

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.4448 of 2012
and M.P.No.1 of 2012**

Mannaiya Thevar

...

Petitioner

Vs

1.Ravichandran

2.Smt.Vijayalakshmi

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the learned District Munsif cum Judicial Magistrate, Needamangalam in I.A.No.130 of 2011 in O.S.No.99 of 2011 dated 12.09.2012 and to set aside the same.

For Petitioner : Ms.M.Meenatchi

For Respondents : No appearance for
R1 & R2

ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed by the learned District Munsif cum Judicial Magistrate, Needamangalam in I.A.No.130 of 2011 in O.S.No.99 of 2011 dated 12.09.2012 and to set aside the same.

2. The petitioner is the defendant and respondents are plaintiffs in O.S.No.99 of 2011 on the file of District Munsif cum Judicial Magistrate, Needamangalam. The respondents filed suit for declaration that sale deeds both dated 21.06.2010 bearing document Nos.3740 & 3741 of 2010 as null and void and for consequential injunction. In the said suit, the petitioner filed written statement on 21.01.2011. The petitioner filed I.A.No.337 of 2011 for rejection of plaint under Order VII Rule 11 and Sec.151 CPC.

3. According to the petitioner, the respondents have filed earlier suit O.S.No.106 of 2010 on the file of District Munsif Court, Thiruvarur for injunction. In the said suit itself, they have mentioned about two sale deeds compulsorily registered on 21.06.2010 in favour of the petitioner as Doc.Nos.3740/2010 & 3741/2010, now sought to be declared as null and void. In view of the same, the respondents ought to have claimed the relief of declaration now sought for in the said suit itself. The present suit is hit by principles of Order II Rule 2 CPC. The respondents have not properly valued the suit and has not paid the correct court fee and prayed for rejection of the plaint.

4. The first respondent filed counter affidavit and submitted that the cause of action for subsequent suit was not available to them when they filed earlier suit. The petitioner forged the signature of the respondent and got the sale deed executed in his favour. The respondent came to know about the forgery committed by the petitioner only on 31.05.2011. The petitioner has forged the signature of the respondent in the sale deed and therefore the suit valued by the respondent is proper and respondents have paid correct court fee and prayed for dismissal of the application for rejection of plaint.

5. The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and materials on record, dismissed the application.

6. Against the said order of dismissal dated 12.09.2012 made in I.A.No.130 of 2011 in O.S.No.99 of 2011, the present Civil Revision Petition has been filed.

7. The learned counsel for the petitioner reiterated the averments made in the application and grounds raised in the present

revision and submitted that the respondents ought to have filed a comprehensive suit at the time of filing the earlier suit itself and hence the subsequent suit is barred under Order II Rule 2 (3) CPC. In support of her contention, the learned counsel relied on the following judgments -

- 1. 1979 (92) LW 454 [Mrs.J.Kasthuri v. Seth Ghanshamdas Vonsimal Deva Bank]**
- 2. 1986 (99) LW 624 [Arumugham Pillai v. A.P.Aruladum Perumal Pillai (died) and another]**
- 3. 2005 (4) CTC 197 [Chellakannu v. Kolanji]**
- 4. 2011 (2) CTC 177 [Joseph Arokiados v. P.Pradeep]**
- 5. 2012 (4) LW 747 [Sivagurunathan & anr. v. S.Shanmugaraja]**
- 6. 2014 (4) LW 466 [T.M.Muthukrishan v. K.Susila & others]**

8. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice has been served and the names of the respondents 1 and 2 have been printed in the cause list, there is no representation for them either in person or through counsel.

9. From the plaint filed in both the suits, it is seen that the respondents have not mentioned in the earlier suit that the petitioner has committed forgery and got the sale deed registered in his favour. On the other hand, they have mentioned that the Deputy Registrar erred in passing order directing the Sub Registrar to register the sale deed in favour of the petitioner while the writ petition was pending in this court. In the subsequent suit only, the respondents have prayed for decree of declaration that two sale deeds both dated 21.06.2010, registered as Doc.Nos.3740/2010 & 3741/2010 as null and void and for consequential injunction. The cause of action for both the suits are entirely different and present suit is not hit by principles of Order II Rule 2 CPC. Further, the respondents have not claimed that they are party to the sale deeds as their signatures are forged in the sale deeds. In view of the same, the respondents have properly valued the suit and paid the correct court fee. In the said circumstances, the judgments relied on by the counsel for the petitioner do not advance the case of the petitioner in view of the fact that cause of action for both the suits are different and respondents have denied that they have not executed the sale deeds and has come out with the suit that their signatures are forged by the petitioner. The learned Judge has considered all the facts and passed the order by giving cogent and

valid reasons. I do not find any irregularity or illegality in the order passed by the Trial Judge warranting interference by this Court.

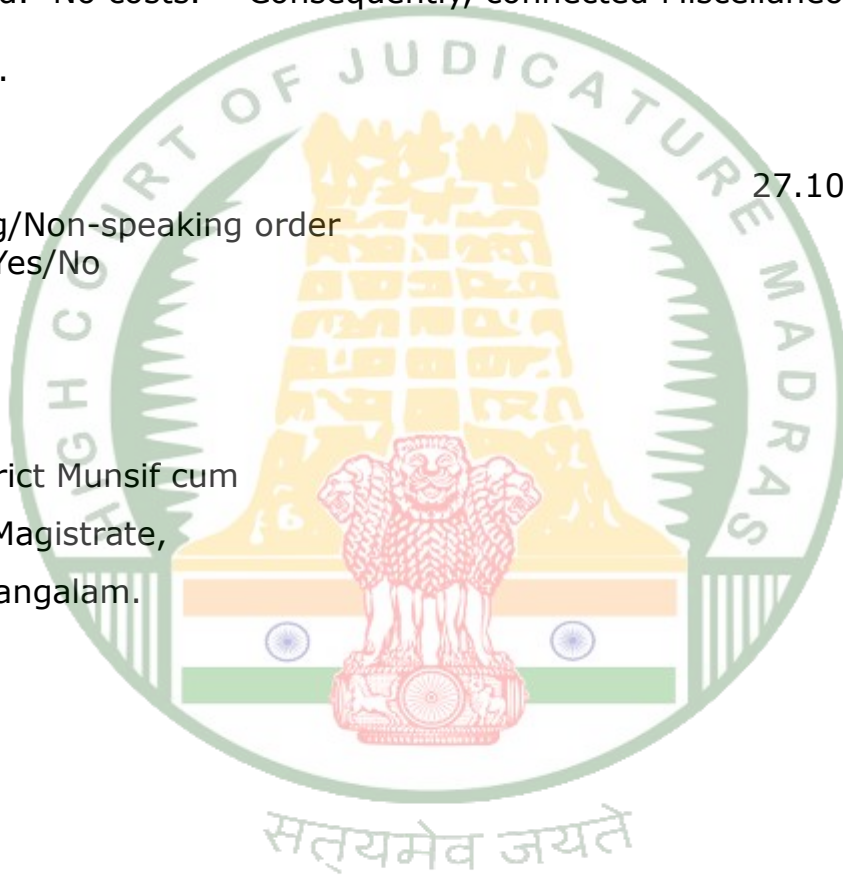
10. In view of the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.10.2017

Speaking/Non-speaking order
Index : Yes/No
rgr

To

The District Munsif cum
Judicial Magistrate,
Needamangalam.



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V.M.VELUMANI, J.

rgr



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