

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2595 of 2013
& M.P.No.1 of 2013

1.S.Shanmugasundaram
2.S.Chandrasekar
3.Arul

.. Petitioners

Vs.

1.Minor Karthikeyan
2.Minor Premkumar
3.Minor Santhosh Kumar

.. Respondents

(Minors 1 to 3 represented by the
next friend and mother Pushpa,
Kuppandi Street,
Dharmapuri Town and District)

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
02.04.2013 made in I.A.No.421 of 2012 in O.S.No.127 of 2008 on
the file of the Sub Court, Dharmapuri.

For Petitioners : Mr.R.Karthikeyan

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 02.04.2013 made in I.A.No.421 of 2012 in O.S.No.127 of 2008 on the file of the Sub Court, Dharmapuri.

2. The petitioners are the defendants 1 to 3 and respondents are the plaintiffs in O.S.No.127 of 2008 on the file of the Sub Court, Dharmapuri. The respondents filed the said suit against the petitioners and fourth respondent/fourth defendant for partition. The second petitioner filed written statement in the year 2009 and is contesting the suit. Trial commenced. The respondents and petitioners and fourth defendant have let in evidence and closed their side. At that stage, the petitioners filed I.A.No.421 of 2012 for recalling the D.W.1 for marking of the documents, to send summons to the Zonal Deputy Tahsildar, Dharmapuri, to examine as additional witness, to produce and mark the order of cancelling the patta issued to the fourth defendant and mark the documents filed along with the petition.

3. According to the petitioners, the property belonged to one Krishnan, grandfather of the respondents and father of the fourth

defendant. Even before the fourth defendant was born, the father of the petitioners 1 and 2 purchased the suit property by the deed of sale dated 24.02.1969 from Krishnan. In the sale deed, name of the fourth defendant was not mentioned. On the other hand, it was mentioned in the agreement of sale dated 11.07.1975 bearing Document No.1815/1975 executed by Krishnan and fourth defendant was shown as minor. At the time of purchasing the property by the father of the petitioners 1 and 2 from Krishnan, the fourth defendant was not born. The patta issued in favour of the fourth defendant for the purpose of this case was cancelled by the Zonal Deputy Tahsildar, Dharmapuri and to mark the said document, it is necessary to summon the Zonal Deputy Tahsildar, Dharmapuri, to examine himself as additional witness.

4. The respondents filed counter affidavit and opposed the said application. According to the respondents, the petitioners have not mentioned the documents now sought to be marked in the written statement. By not mentioning the name of the fourth defendant it will not amount that the fourth defendant was not born at the time of execution of the sale deed. The petitioners must prove that when fourth defendant was born. The fourth defendant

has mentioned about the patta issued in his favour and the petitioners did not dispute the same. In view of the same, there is no necessity to examine the Zonal Deputy Tahsildar, Dharmapuri.

5. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that the petitioners have not mentioned in the written statement about the documents, now sought to be marked and without pleadings, the petitioners are not entitled to let in evidence.

6. Against the said order of dismissal dated 02.04.2013 made in I.A.No.421 of 2012, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. Though notice was served on the respondents and their names were printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

9. The learned counsel for the petitioners contented that it is for the respondents to prove that the fourth defendant was born when Krishnan executed the sale deed dated 24.02.1969 in favour of Sudarsanam Chettiar, the father of the petitioners 1 and 2. The fourth defendant produced the patta only when he gave evidence, but did not state that the said patta was cancelled. In view of the same, it is necessary to examine the Zonal Deputy Tahsildar, Dharmapuri. The learned counsel for the petitioner relied on the order dated 30.08.2017 made in C.R.P.Nos.3309 to 3312 of 2011 and M.P.No.1 of 2011 in support of his contention. The contentions of the learned counsel for the petitioners are without merits. The application filed by the petitioners for recalling D.W.1 to mark agreement of sale dated 11.07.1975 and examine the Zonal Deputy Tahsildar, Dharmapuri as additional witness with regard to cancellation of patta was rejected on the ground that the petitioners did not mention the same in the written statement. It is well settled that no evidence can be let in without pleadings.

10. The judgment relied on by the learned counsel for the petitioners is not relevant to the facts of the present case. In view of the well settled judicial pronouncement that no evidence can be

let in in the absence of pleadings, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 02.04.2013.

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

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Index : Yes/No
dm

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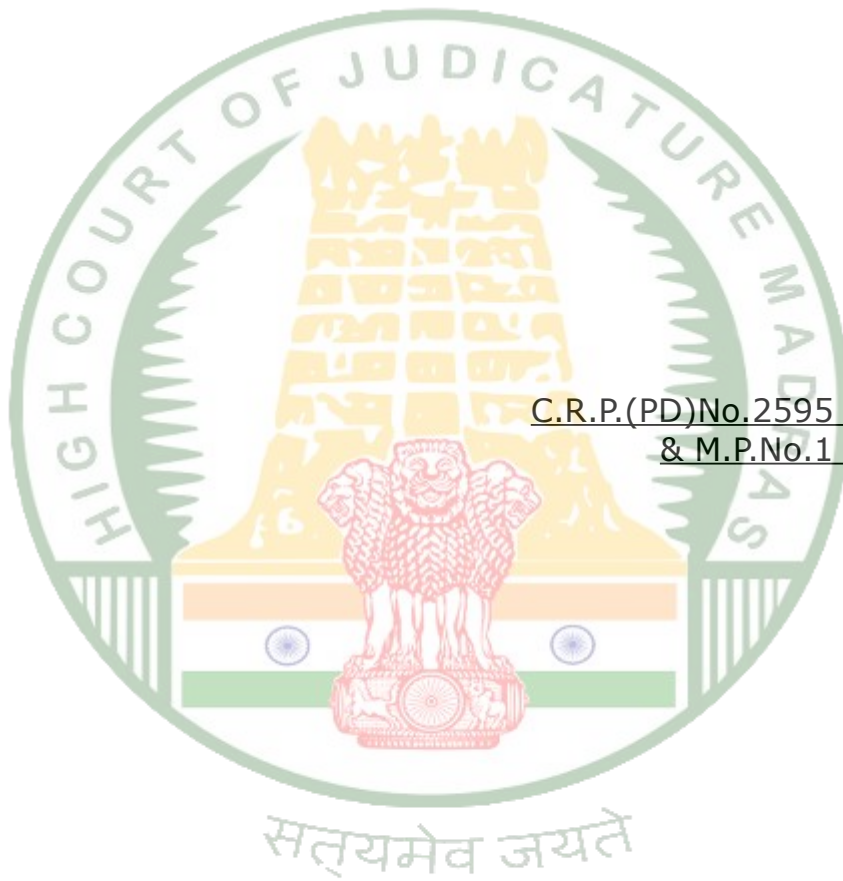
The Sub Judge, Dharmapuri.



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V.M.VELUMANI, J.

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