

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

**CRP (PD) NO.2492 OF 2019 &
C.M.P.No.16271 of 2019**

S.Kothai

.. Petitioner

Vs

B. Malathi

.. Respondent

Prayer: Civil Revision Petition under Article 227 of Constitution of India against the fair and decreetal order dated 03.07.2019 passed in I.A.No.39 of 2019 in O.S.No.72 of 2018 by the learned Additional District Judge (FTC), Vellore .

For Petitioner : Mr.S.V.Jayaraman,
Senior Counsel

For respondent : Mr. M. Sathish Kumar

ORDER

The Revision Petitioner is the 2nd defendant in a suit for partition filed by the respondent. A perusal of the plaint shows that the revision petitioner purchased the property and settled it in her father's name, the 1st defendant. Thereafter, it appears that the 1st defendant settled

the same in favour of his daughter, the revision petitioner herein.

2. To show the transactions, the revision petitioner filed an application to receive the documents after condoning the delay in filing such petition.

3. The trial Court had taken a stand that the revision petitioner being the 2nd defendant has not filed an independent written statement and she has adopted the written statement filed by her father, the 1st defendant and therefore she is not entitled to mark the documents, therefore, the court below dismissed the petition filed for condoning the delay in filing the petition to receive documents.

4. Mr. M. Sathish Kumar, learned counsel takes notice on behalf of the respondent.

5. It is the case of the plaintiff that the property was purchased by the 2nd defendant/petitioner herself on 11.6.2003 and it was settled in favour of the 1st defendant on 31.12.2014. The further averment that the plaintiff goes to show that some bank transaction, in which,

the money stood in the plaintiff's husband again was taken out by the revision petitioner and her father. In order to prove those transaction and the money invested by the petitioner was proved by availing house loan from the Bank, she wanted to mark those documents. It is well settled that the documents can be received with the leave of the Court when it was not filed at the time of filing the written statement. The averments in the Written Statement reveals that the property is an independent property of the petitioner. While such an averment is available, the documents to prove as to how they are independent properties have to be produced. The trial court proceeded on the basis that the petitioner seek to mark secondary evidence and without filing independent written statement. But the petitioner would state that the documents are original documents and not secondary evidence. Secondly, as a defendant, she is entitled to state what is adopted by her in the written statement.

6. Therefore, I am of the considered opinion, the order passed by the court below in I.A.No.39 of 2019 in O.S.No.72 of 2018 dated 3.7.2019 is not sustainable and accordingly set aside and leave is granted to the petitioners to mark those documents subject to proof

and relevancy. The respondents shall be put on notice before marking the documents.

7. With the above observations, I am inclined to allow the revision petition. Accordingly, the revision petition is allowed. No costs.

02.08.2019

msr
Index:Yes/No
Internet:Yes/No
speaking order/non speaking order

To
Additional District Judge (FTC), Vellore .

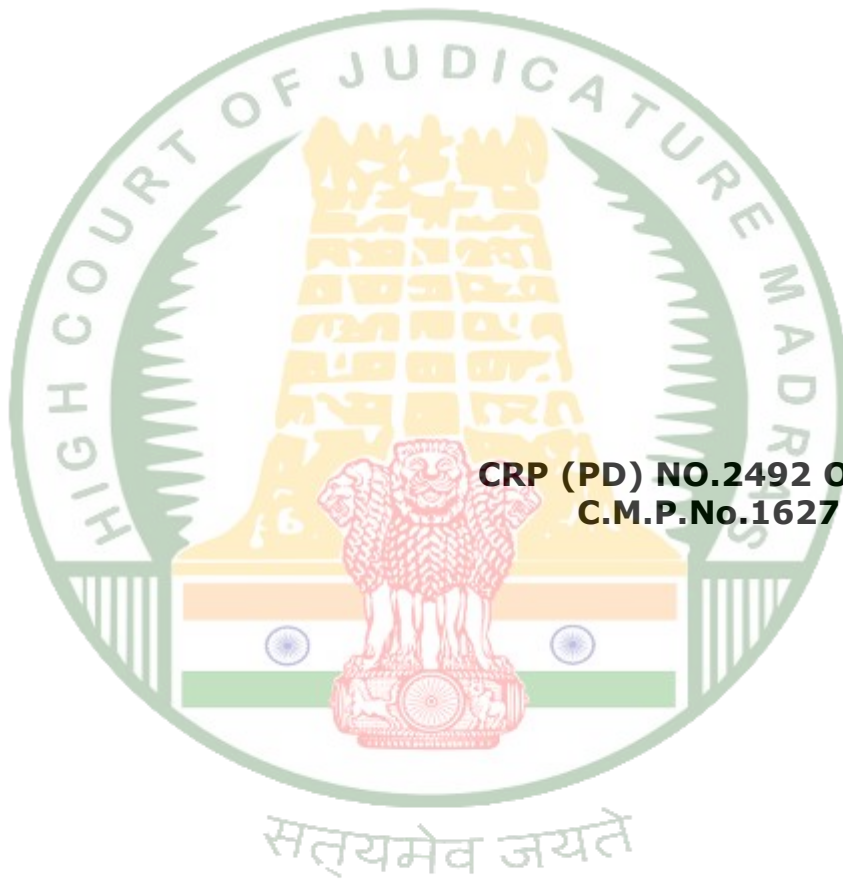


WEB COPY

CRP (PD) NO.2492 OF 2019 &
C.M.P.No.16271 of 2019

M.GOVINDARAJ, J.

msr



**CRP (PD) NO.2492 OF 2019 &
C.M.P.No.16271 of 2019**

WEB COPY 02.08.2019