



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2016

CORAM:

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**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(MD)No.229 of 2016 (PD)

and

C.M.P.(MD)No.982 of 2016

Jeyakodi

.. Petitioner/Respondent/Respondent

Vs.

1.Samatharani

2.Kalidass

3.Balamurugan

4.Anandaraja

5.Devi

.. Respondents /Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order, dated 25.06.2015 passed in I.A.No.101 of 2015 in O.S.No.32 of 2011 by the Sub Court, Aruppukottai, virudhunagar District and consequently allow the C.R.P.

For Petitioner : Mr.V.R.Venkatesan

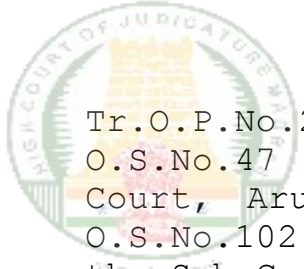
For Respondents : Mr.S.Natarajan

### **ORDER**

The petitioner is the defendant, whereas, the respondents are the plaintiffs in O.S.No.32 of 2011, on the file of the Sub Court, Aruppukottai.

2.Two suits in O.S.No.139 of 2010, filed by the petitioner, on the file of the Sub Court, Aruppukottai for a declaration declaring that the settlement deed dated 26.09.1942 as null and void and O.S.No.32 of 2011, filed by the respondents, on the file of the Sub Court, Aruppukottai, for declaration of title and for possession of the suit properties, were pending. O.S.No.47 of 2011 filed by respondents for a declaration declaring that the plaintiffs and defendants are partners of Rathinam Super Store and for an injunction restraining the defendants from auditing the accounts of the said store and O.S.No.363 of 2010 filed by one Senthamilselvan, for a permanent injunction, restraining the defendants from enjoying the suit properties by the plaintiffs, were pending before the District Munsif Court, Aruppukottai.

3.The petitioner filed Tr.O.P.No.25 of 2011, on the file of the District Court, Virudhunagar District at Srivilliputhur to transfer the suits in O.S.No.47 of 2011 and O.S.No.363 of 2010 from the file of the District Munsif Court, Aruppukottai, to the file of the Sub Court, Aruppukottai, for a joint trial. The



Tr.O.P.No.25 of 2011 was ordered and accordingly, suits in O.S.No.47 of 2011 and O.S.No.363 of 2010 were transferred to Sub Court, Aruppukottai, and re-numbered as O.S.No.101 of 2012 and O.S.No.102 of 2012 and thus all the suits are now pending before the Sub Court, Aruppukottai.

4.While pending, in O.S.No.32 of 2011, evidence of P.W.1 was recorded. The respondents filed an Interlocutory Application in I.A.No.101 of 2015 in O.S.No.32 of 2011, on the file of the Sub Court, Aruppukottai, to Eschew the evidence of P.W.1, recorded in O.S.No.32 of 2011, as a joint trial has been ordered in Tr.O.P.No.25 of 2011. The learned Sub Judge, Aruppukottai, Virudhunagar District, considering the fact that the above said two suits were transferred and a joint trial of four suits has been ordered, allowed the application in I.A.No.101 of 2015, filed by the respondents to Eschew the evidence of P.W.1 in O.S.No.32 of 2011. Against the said order, the petitioner has preferred the present Civil Revision Petition.

5.The learned counsel for the petitioner submitted that only joint trial has been ordered and no order was passed for recording common evidence.

6.The learned counsel for the caveator submitted that the petitioner filed a memo dated 01.04.2013 in O.S.No.139 of 2010, to conduct joint trial, as per the order of the learned District Judge and already trial has been commenced and P.W.1 was examined in chief and for cross-examination, P.W.1 was not present and reported that he is not available and P.W.2 being examined in chief and posted for cross-examination of P.W.2 on 05.02.2016. He further submitted that already, this Court by the order, dated 27.03.2015 in C.R.P (PD)No.614 of 2015, directed the learned Subordinate Judge, Aruppukottai, to dispose of the suit in O.S.No.139 of 2010 before 31.12.2015.

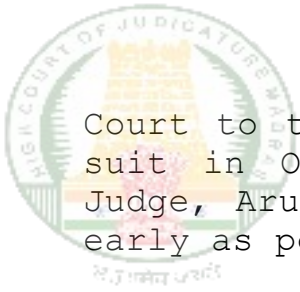
7.Heard Mr.V.R.Venkatesan, learned counsel appearing for the petitioner and Mr.S.Natarajan, learned counsel appearing for the caveator.

8. I have heard the arguments of the counsel for the petitioner and the respondents and carefully perused the entire materials on record.

9.The contention of the learned counsel appearing for the petitioner that only joint trial was ordered and no order was passed to record common evidence, is untenable. Only on the petition filed by the petitioner, all the suits are directed to be tried jointly. In the circumstances, the learned Sub Judge has rightly passed an order, allowing I.A., to Eschew the evidence of P.W.1 giving valid reason for the same. In the circumstances, there is no reason warranting interference with the order of the lower Court, by this Court.

10.Accordingly, the Civil Revision Petition is dismissed. No ~~connected~~ ~~miscellaneous~~ petition is also dismissed.

11.Considering the fact that there is a direction of this



Court to the learned Sub Judge, Aruppukottai, to dispose of the suit in O.S.No.139 of 2010 before 31.12.2015, the learned Sub Judge, Aruppukottai, is directed to dispose all the four suits as early as possible, in any event, on or before 30.06.2016.

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sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge, Aruppukottai, Virudhunagar District .

+one cc to Mr.S.Natarajan, Advocate in SR.NO.6900

+one cc to Mr.V.R.venkatesan, Advocate in SR.NO.6789

CSL/SKS-RR/17.02.2016/2P/4C

C.R.P (MD) No.229 of 2016 (PD)  
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