



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

**C.R.P (MD) Nos. 78 to 81 of 2018
and**

C.M.P. (MD) Nos. 347 and 4782 of 2018

Chellammal (died)

1. Chellappa
2. Thangaraj
3. Dhamodaran
4. Ganapathi
5. Lingadurai
6. Harichandran

... Petitioners / Petitioners 2 to 7/
Plaintiffs 2 to 7

Vs.

1. Deivamani Ammal
2. Janaki
3. Pushpam
4. Kumaresan
5. Thiraviya Nadar
Arulmani Nadar (died)
6. Lourthammal
7. Rajendran
8. Hendry
9. Amalan
10. Surgeon Reality Private Limited,
Through its Managing Director
11. Suyambulingadurai
12. Sasikala Selvarani

... Respondents / Respondents 1 to 5,
7 to 13 / Defendants 1 to 5, 7 to 13.

COMMON PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the order dated 23.08.2017 made in I.A.No.1430/2016 and I.A.No.1431 of 2016 and I.A.No.235 of 2017 in I.A.No.1431 of 2016 and I.A.No.668 of 2017 in O.S.No.83 of 2009 on the file of the Subordinate Judge, Valliyoor, respectively.

For Petitioners in
all C.R.Ps.

: Mrs.P.Jessi Jeeva Priya

For R-1 to R-3
in all C.R.Ps.

: Mr.H.Arumugam



For R-4
in all C.R.Ps. : Mr.V.S.Rishikesh

For R-6 to R-10
in all C.R.Ps. : No Appearance

For R-11 & R-12
in all C.R.Ps. : Mr.S.Kumar

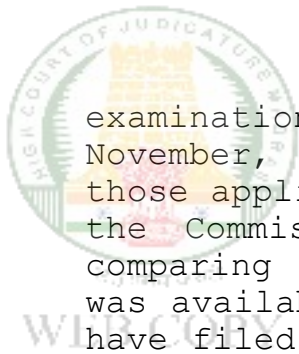
C O M M O N O R D E R

These Civil Revision Petitions have been filed by the petitioner against the order, dated 23.08.2017 made in I.A.No.1430/2016 and I.A.No.1431 of 2016 and I.A.No.235 of 2017 in I.A.No.1431 of 2016 and I.A.No.668 of 2017 in O.S.No.83 of 2009 on the file of the Subordinate Judge, Valliyoor, respectively.

2.Since the parties are one and the same in all these Civil Revision Petitions, a common order is to be passed in all the petitions.

3.The suit in O.S.No.83 of 2009 was filed by one Chellammal during the year 2009 for a declaration to declare that the said Chellammal is an absolute owner of the plaint schedule property. The said Chellammal was passed away during the year 2013. Thereafter, the legal heirs of the Chellammal have been impleaded as plaintiff Nos.2 to 7. When the suit was listed for cross examination of D.W.1, on 17.10.2016, the defendant marked Ex.D2-original settlement deed. Thereafter, the plaintiffs came to know about the fact that the settlement deed was forged one and the signatures were differed and therefore, the revision petitioners herein filed an application in I.A.Nos.I.A.No.1430/2016 and I.A.No.1431 of 2016 and I.A.No.235 of 2017 in I.A.No.1431 of 2016 and I.A.No.668 of 2017 in O.S.No.83 of 2009 on the file of the Subordinate Judge, Valliyoor, respectively, for the purpose of send for the documents; expert opinion and appointment of Advocate Commissioner, respectively. When the said applications came up for hearing, the Court below dismissed all the four applications on 23.08.2017 stating that the suit was filed in the year 2009 and the original plaintiff Chellammal has not taken any steps to refer Ex.D2 settlement deed for the purpose of expert opinion. Further, the Court below observed that these applications have been filed after the lapse of about nine years. Aggrieved by the said orders, the revision petitioners herein filed the present Civil Revision Petitions.

