

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2992 of 2011
& M.P.No.1 of 2011

1. K.Ponnusamy
2. Angammal
3. Dharmalingam

Kamallammal (died)

4. K.Kandasamy
5. Ramasamy
6. Murugan
7. Sivayanam

.. Petitioners

Vs.

1. Rangasamy
2. Patcha Gounder
3. Perumal Gounder
4. Cheperumal

(RR2 to 4, suo-motu impleaded
vide order of court dated
05.12.2014 made in
CRP(PD)No.2992 of 2011.)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.12.2010 made in I.A.No.699 of 2004 in O.S.No.137 of 2004 on the file of the District Munsif Court, Sankari.

For Petitioners : M/s.Zeenath Begam
for Mr.T.Muruga Manickam
For R2 & R3 : Mr.P.Valliappan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 14.12.2010 made in I.A.No.699 of 2004 in O.S.No.137 of 2004 on the file of the District Munsif Court, Sankari.

2. The petitioners are defendants 3 to 5 and 7 to 10, first respondent is the plaintiff and the respondents 2 to 4 are defendants 11 to 13 in O.S.No.137 of 2004. The first respondent filed suit for partition against the petitioners and permanent injunction. According to the first respondent, the suit properties belong to their common ancestor by name Gurusamy Mudaliar and there was no partition of the properties and therefore, he filed suit for partition claiming 1/6th undivided share in the suit properties. The defendants 11 to 18 are subsequent purchasers of the suit properties. The defendants 6 to 10/deceased Kamalammal and petitioners 4 to 7 filed written statement and are contesting the suit.

3. According to the petitioners 4 to 7, there was a family partition on 18.08.1969 and from that date onwards, the parties are in possession and enjoyment of their properties allotted to them. The petitioners filed I.A.No.699 of 2004 under Order XVI Rule 2 and section 151 of CPC for permission to the petitioners to summon the fourth respondent/13th defendant by name, Cheperumal and Mr.K.Arthanari, Advocate, as witnesses on their side in the above suit.

4. According to the petitioners, the properties allotted to them in the partition was leased out to fourth respondent's father for doing agricultural activities and towards interest due for Rs.20,000/- advanced by him. They paid Rs.20,000/- after expiry of lease period and an endorsement was made on the reverse of the lease deed (cGtil rPl;L) dated 01.10.1989 by Advocate Mr.K.Arthanari on 02.09.1992. In the circumstances, they are necessary witnesses to prove their case.

5. The respondents 2 and 3 filed counter affidavit opposing the said application submitted that the petitioners have not stated the lease deed in their favour in the affidavit, therefore, the

petitioners cannot be permitted to examine the witnesses without there being any pleadings. They have not produced original lease deed (cGtil rPl;L) dated 01.10.1989 and petitioners are colluding with defendants 2 and 13/respondents 5 and 4 fabricated the lease deed dated 01.10.1989.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that a co-defendant cannot be forced to give evidence on behalf of the another co-defendant. Especially, the person sought to be summoned remained exparte. As far as the Advocate Mr.K.Arthanari is concerned, he has filed vakalat on behalf of the second defendant and therefore, he cannot be examined as witness, as held by the Judgment of this Court reported in **2009 (6) MLJ 792.**

7. Against the order of dismissal dated 14.12.2010 made in I.A.No.699 of 2004, the present civil revision petition has been filed by the petitioners.

8. Heard the learned counsel for the petitioners and respondents and perused the materials on record.

9. From the materials on record, it is seen that fourth respondent/13th defendant remained exparte and he is a co-defendant. In view of the same, the stand of the fourth respondent/13th defendant, whether he is a supporting or opposing the petitioners is not known. In view of the same, the contention of the learned counsel for the petitioners that fourth respondent/13th defendant is not an opposite party to the petitioners is without any merits. Similarly, it is not denied that Advocate Mr.K.Arthanari, Advcoate, has filed vakalat for the second defendant. The second defendant did not give any instruction to file written statement and therefore, no written statement was filed and he is also set exparte. In view of the same, it cannot be ascertained that whether the second defendant has given any instruction to his Advocate Mr.K.Arthanari. The petitioners have filed this application seeking examination of the Advocate with regard to the instructions given by the second defendant, whether the second defendant has given any instruction to his Advocate.

10. In the Judgment reported in **2009 (6) MLJ 792**, this Court has held that the instruction given by the Advocate by a party cannot be divulged or disclosed the same. The counsel is

protected that not to disclose the professional communication received from his client in strict confidence. Further, the petitioners have not pleaded about the lease agreement in the affidavit and discharge by them. They have not produced the original lease deed. In view of the same, the application filed by the petitioners is not maintainable and is devoid of merits.

11. The learned Judge considering the above facts properly dismissed the application by giving cogent and valid reasons. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 14.12.2010.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

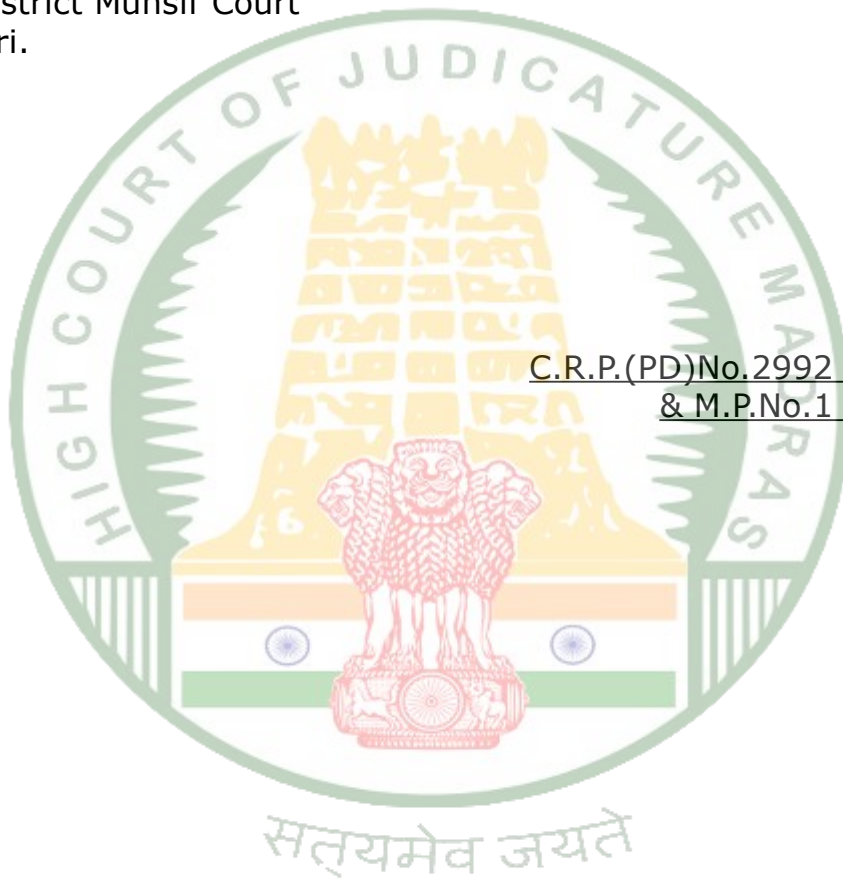
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V.M.VELUMANI, J.

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To

The District Munsif Court
Sankari.



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