



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017  
(Reserved on 18.04.2017)

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CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CRP(PD) (MD)Nos.834 and 835 of 2017  
and  
CMP(MD)No.3703 of 2017

Pitchaiammal ... Petitioner in both CRPs  
vs.  
1)V.Maharajan  
2)V.Gajendran ... Respondents in both CRPs

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.12.2016 passed in I.A.Nos.293 and 294 of 2016 in O.S.No.285 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr.A.Saravanan  
For Respondents : Mr.G.Prabhu Rajadurai

**COMMON ORDER**

These revision petitions are directed against the dismissal of the interlocutory applications filed by the revision petitioner to send for the original document and to compare the document with that of the disputed document.

2.The brief facts of the case leading to these revisions is as under:-

Suit for partition in respect of the schedule mentioned property was filed by the revision petitioner in O.S.No.285/13 on the ground that the suit property was purchased by her father V.Santhanam through 3 sale deeds between 1975 and 1979 out of his own earning and thereafter, on 28.11.2012, he settled the property in favour of the revision petitioner who is none other than the daughter of Santhanam. While so, the respondents who are brother's sons of Santhanam were trying to disturb the peaceful possession and hence suit for injunction.

3.There are two other suits in connection with the same property one filed by the father of the revision petitioner namely, V.Santhanam against the respondents herein, numbered as O.S.No.316/13 claiming that the partition deed alleged to have been effected between him and his brother Vellaiya Gounder to be declared as null and void. The other suit in O.S.No.5 of 2014 has



been filed by the respondents herein against the present revision petitioner alleging that the settlement deed executed by V.Santhanam in favour of the revision petitioner on 28.11.2012 as null and void.

4. While the revision petitioner and her father claim that there was partition between the family members in respect of the ancestral property as early as in 1960 (Tamil Vikari Aandu, 15<sup>th</sup> day of Tamil Month Karthigai) and the same was acted upon, the suit properties were purchased by Santhanam out of his earning between 1975 to 1977.

5. Whereas, the case of the respondents is that the suit properties were purchased out of joint family exertion. There was a partition duly registered between the family members only in the year 1987. Earlier, when Santhanam who is the plaintiff in O.S.No.316/13 sought for the very same relief of calling for the partition deed of the year 1987 and mortgage deed of the year 1968 alleged to have been executed by Vellaiya Gounder for comparing the thumb impression of the Vellaiya Gounder found in those documents to that of the thumb impression found in the disputed document of partition note alleged to have been executed by Vellaiya Gounder during the Tamil Vikari Aandu, 15<sup>th</sup> day of Tamil Month Karthigai, the Trial Court rejected the same on the ground that the applications have been taken out belatedly. On revision, the High Court confirmed the dismissal of the applications holding that when these documents are relevant to other two suits, applications filed in one suit alone indicates the biased intention of the revision petitioner (Santhanam) and hence dismissed the interlocutory applications.

6. Now, pointing out the observation made by the High Court in the earlier revision petition, the revision petitioner herein has taken out the interlocutory applications in the other two suits also. Now the Trial Court has dismissed the same holding that when the High Court has already upheld the dismissal of the similar applications filed by the plaintiff in O.S.No.316/13, the subsequent applications for very same relief by the daughter of V.Santhanam in the other two suits are not maintainable.

7. Under the abovesaid circumstances, the present revision petitions are filed on the ground that the Court below has not only declined the genuine claim of the petitioner to send for the document to compare the thumb impression found in the disputed document and the admitted document which is just and essential to establish the factum of earlier partition and the same been acted upon by the concerned parties. The Trial Court has exceeded its jurisdiction by observing that Ex.A2 marked in O.S.No.316/13 which is a partition note between the parties indicating that there was no joint family is not admissible.



8.Perusal of the impugned common order indicates that the Trial Court has held that the three suits namely, O.S.Nos.316/13, 5/14 and 285/13 were not tried together and all the suits are advanced at the stage of trial. At this juncture, such applications are not maintainable.

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9.Perusal of the impugned common order and the earlier order passed by this Court indicates that while the case of the revision petitioner is that there was division among the joint family property and the same has been recorded by way of a note during 1960 (Tamil Vikari Aandu, 15<sup>th</sup> day of Tamil Month Karthigai) and thereafter her father from his own earning had purchased the suit property, the contra case of the respondents is that the suit properties were purchased from out of the joint family exertion in the name of the revision petitioner's father. For the said purpose, the plaintiff in O.S.No.316/13 has relied upon the partition note and the same has been admitted in evidence. The said document is denied and disputed by the respondents. According to them, the partition was effected only in the year 1987 by way of a registered document. Since there is other documents duly registered in the year 1968 with recitals indicating division of property among the family members, the exercise of comparing the thumb impression sought by the revision petitioner is needless.

10.The factum of oral partition among the parties can be proved through those documents relied and admitted by the respondents. Furthermore, this Court finds that the Trial Court has not held Ex.A2 marked in O.S.No.316/13 as inadmissible document. It has only expressed its opinion about the purpose of that document and rightly held that being an unregistered document, it can be looked into for collateral purposes. When there is a registered sale deed in favour of the plaintiff in O.S.No.316/13 who has settled the property in favour of the plaintiff in O.S.No.285/13, the burden of proving the contra fact is on the respondents herein. Even on that score, the comparison of the finger print is not relevant to prove. Therefore, this Court finds no error or irregularity in the common order passed by the Trial Court.

Hence, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(writs)

/True Copy/



To

The District Munsif cum Judicial Magistrate Court,  
Vadipatti.

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+1cc to Mr. A. Saravanan, Advocate, SR.No.53801

+1cc to Mr. G. Prabhu Rajadurai, SR.No.54026

Pre-Delivery order made in  
CRP (PD) (MD) Nos.834 and 835 of 2017  
25.04.2017

SDS/JC/05.05.2017/4P/4C