

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1127 of 2015
& M.P.No.1 of 2015

1.Packiammal
2.Ramu
3.Kandasamy
4.Sivakumar

.. Petitioners

Vs.

1.Thaiyanayaki ammal
2.Velmurugan
3.J.Prabhakar Jeyaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 26.01.2014 made in I.A.No.1019 of 2013 in O.S.No.132 of 2008 on the file of the Principal District Munsif, Ulundurpet.

For Petitioners : Mr.C.Munusamy

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 26.01.2014 made in I.A.No.1019 of 2013 in O.S.No.132 of 2008 on the file of the Principal District Munsif, Ulundurpet.

2.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.132 of 2008 on the file of the Principal District Munsif, Ulundurpet. The petitioners filed the said suit against the respondents for declaration and permanent injunction or in alternative, possession and damages. The respondents filed written statement on 13.10.2009. The petitioners filed I.A.No.1019 of 2013 under Order 75 (1) of Civil Rules of Practice to send the thumb impression to the expert to get the opinion through Advocate Commissioner in respect of the sale deeds dated 12.05.1962 and 24.05.1982. According to the petitioners, one Kasinathan Chettiar @ Rajmuthu Chetti, the husband of the first petitioner and father of the other petitioners has purchased the suit property by the sale deed dated 12.05.1962. He did not sell the property to anybody. He went to Bombay for his work. At that time, he leased out the suit property to one Narayana Chettiyar, who forged the signature and thumb impression of the husband of the first petitioner and created the forged sale deed dated 24.05.1982. Therefore, it is necessary to send the said thumb impression to the expert to get the opinion through Advocate Commissioner.

3.The third respondent filed counter affidavit and contended that in the written statement filed on 13.10.2009 itself, the third

respondent has mentioned the sale deeds dated 12.05.1962 and 24.05.1982 and another sale deed dated 28.02.2008 executed by respondents 1 and 2 in his favour. After considerable delay, the petitioners have come out with the present application only to drag on the proceedings. The third respondent is willing to produce all the three documents before the Court and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the application on the ground of delay and also held that the petitioners have prayed for sending the thumb impression from the Sub Registrar Office, Thirunavalur, but have not filed any application for appointment of an Advocate Commissioner to send the documents to expert for obtaining the opinion and hence their intention is only to drag on the proceedings.

5.Against the said order of dismissal dated 26.01.2014 made in I.A.No.1019 of 2013 in O.S.No.132 of 2008, the petitioners have come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioners and perused

the materials available on record. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.From the affidavit filed in support of I.A.No.1019 of 2013, it is seen that the petitioners have prayed to send thumb impression from the Sub Registrar Office, Thirunavalur and appoint an Advocate Commissioner to get the opinion from the expert. But in the prayer portion, the petitioners have not mentioned about the appointment of Advocate Commissioner. The learned Judge, on taking into account this fact, dismissed the application. The reason given by the learned Judge is not valid reason. The learned Judge also failed to consider the fact that third respondent has stated that he is willing to produce all the original sale deeds in the Court. The petitioners have filed the suit for declaration on the ground that signature and thumb impression of the husband of the first petitioner in the sale deed dated 24.05.1982 is a forged one. In view of the said specific contention, the opinion of the hand writing expert as to the genuineness of the thumb impression in the sale deed dated 12.05.1962 is necessary to decide the issue in the suit.

8.For the above reason, the impugned order of the learned

Judge is set aside. The learned Judge is directed to call upon the third respondent to produce all the original documents dated 12.05.1962, 24.05.1982 and 28.02.2008 into the Court within a period of two weeks from the date of receipt of a copy of this order. If third respondent fails to produce the original documents, the learned Judge is directed to send for thumb impression from Sub-Registrar, Tirunavalur in respect of sale deed dated 12.05.1962 and 24.05.1982. On receipt of said documents, the learned Judge is directed to appoint an Advocate Commissioner to send the documents to get opinion from the expert.

9. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.02.2018

gsa

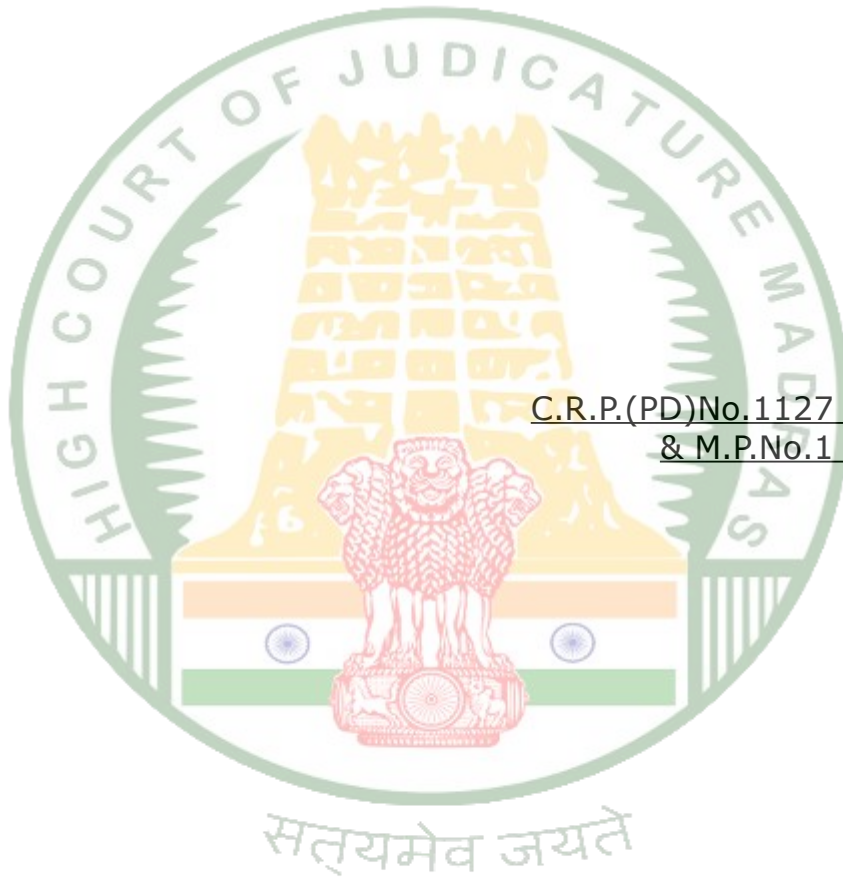
WEB COPY

To

The Principal District Munsif,
Ulundurpet.

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.1127 of 2015
& M.P.No.1 of 2015

WEB COPY

12.02.2018