

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP(PD)No.4285 of 2014

Kunjithapadham

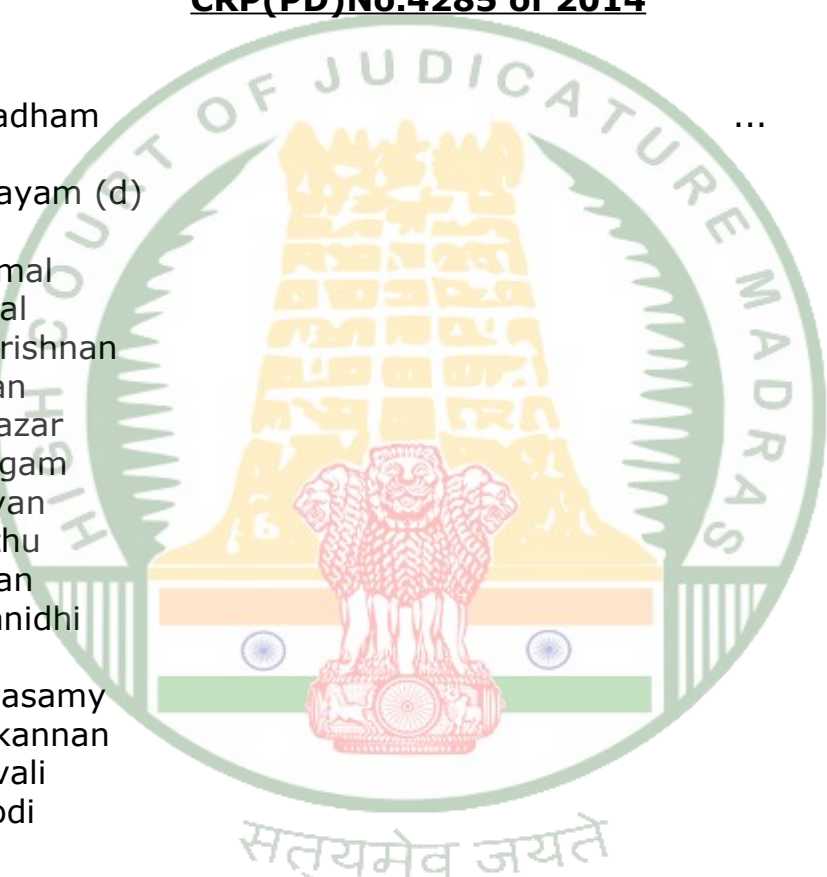
... Petitioner

Namachivayam (d)

- 1.Sornammal
- 2.Rajagopal
- 3.Gopalakrishnan
- 4.Natarajan
- 5.Abdul Nazar
- 6.Ramalingam
- 7.Vengayyan
- 8.Marimuthu
- 9.Rajendran
- 10.Karunanidhi
- 11.Pakkiri
- 12.Govindasamy
- 13.Mayakkannan
- 14.Deepavali
- 15.Poongodi
- 16.Selvi
- 17.Bibi John
- 18.Karthikeyan
- 19.Kandhavel
- 20.Anbu
- 21.Magizharasi
- 22.Anjalakshi
- 23.Selvi
- 24.Chinnadurai
- 25.Sabjohn

... Respondents

(Respondents 1 to 4, 6 to 9, 11, 12, 14 to 25 are not necessary parties to this revision petition)



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to allow this revision petition and set aside the order dated 18.02.2014 in I.A.No.661 of 2009 in O.S.No.87 of 1993 on the file of the District Munsif Court, Panruti.

For Petitioner : Ms.Anusarala

For Respondents : R1 to R4, R6 to R9,
R11, R12, R14 to R25 – Given up

Mr.S.Sabarish for R5, R10 & R13
for Mr.S.K.Rakthunathan

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 18.02.2014, passed by the District Munsif Court, Panruti, in I.A.No.661 of 2009 in O.S.No.87 of 1993.

