



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.[PD](MD)Nos.1805 & 1806 of 2025

and

C.M.P.(MD)No.9900 of 2025

Kandasamy

...Petitioner
in both petitions

Vs.

1.Kaniammal

Ammaponnu (Died)

Esakkimuthu (Died)

2.Esakkiammal

3.Selvi

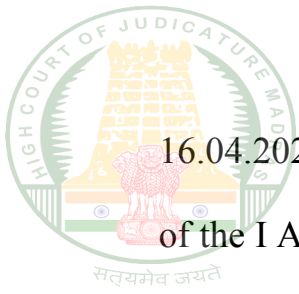
4.Kavitha

5.Madasamy

6.Abinaya

...Respondents
in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated



16.04.2025 made in I.A.Nos.10 and 11 of 2025 in O.S.No.63 of 2019 on the file of the I Additional District Court, Thoothukudi.

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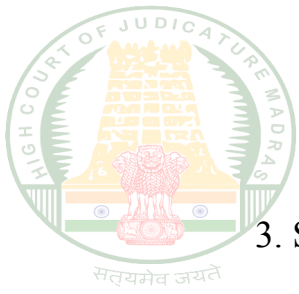
For Petitioner

: Mr.M.P.Senthil
in both petitions

COMMON ORDER

These Civil Revision Petitions have been filed seeking an order to set aside the fair and decreetal order dated 16.04.2025 made in I.A.Nos.10 and 11 of 2025 in O.S.No.63 of 2019 on the file of the I Additional District Court, Thoothukudi.

2. The first respondent herein filed the suit in O.S.No.63 of 2019 before the learned Principal District Judge, Thoothukudi, against the petitioner, one deceased Ammaponnu, and another deceased Esakkimuthu, seeking the relief of partition and separate possession. After the demise of the said Esakkimuthu, his legal heirs were impleaded as parties to the suit. Pending suit, the petitioner herein filed two interlocutory applications in I.A.Nos.10 and 11 of 2025, before the learned I Additional District Judge, Thoothukudi. I.A.No.10 of 2025 was filed under Order VIII Rule 9 read with Section 151 CPC seeking to receive an additional written statement. I.A.No.11 of 2025 was filed under Order VIII Rule 1(3a) read with Section 151 CPC seeking to receive certain documents. However, both applications were dismissed by the trial Court on 16.04.2025. Aggrieved by the same, the petitioner has preferred the present Civil Revision Petitions.



3. Since the issue involved in both petitions is common, they are disposed of by way of a common order.

4. The learned counsel for the petitioner submitted that the petitioner is the fourth defendant in O.S.No.63 of 2019. Initially, the petitioner and his deceased brother, the second defendant Esakkimuthu, were represented by the same counsel and filed a joint written statement on 25.10.2019. Subsequently, upon the demise of Esakkimuthu on 01.09.2024, the petitioner engaged a separate counsel to conduct the case. During the course of preparing the case, he came to know that his father had executed a Will dated 29.10.2009 in his favour in respect of Item Nos.1, 5, and 7 of the suit schedule properties, which was not mentioned in the earlier written statement.

5. Immediately thereafter, the petitioner filed two interlocutory applications in I.A.Nos.10 and 11 of 2025 to file an additional written statement and to receive the said Will as a document. However, the trial Court dismissed the applications, mainly on the ground of delay and the fact that the petitioner had already been examined as D.W.2 and completed his cross-examination.

6. The learned counsel further contended that the petitioner had instructed his deceased brother to produce the Will through counsel, but the same was not



done, nor was the Will handed over to the petitioner. As a result, it was inadvertently omitted in the original written statement. Therefore, in order to bring on record a genuine and material document, the petitioner sought permission to file an additional written statement and mark the Will, which the trial Court erroneously rejected.

7. The facts in the case are not in dispute. The suit in O.S.No.63 of 2019 is pending on the file of the I Additional District Court, Thoothukudi. The relationship between the parties and the filing of the earlier written statement are admitted. It is also not in dispute that the petitioner has already been examined as D.W.2 and his cross-examination is complete. Only thereafter, the petitioner filed the present applications to file an additional written statement and to produce the Will dated 29.10.2009. The trial Court rightly observed that the said Will was admittedly in existence even prior to the filing of the suit. Despite this, the petitioner failed to take any steps to produce the same or plead it in the earlier stages, including during his chief-examination.

8. Permitting the filing of an additional written statement at this belated stage, after the completion of evidence, would amount to allowing the petitioner to improve his stand and alter the nature of the defence, which is impermissible in law. The reasons assigned by the trial Court for dismissal of the applications are well-founded and do not warrant interference under Article 227 of the Constitution of India.



9. In view of the above discussion, this Court finds no merit in these Civil Revision Petitions. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.06.2025

Internet:Yes/No

Index:Yes/No

TSG

To

1.The I Additional District Judge, Thoothukudi.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(PD).(MD)Nos.1805 & 1806 of 2



M.DHANDAPANI, J.

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