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Civil Revision Petition No. 1224 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.1224 of 2025
and C.M.P.No.7378 of 2025

1. K. Ramaswamy
2. R. Ramesh

....Petitioners

Versus

1. K. Venkatachalam
2. K.R.Selavam

....Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order, dated 04.01.2025 in IA No.08 of 2024 in O.S.No.54 of 2011 on the file of II Additional District Judge, Salem and allow the said IA by directing the court below to send for the said WILL dt 23.11.2003 along with the cover as prayed for by the petitioners and issue the necessary directions.

For Petitioners

: Mr.S.Kalyanaraman

ORDER



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The defendants 1 and 3 have filed the above Civil Revision Petition challenging the order passed in I.A.No.8 of 2024 in O.S.No.54 of 2011 by the I Additional District Judge, Salem in and by which, the petition filed by them for sending the documents mentioned in petition in O.S.No.56 of 2011.

2.The brief facts are as follows:

(i) The 1st respondent/plaintiff had filed the suit O.S.No.54 of 2011 on the file of the II Additional District Court, Salem against the revision petitioners/defendants 1 and 3 and the 3rd respondent herein seeking a partition of his ½ share in the suit schedule properties and for mesne profits. The suit was filed in respect of 8 items of properties.

(ii) Earlier, a suit O.S.No.56 of 2011 was filed by the sisters of the plaintiff and the 1st defendant namely Pappa @ Radha and Govindammal on the file of the I Additional District Court, Salem seeking partition and separate possession of their 2/4th share in the suit schedule properties. The plaintiffs therein had withdrawn the suit O.S.No.56 of 2011 and abandoned their right to claim a share in the suit schedule property.



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(iii) In the written statement in the instant suit, the defendants 1 and 3 had stated that their father, Karupanna Gounder, had left a Will dated 23.11.2003 which was deposited in a sealed cover before the District Registrar, Salem West. Karupanna Gounder died on 19.12.2010 and on an application by the 1st defendant, the sealed cover was opened in the presence of the defendants 1 and 2 and the Will was registered on 31.12.2010 as Document No.229 of 2010. Under this Will dated 23.11.2003, the said Karupanna Gounder had bequeathed his properties in favour of his grandsons, who are defendants 2 and 3 and no portion was bequeathed to defendant 4 and 5 or the 1st defendant. It is the contention of the defendants 1 and 3 that the plaintiff had created the Will dated 05.10.2009.

(iv) In his reply statement, the plaintiff had contended that this Will dated 23.11.2003 is a forged and fabricated document.

(v) In the additional written statement filed by the 3rd defendant



adopted by the 1st defendant, it was contended that the plaintiff had not filed the original forged unregistered Will dated 05.10.2009 and in the list of documents, it has been stated as follows:

"Since un registered, for safety purpose the original Will will be produced at the time of trial".

However, having undertaken to produce the original at the time of trial, the plaintiff has now come forward with the contention that the original Will has been lost and the same could not be located despite the plaintiff's strenuous efforts to locate the same.

(vi) Thereafter, the defendants 1 and 3 had filed I.A.No.6 of 2023 seeking to send for the document i.e Will dated 23.11.2003 from the District Registrar Office Salem West, Salem-1 to the suit O.S.No.54 of 2011 pending on the file of this Court.

(vii) The plaintiff would submit that the defendants' claim that on



24.11.2003, the sealed cover was deposited in the suit O.S.No.56 of 2011 cannot be believed. He would submit that the defendants ought to have obtained the certified copy of the Will by opening the cover and this application has been filed only to drag on the proceedings. One Mr.Senthil Kumar working as Sub Registrar in the Joint Sub Registrar Office, Salem-West has deposed as C.W1 in I.A.No.6 of 2023 on 08.04.2024 wherein he has stated that on 29.01.2024, the document and the sealed cover were opened and the Will was forwarded to the II Additional District and Sessions Judge, Salem in O.S.No.56 of 2011.

