



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)Nos.1648 & 1649 of 2012

and

M.P. (MD)Nos.1 of 2012

WEB COPY

Minor Suthesamitthiran

rep by his guardian and  
next friend mother Thamilarasi) ... Petitioner in both CRPs.

Vs.

- 1.Amirtham
- 2.Prabhakaran
- 3.Nagarethinam
- 4.Velmurugan

... Respondents in  
both CRPs.

**COMMON PRAYER:** This petition is filed under Article 227 of Civil Procedure Code, against the Fair and Decretal order passed in I.A.Nos.1094 & 1093 of 2011 respectively in O.S.No.551 of 2009, on the file of the Principal District Munsif Court, Dindigul, dated 27.03.2012.

In Both CRPs

|                  |                      |
|------------------|----------------------|
| For Petitioner   | : Mr.N.Rahamadullah  |
| For Respondent-1 | : Mr.M.R.Sreenivasan |
| For R2 & R3      | : No Appearance      |

#### COMMON ORDER

These Civil Revision Petitions have been filed challenging the fair and final orders passed by the Court below dismissing the application filed under O.26 Rule 10 of CPC., to send the document (Ex.A1), for expert opinion, in order to compare the signature found therein with the signature found in Ex.B1.

2. The petitioner is the plaintiff in the suit and the suit has been filed for the relief of declaration to declare that the plaintiff is entitled for the property, by virtue of the document, dated 21.02.2005 and to declare the document dated 12.11.2008, as null and void and for consequential reliefs.

3. The respondents took a very specific stand that the 1<sup>st</sup> defendant, who is the grandfather of the plaintiff, does not have a right to execute any document in favour of the plaintiff, since he is one of the co-sharer in the property and thereby, the 1<sup>st</sup>



defendant denied the very execution of the document. It was the further case of the respondents that the subsequent document, dated 12.11.2008, which was executed by all co-sharers had specifically allotted the respective shares.

4. The application was filed by the petitioner for sending the document, dated 21.02.2005, for getting expert opinion only on the ground that the signature found therein has been denied.

5. The learned counsel for the petitioner submitted that the 1<sup>st</sup> defendant has denied the signature found in the document, dated 21.02.2005 and therefore, the burden of proof is upon the petitioner to prove the genuineness of the document and therefore, the expert opinion is required.

6. Per contra, the learned counsel appearing on behalf of the respondents submitted that the case is at the stage of final arguments and at that stage, this application came to be filed and therefore, the intention of the petitioner is only to drag on the proceedings. The learned counsel further submitted that even as per the case of the plaintiffs, the property is a joint family property and therefore, the 1<sup>st</sup> defendant will not have the exclusive right of executing any document with regard to the entire property in favour of the petitioner. Therefore, the learned counsel submitted that no useful purpose will be served by sending the document, dated 21.02.2005, for expert opinion.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. It is seen from the records that the trial was completed on 19.10.2010 and the case was at the stage of final arguments. At that stage, the present application came to be filed for sending the document (Ex.A1) for expert opinion.

9. The court below has dismissed the application mainly on the ground that it is the admitted case of the plaintiff that the property in question is a joint family property and therefore, the 1<sup>st</sup> defendant could not have executed a document by settling the entire property in favour of the plaintiff. The Court below has given a further finding that a family arrangement has already been executed on 12.11.2008 by all the co-sharers of the property and the same has also come into force. Therefore, the Court below found that no useful purpose will be served by sending the document, dated 21.02.2005, for expert opinion, since prima facie no right can flow in favour of the petitioner, by virtue of this document. In other words, the petitioner cannot claim the entire property by virtue of this document, since the property in question is a joint family property and the 1<sup>st</sup> defendant could not have exclusively executed a document settling the entire property in favour of the



10. As rightly found by the Court below, no useful purpose will be served by sending the document (Ex.A1) for expert opinion, if ultimately no rights are going to flow from this document. The genuineness or otherwise of the document, may not have any bearing in the present case by virtue of the specific plea that has been taken by the petitioner in the plaint. This Court does not find any illegality or infirmity in the order passed by the Court below.

11. In the result, the Civil Revision Petitions are dismissed. The Court below is directed to complete the proceedings in O.S.No.551 of 2009, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

MPK

To

The Principal District Munsif,  
Dindigul.

+1 CC to Mr.N.RAHAMADULLAH, Advocate ( SR-97398[F]dated  
11/11/2019 )

+1 CC to Mr.R. NANDA KUMAR, Advocate ( SR-97566[F] dated  
12/11/2019 )

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**08.11.2019**

VB(26.11.2019) 3P 4C