4.The learned counsel for the revision petitioners would contend that the revision petitioners are the legal heirs of the deceased Chellammal. They came to know about the original of Ex.D2-settlement deed only when the defendant marked the same through D.W.1, on 17.10.2016. So after marking of the said document, D.W.1's



examination was closed and thereafter, immediately in the month of November, 2016, without any delay, the revision petitioners filed those applications, to send the documents for expert opinion through the Commissioner appointed by the Court. So, immediately after comparing with the signatures with the original signatures, which was available with the legal heirs of the deceased Chellammal, they have filed those applications, and hence there is no delay on their part. Further, the learned counsel submitted that the present suit has been filed to claim their suit scheduled property. If the said Chellammal is not the owner of the property and if she would have executed Ex.D2-settlement deed, definitely, she would not have filed the present suit. Therefore, she contended that the settlement deed is a forged one and the same should be sent for expert opinion through the Advocate Commissioner appointed by the Court. All these facts have not been considered by the Court below and therefore, the order of the Court below is liable to be set aside. In this regard, the learned counsel for the revision petitioners refers the Judgment of this Court in S.CHINNATHAI v. K.C.CHINNDURAI, reported in 2010 (3) MLJ 65, wherein it has been held as follows:-

"10. When the Civil Court decides an application filed under provisions of Order 26 Rule 10A of the Civil Procedure Code, the Court has to decide as to whether the said application is necessary for the purpose of deciding the case. While deciding the said application, the Civil Court cannot reject the application only on the ground of delay, until or unless it comes to the conclusion that the application lacks bonafides or the same has been filed with the sole view to protract the proceedings.

18. However, on a consideration of the above said legal position, the following principles emerge for consideration:

1. The civil Court is having jurisdiction to send the document to the Forensic Expert for comparing the signatures between the disputed documents with the admitted documents by appointing a Commissioner and get a report.

2. When the civil Court is exercising its power under Section 73 of the Indian Evidence Act, the civil Court will have to exercise its power under Order 26 Rule 10A of the Civil Procedure Code instead of invoking Section 73 of the Indian Evidence Act.

3. The Advocate Commissioner, being an officer of the Court can be asked to take the original document.

4. When the Advocate Commissioner takes the original document, then a certified copy of the same will have to be kept under the custody of the Court.



5. The civil Court cannot direct the disputed document to be compared with the vakalat or written statement of a party.

6. When the civil Court comes to the conclusion that the power under Order 26 Rule 10A of the Civil Procedure Code should be invoked, then the civil Court shall invoke the same even without an application from the parties concerned in the interest of justice and in order to solve the dispute between the parties.

7. When a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While sending a document to an expert, the original of the same has to be sent since it is not possible to compare the xerox copies with the other admitted documents.

8. The civil Court shall not dismiss an application seeking for the examination of the document by an expert on the ground of wrong quoting of provision of law and in such a case, the Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code.

9. The civil Court shall exercise under Order 26 Rule 10A of the Civil Procedure Code even when a prayer is sought for a direction to summon the expert to the Court for the purpose of examining the document.

10. An application filed under Order 26 Rule 10A of the Civil Procedure Code will have to be filed at the earliest opportunity in the normal circumstances.

11. However, an application under Order 26 Rule 10A of the Civil Procedure Code cannot be dismissed merely on the question of delay alone, unless the same is willful and deliberate."

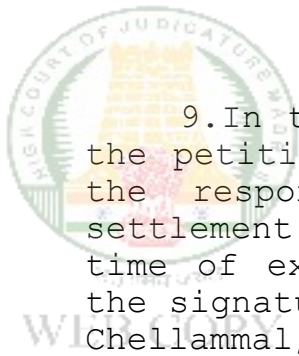
5. On the other hand, the learned counsel for the respondents strongly opposed the present Civil Revision Petitions stating that the suit was filed in the year 2009 and after the period of ten years, the petitioners herein filed the present applications. Further, they would contend that the said document was filed along with written statement. If at all if they have doubt over the said document, the said Chellammal should have taken steps to send the same for expert opinion. The present suit has been filed as if there is no such settlement deed, but thereafter, a settlement deed has been filed along with written statement. The said Chellammal has not taken any steps even after the period of ten years, now, the legal heirs have taken steps to send for the documents for expert opinion, which is not maintainable and it is barred by limitation and this Court is also of the opinion that the present Civil Revision Petition is liable to be dismissed.