(viii) Thereafter, the defendants 1 and 3 had filed I.A.No.8 of 2024 in O.S.No.54 of 2011 seeking an order to send for the original Will dated 23.11.2003 from the District Registrar Office Salem West, Salem -1 to the I Additional District Court, Salem to the file of the suit O.S.No.56 of 2011. This application has been dismissed as infructuous on the ground that the plaint and the unmarked documents in O.S.No.56 of 2011 **including the Will dated 23.11.2003** had been returned to the plaintiffs therein and the same are in their custody. Challenging the said order, the defendants 1 and 3 are before this Court.



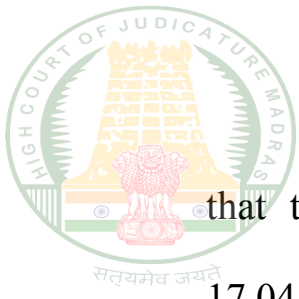
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3. Heard the learned counsels on either side and perused the materials available on record.

4. The defendants 1 and 3 would submit that C.W1 had deposed that the original Will had been submitted to the custody of the Court on 29.01.2014 and it is not a document that was filed by the plaintiff in O.S.No.56 of 2011. Therefore, the said document could not have been returned to the plaintiff. This Court, by order dated 26.03.2025, had directed the Registry to call for the entire documents pertaining to the petition filed in O.S.No.56 of 2011 in and by which the plaintiff has taken a return of the unmarked documents after the suit was dismissed as not pressed on 24.04.2023. It was further ordered that in case, the documents are returned on the basis of the petition, the learned Judge should clarify the method by which the documents were returned and the details of the documents so returned by way of a report. The copy of the acknowledgment received from the plaintiff was also directed to be submitted on or before 07.04.2025. On 07.04.2025, since the records had not been received, the matter was adjourned to 17.04.2025 with a direction



that the Registry was to ensure the receipt of the documents. On 17.04.2025 though records were received, the report, as directed, has not been received and therefore, direction was issued to the II Additional District Judge, Salem to submit his report on or before 24.04.2025 and the matter was directed to be listed on 25.04.2025. A report dated 21.04.2025 has been received from the II Additional District Judge, Salem in which he has stated as follows:-

"I respectfully submit, that in the above reference and on careful persusal of the case records in OS.No. 56/2011 on the file of this Court and the same was disposed on 24.04.2023 as not pressed, it reveals that after getting endoresement from the Counsel for the Plaintiff the unmarked plaint documents (SL.No. 1 to 25) and the Original Sale deed, dated 17.09.2003 where furnished to the Plaintiff's counsel on 10.07.2023 and the endorsement copy of pages are enclosed herewith, the Original Will dated 23.11.2003 and relevant papers are available and kept in case records. Generally, this court return the Marked documents through the petition under order 13 rule 9 of CPC and Unmarked documents normally a memo filed by the concern counsel and



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*order to return the documents are normal procedure followed
by this Court."*

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The xerox copy of the list of documents filed by the plaintiff and the receipt of the documents by the learned counsel for the plaintiff has been produced and a perusal of the same would reveal that on 10.07.2023, 25 documents had been received. Apart from that, it is only the original registered settlement deed dated 17.09.2003 that has been received back by the plaintiff and there is nothing to show that the original Will dated 23.11.2003 which was deposited by the Sub Registrar's Office had been given to the plaintiff. The document viz; the Will dated 23.11.2003 could not have been returned to the plaintiff as it is not a document that has been filed by the plaintiff along with the suit. Therefore, from the very report, it is clear that the impugned order suffers from a non-application of mind in as much as I.A.No.8 of 2024 has been dismissed as infructuous only on the ground that the unmarked plaint documents 1 to 5 and the Will dated 23.11.2003 had been returned to the plaintiff's counsel on 10.07.2023. Therefore, the civil revision petition is allowed. The order dated 04.01.2025 is set aside. No costs. The learned II Additional District Judge, Salem shall call for the original Will. The report dated 21.04.2025 sent by the II Additional District Judge, Salem along with the list of



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documents shall form part of the order. Consequently, connected miscellaneous petition is closed.

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25.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To,
The II Additional District Judge, Salem



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P.T.ASHA, J.,

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