Brief facts leading to the filing of instant revision filed under Article 227 of the Constitution of India:

2.The petitioner is the plaintiff in the suit O.S.No.87 of 1993 on the file of the District Munsif Court, Panruti. The said suit was filed for specific performance of an agreement of sale dated 10.02.1990 against the respondents. I.A.No.40 of 1996 was filed by the petitioner for sending the documents, namely, the Vakalat and the written statement filed by Namachivayam/the original defendant to Government Handwriting Experts for comparison with his signature

found in the agreement of sale dated 10.02.1990 and submit a report. I.A.No.40 of 1996 was allowed by the trial Court on 15.03.1996. However, as seen from the affidavit filed in support of I.A.No.661 of 2009, the petitioner did not execute the said order. In view of the non execution of the said order, the petitioner filed I.A.No.661 of 2009 in O.S.No.87 of 1993 once again seeking for the same relief. According to petitioner, the earlier order dated 15.03.1996 could not be executed for reasons beyond his control. A counter affidavit was also filed by the respondents in I.A.No.661 of 2009 denying the averments contained in the affidavit filed in support of I.A.No.661 of 2009. It is the case of the respondents that the unregistered sale agreement dated 10.02.1990 has not been signed by Namachivayam/ the original defendant in the suit. It is their case that the 6th, 11th and 14th respondents are in possession of the property subsequent to the purchase of the suit schedule property by them from Namachivayam/ the original defendant. सत्यमेव जयते

3.By order dated 18.02.2014, the District Munsif Court, Panruti dismissed I.A.No.661 of 2009 in O.S.No.87 of 1993.

4.Aggrieved by the same, the instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India.

5.Heard Ms.Anusarala, learned counsel for the petitioner and Mr.S.Sabarish, learned counsel for the respondents R5, R10 & R13.

6.Admittedly, the petitioner had the benefit of a direction given by the trial Court by its earlier order dated 15.03.1996 in I.A.No.40 of 1996 and by the said direction, the trial Court had directed the documents namely, the Vakalat and the written statements filed by Namachivayam/the original defendant which contains the undisputed signature of Namachivayam to Government Handwriting Expert for comparison with the disputed signature found in the unregistered agreement of sale dated 10.02.1990. Namachivayam also died during the pendency of the suit. But, however, the earlier order dated 15.03.1996 was not executed. It has been stated in the affidavit filed in support of I.A.No.661 of 2009, seeking for the same relief sought for earlier in I.A.No.40 of 1996, which was allowed by the trial Court on 15.03.1996 that only for reasons beyond the petitioner's control, the earlier order could not be executed by the petitioner.

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7.The suit has been filed for specific performance of the unregistered agreement of sale dated 10.02.1990 and the execution of the said agreement of sale has been disputed by the respondents/defendants. This being the case, in order to establish the

petitioner's case that the said unregistered agreement of sale is a genuine one, the signature found in the said unregistered agreement of sale has to be proved by the petitioner that it was infact the signature of Namachivayam/the original defendant. As rightly ordered by the trial Court in the earlier order dated 15.03.1996 in I.A.No.40 of 1996, the disputed signature found in the agreement of sale as well as the undisputed signature found in the Vakalat as well as in the written statement were sent to Government Handwriting Expert for comparison and for submission of a report. But the same was not executed by the petitioner which necessitated the petitioner to file a fresh application namely, I.A.No.661 of 2009 for the same relief. Since the suit is still pending, no prejudice will be caused to the respondents if I.A.No.661 of 2009 filed by the petitioner is allowed in favour of the petitioner as it will aid the Court in rendering the correct verdict. Ultimately, the Court has to render justice between the parties and cannot be rigid on technicalities. Further, as against the order dated 15.03.1996, passed in I.A.No.40 of 1996, no appeal has been filed by the respondents and the said order has attained finality. This being the case, in the considered view of this Court, the trial Court ought to have allowed I.A.No.661 of 2009.

