

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

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

C.R.P.(PD)No.4098 of 2012  
and M.P.No.1 of 2012

Radhamani  
Petitioner

Vs.

1.N.Rangasamy  
2.Athayee  
3.R.Mohanasundaram  
4.Velayee  
5.A.Kandasamy  
6.A.Shanmugam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.08.2012 made in I.A.No.361 of 2012 in O.S.No.99 of 2009 on the file of the District Munsif Court, Rasipuram.

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|--------------------|--------------------|
| For Petitioner     | : Mr.R.Nalliyappan |
| For RR1 to 3, 5, 6 | : Mr.N.Manokaran   |
| For R4             | : No appearance    |

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 31.08.2012 made in I.A.No.361 of 2012 in O.S.No.99 of 2009 on the file of the District Munsif Court, Rasipuram.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.99 of 2009. The petitioner filed suit for declaration that 46 cents of land in S.No.63/3A1 belongs absolutely to her and for injunction. The respondents filed written statement and are contesting the suit. At the time of trial, the petitioner sought to mark one Swadeena Muchalika as Ex.A3. The learned Judge refused marking of the said document on the ground that it is not duly stamped. The petitioner filed C.R.P.(PD)No.3305 of 2010 in this Court. This Court by order dated 02.11.2011 allowed the said C.R.P. holding that if the petitioner pays stamp duty penalty, the document could be marked subject to objection by the respondents. Based on the order of this Court, petitioner filed I.A.No.361 of 2012 for permission to pay the stamp duty penalty to the suit property measuring 46 cents.

3. The respondents filed objection stating that they agreed to sell only 3 acre 26 cents and in the sale deed by mistake, it has been mentioned only 3 acres 3 cents. The petitioner is entitled to further extent of 23 cents and not 46 cents and the petitioner has to pay stamp duty penalty only for 23 cents.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and order of this Court in C.R.P.No.3305 of 2010, directed the petitioner to pay the stamp duty penalty for entire 3 acres 49 cents and rejected the application filed by the petitioner for payment of stamp duty penalty for 46 cents.

5. Against the order dated 31.08.2012 made in I.A.No.361 of 2012, the present civil revision petition is filed by the petitioner/plaintiff.

6. Heard both sides and perused the materials on record.

7. I have gone through the Swadeena Muchalika filed in the typed set of papers. A careful reading of the said Muchalika shows that the respondents have admitted that they have agreed to sell 3

acre 49 cents, received Rs.60,000/- as sale consideration and executed the sale deed dated 11.03.1992 registered as document No.467/1992. They have also stated that by mistakenly, the extent has been mentioned as 3 acre 3 cents, whereas they sold 3 acre 49 cents. As a evidence of having sold 46 cents, also the respondents have executed Swadeena Muchalika in the presence of the Panchayathars, the petitioner is relying on the said Muchalika to substantiate her case that she has purchased 46 cents also. The learned Judge has not properly appreciated Swadeena Muchalika and held that the said Muchalika relates to entire 3 acre 49 cents.

8. On the other hand, the respondents are categorically stated that they have sold 46 cents and they have also executed Swadeena Muchalika.

9. In the circumstances, the petitioner has to pay stamp duty penalty only for 46 cents and not for 3 acre 49 cents. The petitioner is in possession of the sale deed dated 11.03.1992, wherein the extent is measuring 3 acre 3 cents and she has already paid the stamp duty and registration charges for 3 acre 3 cents. The petitioner cannot be called upon to pay stamp duty penalty

once again for 3 acre 3 cents. The petitioner is liable to pay stamp duty penalty only for 46 cents, the extent left out in the sale deed dated 11.03.1992.

10. For the above reason, order of the learned Judge dated 31.08.2012 is set aside, I.A.No.361 of 2012 is allowed and the petitioner is permitted to pay stamp duty penalty only for 46 cents. On such payment, the learned Judge is directed to mark the said document as an exhibit subject to objection, if any raised by the respondents.

11. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2017

Index:Yes/No

Speaking/Non-speaking order:Yes/No

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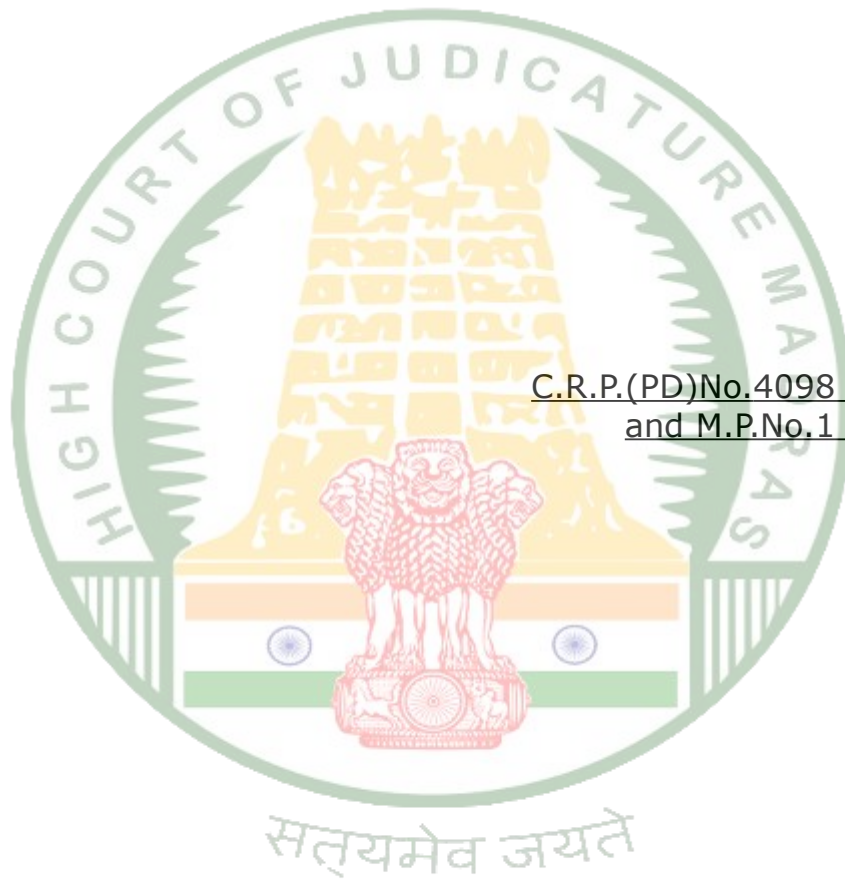
To

The District Munsif Court, Rasipuram.



**V.M.VELUMANI, J.**

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