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CRP. No. 4942 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP Nox. 4942 & 4945 of 2023

- 1.Ashokan
- 2.Rajendiran
- 3.Jayanthi

...Petitioners in both petitions

Vs.

- 1.Thilagarani
Rajeswari (Died)
2. Tirumeni
3. Chennai society of Mary Immaculate,
No.64, Hall Rodad,
Kilpauk, Chennai,
Rep. by Sister Pavula,
President,
S.M.M.I Provincialate,
No.7 Pudukottai Road,
Thanjavur.
- 4.Indian Bank Rep.by its
Branch Manager, Tharangambadi,
Tharangambadi Taluk,
Mayiladuthurai District.
5. Indian Overseas Bank, Rep. by its
Branch Manager,
Indian Overseas Bank Main Branch,
Nagapattinam.
- 6.Indian Bank, Rep. By its
Branch Manager,



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Karaikal Town,
Pondicherry State.

7. Indian Overseas Bank, Rep. by its
Branch Manager,
Mayiladuthurai Town,
Mayiladuthurai Taluk.

....Respondents in both petitions

PRAYER in CRP No. 4942 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.10.2023, made in E.A No. 5 of 2023 in E.P No. 45 of 2022 in O.S No. 83 of 1995, passed by the Sub Court, Sirkali.

PRAYER in CRP No. 4945 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.10.2023, made in E.A No. 5 of 2023 in E.P No. 45 of 2022 in O.S No. 83 of 1995, passed by the Sub Court, Sirkali.

For Petitioner : Mr.B.Jawahar

COMMON ORDER

These petitions have been filed to set aside the fair and decreetal order dated 19.10.2023, made in E.A No. 4 and 5 of 2023 in E.P No. 45 of 2022 in O.S No. 83 of 1995, passed by the Sub Court, Sirkali.

2. The petitioners herein filed E.A No. 4 and 5 of 2023 in E.P No. 45 of 2022 in O.S No. 83 of 1995 to reopen the E.P and to received the additional document. After considering the submissions on either side, the Court below dismissed the said applications. Challenging the same the



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petitioners filed these petitions.

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3. Heard, the learned counsel for the petitioner.

4. As per the contention of the petitioner during pendency of the execution petition in EP No. 45 of 2022 is O.S No. 83 of 1995, the petitioners' mother executed a Will on 24.01.2018 in favour of the petitioner. Further, the suit in O.S No. 83 of 1995 was decreed in the year 2017 and the mother of the revision petitioners died in the year 2020 but she executed a Will in respect of shares in suit property on 24.01.2018 in favour of the petitioners so they filed E.A No. 4 and 5 of 2023 to reopen the execution petition and to receive the additional documents but the Court below dismissed the application stating that the revision petitioner has to work out their remedy with separate proceedings. On perusal of records it reveals that the Will was executed by the petitioners' mother after passing decree so the petitioners are entitled to provide the same before the executing Court but the court below without applying the said legal proposition dismissed the said application as such is erroneous and liable to be set aside. Hence, the order passed by the Sub Cour, Sirkali, in E.A No. 4 of 5 of 2023 is set aside.

5. In the result, this Revision Petition is allowed. No Cost.



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Consequentially, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.



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To
The Sub Court, Sirkali.

CRP Nos. 4942 and 4945 of 2023
and CMP No. 29036 of 2023

22.12.2023