.9 of 2019 in O.S.No.27 of 2009 on the file of the learned First Additional District Munsif Court, Bhavani, thereby dismissing the application filed to receive additional documents.



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2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for partition in the year 2009. The respondents filed their written statement on 05.03.2010. When the suit was posted for arguments, the respondents 2 and 3 filed their application to receive additional documents and produced a Will. It was allowed. When D.W.1 was cross examining the petitioners, the petitioners subsequently denied the Will executed in their favour and also, in order to compare the thumb impression with the partition agreement entered between Muthu Gounder and his sons born through the first wife, the petitioners filed an application to receive additional documents. However, it was dismissed on the ground that the documents 3 to 6 are subsequent to the suit and documents 1 and 2 are un-registered one. That apart, in order to prove the Will, the respondents ought to have proved the Will in the manner known to law, i.e, under Section 68 of the Indian Evidence Act. It is not the burden on the shelter of the petitioners herein to disprove the Will produced by the respondents.



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3. A perusal of records revealed that the petitioners filed a suit for partition and separate possession in respect of the suit properties. When the suit was posted for arguments, the respondents filed I.A.No.3 of 2019 to receive reply statement and the same was allowed with cost of Rs.1000/-. When the matter was posted for additional evidence in respect of the alleged Will, the petitioners filed a petition to receive the additional documents. According to them on 22.08.1980, Muthu Gounder and his sons have entered into a partition agreement and made 6 originals and given to each one of them. A perusal of cross examination of D.W.2 and D.W.3, it was also admitted by them and the original copy of Kaligounder was marked as Ex.A-17. The petitioners are having 2 copies and in order to disprove the case of the defendants, the petitioners filed an application to receive those documents as additional documents. Insofar as the other documents are concerned, pending suit, they lodged a complaint and the acknowledgments were produced to receive as additional documents.

4. Considering the above facts and circumstances, this Court is inclined to allow the petition insofar as the documents 1 and 2 alone.



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Accordingly, the fair and decreetal order dated 12.04.2019 made in I.A.No.9 of 2019 in O.S.No.27 of 2009 on the file of the learned First Additional District Munsif Court, Bhavani, is set aside in part. Insofar as the other documents are concerned, this Court finds no infirmity or illegality in the order passed by the Court below and the Civil Revision Petition stands dismissed. The respondents are at liberty to file their additional written statements.

5. Accordingly, this Civil Revision Petition is partly allowed. Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

mn

To

The First Additional District Munsif Court, Bhavani.

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and C.M.P.No.12196 of 2019

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