

WEB COPY

CRP(PD).No.921 & 922 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).Nos.921 & 922 of 2025

and

CMP.Nos.5324 of 2025

- 1.Nallammal
- 2.Vijayalakshmi
- 3.Venkatesh

... Petitioners in all CRPs.

Vs.

- 1.Kaliammal
- 2.Muthusamy
- 3.Muthulakshmi
- 4.Muthulakshmi

... Respondents in all CRPs

Prayer in CRP.No.921 of 2025:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.09.2024 passed in IA.No.11 of 2024 in OS.No.327 of 2015 on the file of Principal Sub Court, Namakkal, Namakkal District and allow the above CRP.



CRP(PD).No.921 & 922 of 2024

Prayer in CRP.No.922 of 2025:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.09.2024 passed in IA.No.12 of 2024 in OS.No.327 of 2015 on the file of Principal Sub Court, Namakkal, Namakkal District and allow the above CRP.

For Petitioner : M/s.K.S.Jeyaganeshan

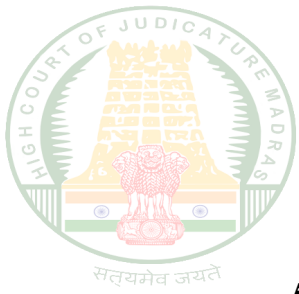
COMMON ORDER

The defendants 2, 4 and 5 are the revision petitioners before this Court. They seek to challenge the order passed by the Principal Subordinate Judge, Namakkal in I.A.Nos.11 & 12 of 2024 in OS.No.327/2015.

2. I.A.No.11/2024 has been filed for recalling D.W.2 to mark the copy of a Will dated 09.07.1974 executed by the 1st defendant's father.

3. I.A.No.12/2024 has been filed under Order 8 Rule 1 Sub Rule 3 of CPC seeking leave of the Court to file documents belatedly.

4. The facts of the case are hereinbelow briefly set out:-



WEB COPY

CRP(PD).No.921 & 922 of 2025



5. The plaintiffs had filed the suit O.S.No.327/2015 on the file of the above Court seeking a partition and separate possession of the plaintiffs' 6/16 share in the suit schedule property.

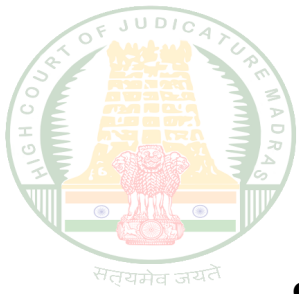
6. The suit A schedule property is the ancestral property of the 2nd plaintiff's grandfather, Veerappa Gounder. The B schedule property has been purchased by the said Veerappa Gounder from out of the consideration received by him for the release deed executed in favour of his father Koundai Gounder. Therefore, it is the case of the plaintiffs that the properties are the ancestral properties of the 2nd plaintiff's grandfather Veerappa Gounder. The father of the 2nd plaintiff, Muthusamy and the father of the 1st defendant, Karuppan are the sons of Veerappa Gounder. When the 2nd plaintiff was 3 years old, Muthusamy had deserted the plaintiffs and started living with the 2nd defendant. On 09.07.1974 Koundai Gounder, the great grandfather of the 2nd plaintiff, had executed a Will bequeathing all the properties on Karuppan, the father of the 1st defendant. The 2nd plaintiff's grandfather, Veerappa Gounder had not executed any release deed in



favour of Koundai Gounder and therefore the Will would not bind the share of the 2nd plaintiff's father.

7. There was no partition between the 2nd plaintiff's paternal grand father, Veerappan Gounder, his father Muthusamy or the 1st defendant's father Karuppan. Karuppan Gounder passed away on 20.06.1996 and the 2nd plaintiff's father, Muthuswamy passed away on 06.06.2007. Despite the request for partition, the defendants had not come forward to enter into a partition and therefore the plaintiffs had filed the above suit.

8. The 1st defendant had filed a written statement denying the Will dated 09.07.1974. The 1st defendant admitted that the A schedule property was the ancestral property of the 2nd plaintiff and herself. She would submit that the release deed dated 14.05.1940 should be presumed to be a release in favour of the joint family. It was from out of the income of the ancestral property that Veerappa Gounder had purchased the B schedule property on 19.05.1957 and the property was being enjoyed as a joint family property.



WEB COPY

9. She would further submit that the 2nd defendant is not the legally wedded wife of the 2nd plaintiff's father, Muthusamy and therefore she has no right to claim a share in the ancestral property. She would ultimately submit that the 2nd plaintiff's father Muthusamy was entitled to a half share and the 1st defendant's father Karuppan entitled to the other half share. After the birth of the 2nd plaintiff, Muthusamy had a 1/4th share in the suit schedule property and the 2nd plaintiff had the other 1/4th share. After the death of their respective fathers, the 1/4th share of Muthusamy would devolve on the plaintiffs 1, 2 and defendants 3 and 4 each being entitled to a 1/16th share.

10. When the suit was at the stage of D.W.2 evidence, the aforesaid two interlocutory applications have been filed by defendants 2, 4 and 5.

11. It is their contention in the affidavit filed in support of these applications that during the evidence of D.W.2, the original Will dated 09.07.1974 could not be found. However, now after searching the



house, a xerox copy of the Will has been found and in order to prove their case, the xerox copy of the Will is very vital. Therefore, they have come forward with the impugned applications.

12. The applications were strongly opposed by the 2nd plaintiff/ 2nd respondent by contending these applications are nothing but an attempt to protract the proceedings as the certified copy of the Will dated 09.07.1974 has already been marked as Ex.A.4.

13. The learned Sub Judge, Namakkal proceeded to dismiss the said applications stating the certified copy of the Will has already been marked as Ex.A.4 and no reasons have been given for marking the xerox copy of the original Will. Challenging the same, the defendants 2, 4 and 5 are before this Court.

14. Heard the counsel for the petitioners and perused the records.

15. A perusal of the records would show that the certified copy of the Will dated 09.07.1974 has already been marked as Ex.A.4. A



CRP(PD).No.921 & 922 of 2025

perusal of the affidavit filed in support of these petitions does not give any reasons as to why the petitioners seek to mark the xerox copies of the original Will. There appears to be no basis for either reopening the evidence or permitting to mark a Xerox copy of the Will. Therefore, the learned Sub Judge, Namakkal has rightly dismissed the applications and I see no reason to interfere with the same.

16. Accordingly, the Civil Revision Petitions stand dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.03.2025

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

To

1.The Principal Sub Court, Namakkal,

P.T. ASHA. J.,

(shr)



WEB COPY

CRP(PD).No.921 & 922 of 2025



CRP.(PD).No.921 & 922 of 2025
and
CMP.No.5324 of 2025

07.03.2025