8.This Court has perused the impugned order. The trial Court has dismissed I.A.No.661 of 2009 only on the ground that the said application has been filed belatedly, i.e., after a lapse of 13 years from the passing of the earlier order dated 15.03.1996 in I.A.No.40 of 1996. As observed earlier, it has to be ascertained as to whether the signature found in the unregistered agreement of sale is infact the signature of Namachivayam/the original defendant or not and for this purpose, the documents disputed and undisputed signature found in the respective documents will have to necessarily be sent to Government Handwriting Experts for comparison and for a report obtained by them with regard to the same. No prejudice will be caused to the respondents if I.A.No.661 of 2009 is allowed. Therefore, this Court sets aside the impugned order dated 18.02.2014, passed in I.A.No.661 of 2009. It is now contended before this Court by the learned counsel for the respondents that the written statements and the Vakalat signed by Namachivayam were filed in 1993 whereas the alleged agreement of sale is of the year 1990 and not contemporaneous document. This contention can very well be raised by the respondents during the cross examination of the petitioner's witnesses before the trial Court and can be raised even during the arguments. The trial Court shall consider the said contention and decide the matter on merits and in accordance with law.

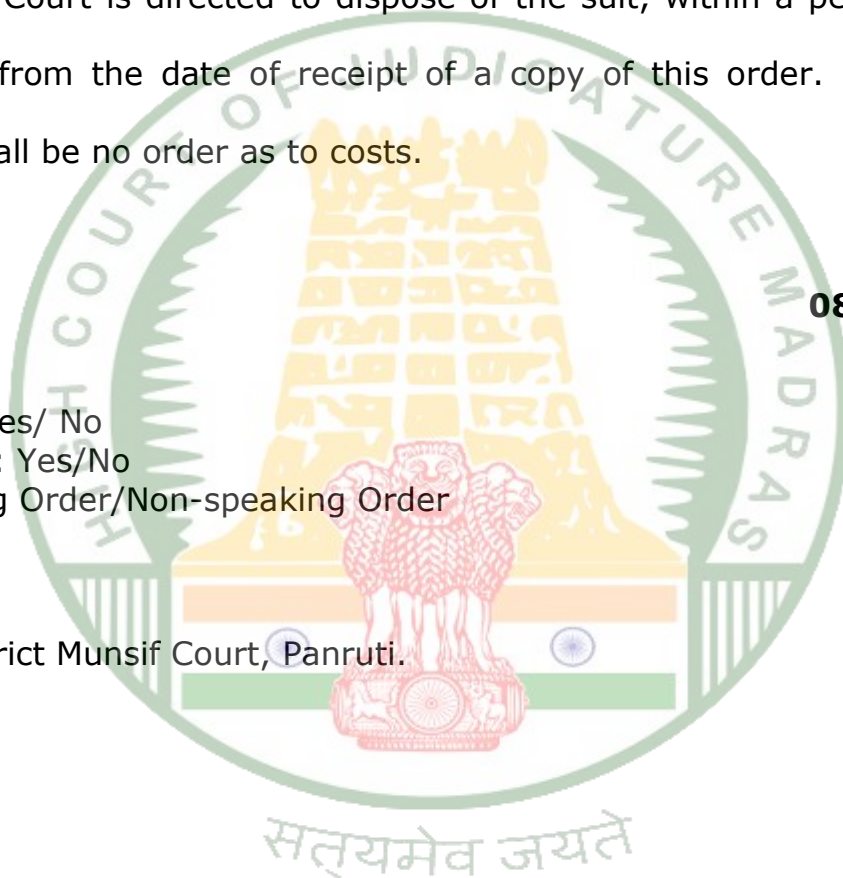
9.For the foregoing reasons, the impugned order dated 18.02.2014, passed by the District Munsif Court, Panruti in I.A.No.661 of 2009 in O.S.No.87 of 1993, is hereby set aside and the Civil Revision Petition is allowed. In view of the long pendency of the suit, the trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

08.08.2019

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

The District Munsif Court, Panruti.



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ABDUL QUDDHOSE, J.

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