

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.R.P.(PD).Nos.539 & 540 of 2016

and

C.M.P.No.2708 of 2018

Devaki Ammal (Died)

Sowgandha Bai (Died)

Rangaraju

.. Petitioner
in both CRPs.

vs.

1.Kalaivany

2.R.Ranjith

3.G.Ganasekaran

...Respondents in
both CRPs.

COMMON PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 23.01.2016 in I.A.Nos. 687 and 688 of 2015 respectively in O.S.No.94 of 2010 on the file of the II Additional District Judge, Puduchery.

For Petitioner in both CRPs. : Mr.R.Rajarajan

For Respondent in both CRPs. : M/s.P.Gomathi
for M/s. Vincent & Vincent
for R1

Not ready in notice
for R2 & R3

COMMON ORDER

C.R.P.Nos.539 & 540 of 2016 were filed challenging the orders in I.A.Nos. 687 and 688 of 2015, respectively, in O.S.No.94 of 2010, both of which, filed under Order 16 Rule 1 and 2 read with Section 151 of Civil Procedure Code to permit the revision petitioner to examine the witnesses listed in the petition filed in support of the affidavit.

2. The facts in brief are as follows:

The respondents herein had filed a suit for partition in respect of the suit schedule properties and the defence that had been taken by the second defendant who is the revision petitioner is that there was an oral partition during the life time of the parents, in and by which, the first item of suit schedule property was allotted to him and on the basis of the said allotment, he has also borrowed money to develop the said property. The plaintiff had no right to the first item of the said property. It is further seen that the examination of witnesses had commenced and after DW1 has been examined, when the defendant attempted to examine the third party witness, he was not permitted to do so.

3. Thereafter, the impugned applications have been filed. The reason given is that the witnesses one of whom is the fourth defendant and the other third party was required to prove the case of the defendant, namely, the oral partition.

4. The respondent had opposed the said applications by contending that the fourth defendant who is a party to the proceedings cannot be summoned. As regards the independent witness, no reasons had been given as to why he was sought to be examined.

5. The learned II Additional District Judge, Puducherry had dismissed the said interlocutory applications stating that there cannot be a summons issued to a party to the proceedings and therefore, request to examine the fourth defendant was rejected. As regards, the other witness, the application was rejected on the ground that the purpose for which the second defendant wanted to examine the witnesses was not stated in the affidavit.

6. Challenging the two orders, the revision petitioner/second defendant is before this Court.

7. Heard Mr.R.Rajarajan, learned counsel appearing for the revision petitioner/second defendant. Though, the respondents have been served with the papers as early as on 14.12.2016 and the matter was listed with their name in the cause list, none appeared on behalf of the respondents. Considering the fact that the revision petitions are of the year 2016, this Court is proceeding to hear the revisions despite the absence of the respondents.

8. As regards the summoning of the fourth defendant as a witness, I do not find any infirmity in the order of the learned II Additional District Judge, Puducherry. However, the reasons for rejecting the request insofar as the third party is concerned, cannot be countenanced. Even in the affidavit, the revision petitioner/second defendant has stated that the witness was sought to be summoned for proving the case of the defendant which *inter alia* is an oral partition.

9. Insofar as, it relates to witness Vedhavalli wife of Krishnan, the order is set aside. The revision petitioner is directed to issue summons to Vedhavalli, w/o Krishnan, Hindu, aged about 75 years and residing at No.99, Villiamman main road, Moolakulam, Pudhuchery - 605 010.

10. The Civil Revision Petitions are therefore partly allowed.
No costs. Consequently, the connected Miscellaneous Petition is closed.

11. Considering the fact that the suit is of the year 2010, the defendants shall forth with ensure that within a period of one week from the date of receipt of a copy of this order they shall take steps to issue summons to the witnesses and after examination of the witness, the learned Judge shall proceed to pass orders on or before 30.06.2019.

22.03.2019

Index: Yes / No
Speaking / Non speaking order
mbi/tta

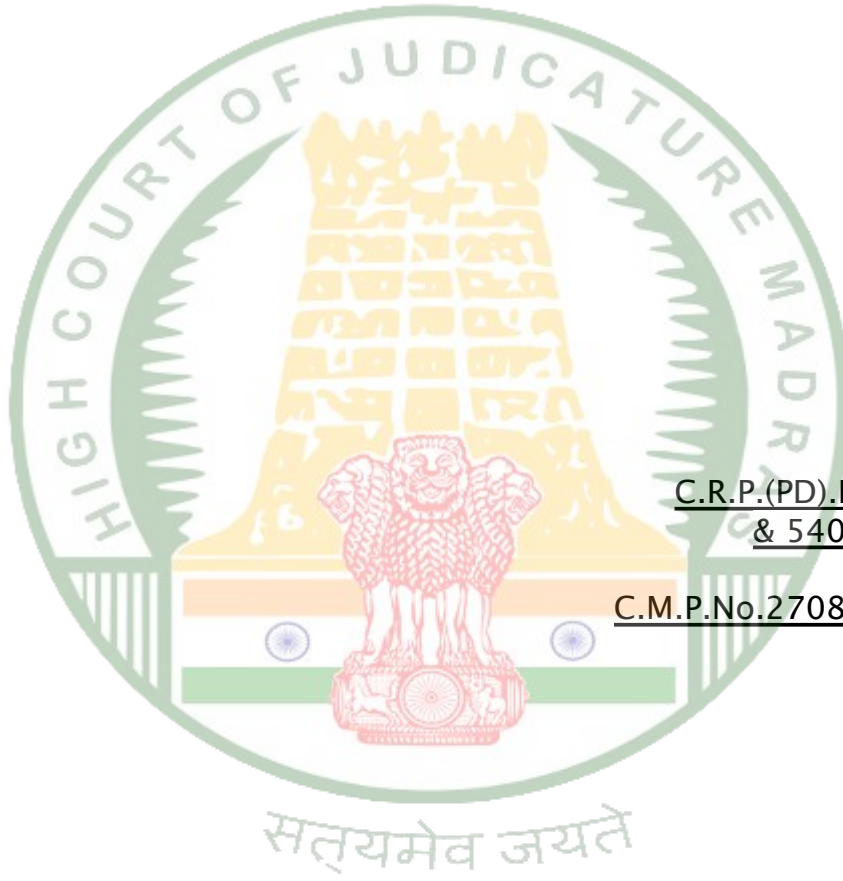
To

The II Additional District Judge,
Puduchery.

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P.T.ASHA,J.

mbi/tta



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