6. According to the petitioner, since the original document was not available, they have not taken any steps. The respondent herein only filed written statement and they have not filed any document and that Ex.D2 settlement deed was only referred in the written statement and therefore, they have awaited till the examination of the witness. D.W.1 was examined and the defendants have marked the original of Ex.D2 settlement deed. After perusal of the said document only, the plaintiff came to know about the forgery of the document and immediately thereafter, they have taken steps. Therefore, it is well within the limitation only and that the intention of the petitioner is not to drag on the matter. Admittedly, now it is posted for arguments, they have marked the settlement deed in the bag end of the proceedings, i.e. on 17.10.2016, at the time of examination of D.W.1 witness. Accordingly, the examination of D.W.1 was completed on 17.10.2016 and thereafter, directly posted for arguments. Therefore, she submitted that their intention is not to drag on the matter by filing this application and hence, prayed for allowing the applications.

7. The suit was filed by one Chellammal during the year 2009 for declaration to declare that the said Chellammal is an absolute owner of the plaint schedule property and thereafter, she passed away in the year 2013. In the present case, the written statement was filed in the year 2009 itself, wherein the defendants have clearly disclosed the fact about the Ex.D2-settlement deed. But according to the revision petitioner, they have not filed the said document and therefore, they did not have any knowledge about the settlement deed. Since the defendants have failed to file the settlement deed, obviously the plaintiff will not have any chance to peruse the settlement deed. Further, the said Chellammal passed away in the year 2013. Thereafter, the plaintiffs 2 to 7 have been impleaded, who are the revision petitioners herein. So admittedly, the originals of Ex.D2-settlement deed was marked during the examination of D.W.1, only on 17.10.2016 and thereafter, in the month of November, 2016 itself, the revision petitioners herein filed appropriate applications for send for the documents, expert opinion through the Advocate Commissioner.

8. Under these circumstances, without appreciating the above facts, the Court below dismissed all the applications. Further, when the Civil Court decides an application filed Under provision of Order 26 Rule 10A of C.P.C., it has to decide as to whether the said application is necessary for the purpose of deciding the case. While deciding the said application, the Civil Court cannot reject the application only on the ground of delay, unless until it comes to the conclusion that the said application has been filed with a view to protract the proceedings.



9. In the present case, there is no doubt that the intention of the petitioners is not in protracting the proceedings as stated by the respondents. When they came to know about the original settlement deed, i.e. Ex.D2 and upon perusal of the same, at the time of examination of D.W.1, the revision petitioners found that the signatures, which is stated to be the signatures of the deceased Chellammal, found in the settlement deed was forged and therefore, in the month of November, 2016 itself, the revision petitioners have filed appropriate applications to send for documents, expert opinion through the appointment of Advocate Commissioner. Therefore, the reasons provided for dismissing the applications in the above I.A.No.1430/2016 and I.A.No.1431 of 2016 and I.A.No.235 of 2017 in I.A.No.1431 of 2016 and I.A.No.668 of 2017 in O.S.No.83 of 2009 on the file of the Subordinate Judge, Valliyoor, respectively. by the Court below is not justifiable and therefore, the same is liable to be set aside.

10. Accordingly, these Civil Revision Petitions are allowed and the order dated 23.08.2017 passed in I.A.No.1430/2016 and I.A.No.1431 of 2016 and I.A.No.235 of 2017 in I.A.No.1431 of 2016 and I.A.No.668 of 2017 in O.S.No.83 of 2009 by the learned Subordinate Judge, Valliyoor are set aside. Further, this Court directed the Court below to complete the entire exercise of sending documents for expert opinion through Advocate Commissioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar (CS)

rj2

To

1. The Subordinate Judge, Valliyoor.

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-88197[F] dated 20/09/2019)
+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-88072[F] dated 20/09/2019)

**Order made in
C.R.P (MD) Nos.78 to 81 of 2018
19.09.2019**

MK (28.11.2019) 6P 4C