

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.1303 of 2015

and

M.P.No.1 of 2015

- 1.Elumalai
- 2.Komala
- 3.Dilli

... Petitioners

Vs.

- 1.Gowry
- 2.Navaneetham
- 3.Devika
- 4.Kowsalya
- 5.Anand
- 6.Mani
- 7.Reddy

- 8.The Sub Registrar,
Sub Registration Office,
Poonamallee,
Chennai 56.

- 9.The District Collector,
Thiruvallur District,
Thiruvallur.

- 10.The Tahsildar,
Poonamallee Taluk,
Poonamallee,
Chennai 56.

11.Balu (Died)

12.Gayathiri

13.Thygarajan

14.Prema Devi

... Respondents

(R12 to R14 brought on record as
LRs of the deceased R11 viz., Balu
vide order of Court dated 10.10.2020
made in CMP.No.7492 & 7489/2019
in CRP.No.1303 of 2015)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.02.2014 made in I.A.No.1139 of 2012 in O.S.No.307 of 2012 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioners : Mr.V.Ayyapparaja

For Respondents : Mr.J.Sudhakaran for R1 to R4
: R5 to R7 – No appearance
: Mr.T.M.Pappiah for R8
Special Government Pleader
: Mr.A.Ansar for R9 & R10
Government Advocate
: Mr.R.Murali for R11 & R12

ORDER

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This Civil Revision Petition has been filed by the petitioners

1, 3 & 4 /defendants 1, 3 & 4 against the dismissal of their application in

I.A.No.1139 of 2012 in O.S.No.307 of 2012 on the file of the Principal

District Munsif Court, Poonamallee, dated 18.02.2014.

2. The petitioners herein along with one Balu had filed an application in I.A.No.1139 of 2012 in O.S.No.307 of 2012 on the file of the Principal District Munsif Court, Poonamallee, under Order 7 Rule 11 of CPC r/w Section 151 of CPC to reject the plaint. The learned Principal District Munsif, Poonamallee, by the order dated 18.02.2014 had dismissed the said application. Feeling aggrieved, the petitioners herein have filed the present Civil Revision Petition.

3. Heard Mr.V.Ayyapparaja, the learned counsel for the petitioners, Mr.J.Sudhakaran, the learned counsel for the respondents 1 to 4, Mr.T.M.Pappiah, the learned Special Government Pleader for 8th respondent, Mr.A.Ansar, the learned Government Advocate for the respondents 9 and 10 and Mr.R.Murali, the learned counsel for the respondents 11 and 12.

4. The learned counsel for the petitioners has submitted that the respondents 1 to 4/ plaintiffs have filed a suit in O.S.No.307 of 2012 on the file of the Principal District Munsif, Poonamallee, for the relief of declaration of their title over the suit property and for permanent injunction restraining the defendants 1 to 7 therein from interfering with

their peaceful possession and also restraining them from alienating or encumbering the suit property. He further submitted that the respondents 1 to 4 filed the above suit claiming that the suit property originally belonged to one Muniammal and the said Muniammal died intestate leaving behind them as her LRs and hence, they are entitled to the suit property.

5. He further submitted that the said Muniammal had settled 30 cents of land to each of her sons namely, Kolandan and Dachina under a registered settlement deed dated 29.05.1970 and retained 61 cents. The said Kolandan and Dachina had jointly mortgaged the aforesaid land in favour of one Rajammal under a registered mortgaged deed dated 17.06.1970. Subsequently, the said Datchina had conveyed his 30 cents of land in favour of Kolandan and thereafter the said Kolandan had sold the total extent of 60 cents in favour of Ragavapillai under a registered sale deed dated 29.03.1973. Subsequently, the said Muniammal, who on her part also had conveyed the remaining extent of 61 cents in favour of Ragava Pillai and thereafter, his Legal Heirs, namely, Sekar, Baskar and Bhoopalan have been in possession and enjoyment of the said property. Suppressing the said fact, the

respondents 1 to 4 had filed the aforesaid suit. He further submitted that they have not challenged the aforesaid settlement deeds and sale deeds and as such, the plaint is bereft of the particulars and hence, the plaint has to be rejected.

6. In support of the aforesaid contentions, the learned counsel for the petitioners had relied upon the decision in ***T.Arivandandam, Vs. V.Satyapal and another, AIR 1977 SC 2421.***

7. Per contra, the learned counsel for the respondents 1 to 4/plaintiffs has submitted that the respondents 1 to 4 are not parties to the documents which are referred to by the petitioners in their affidavit. He further submitted that to the knowledge of the respondents 1 to 4, the said Muniammal had not executed any document in favour of any one and the alleged documents were created, which will not bind upon the respondents/plaintiffs. He further submitted that it is well settled principle that for considering the application filed under Order 7 Rule 11 of CPC, the averments made in the plaint and the documents which were filed along with the plaint alone will be taken into consideration and not the defence taken by the defendants.

8. He further submitted that in this case, the petitioners have produced as many as 15 documents before the trial Court and marked the said documents in their favour as Exs.P1 to P15 and forced the trial Court to conduct mini trial in the said application and said procedure is unknown to law. He further submitted that the disputed questions cannot be decided in the application filed under Order 7 Rule 11 of CPC. The trial Court taking into consideration the aforesaid facts had rightly dismissed the said application and in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

9. A perusal of the typed set of papers filed by the petitioners shows that the respondents 1 to 4 herein had filed a suit in O.S.No.307 of 2012 on the file of the Principal District Munsif, Poonamallee, to declare their title over the suit properties and other reliefs. The petitioners herein have been arrayed as defendants 1, 3 and 4. The petitioners herein along with one Balu (second defendant) after receipt of summons in the said suit, had filed an application in I.A.No.1139 of 2012 under Order 7 Rule 11 of CPC to reject the plaint stating that the present suit is abuse of process of the Court.

10. According to the petitioners, the suit property originally belonged to one Muniammal, who is none other than the mother of the respondents 1 to 4 and the said Muniammal had settled 30 cents of land in favour of her one of the sons namely, Kolandan and another 30 cents in favour of her another son Datchina and subsequently, the said Datchina had conveyed his 30 cents of land in favour of Kolandan and thereafter the said Kolandan had sold the total of extent of 60 cents in favour of Ragavapillai and the said Muniammal had sold the remaining extent of 61 cents in favour of Ragavapillai. After the aforesaid transaction, the petitioners have vexatiously filed the aforesaid suit. According to the respondents, the alleged documents are not genuine and they were created by the petitioners. The disputed questions cannot be decided in the application filed under Order 7 Rule 11 of CPC.

11. Further, it is also well settled that for deciding the application under Order 7 Rule 11 of CPC, averments made in the plaint and the documents which were filed along with the plaint alone will be taken into consideration and not the defence set up by the defendants. In this case, the petitioners have filed as many as 15 documents and marked

as Exs.P1 to P15 and requested the Court to dispose of their application which was filed under Order 7 Rule 11 of CPC, by relying upon the said documents. At this stage, the said documents cannot be taken into consideration for rejecting the plaint. The learned trial Court after taking into consideration the aforesaid facts had rightly dismissed the said application. This Court does not find any infirmity in the said order.

12. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is also closed. It is open to the petitioners to take all the defence during trial. The trial Court is directed to dispose of the suit in accordance with law, uninfluenced by the observation made in I.A.No.1139 of 2012 by the trial Court or by this Court in this Civil Revision Petition.

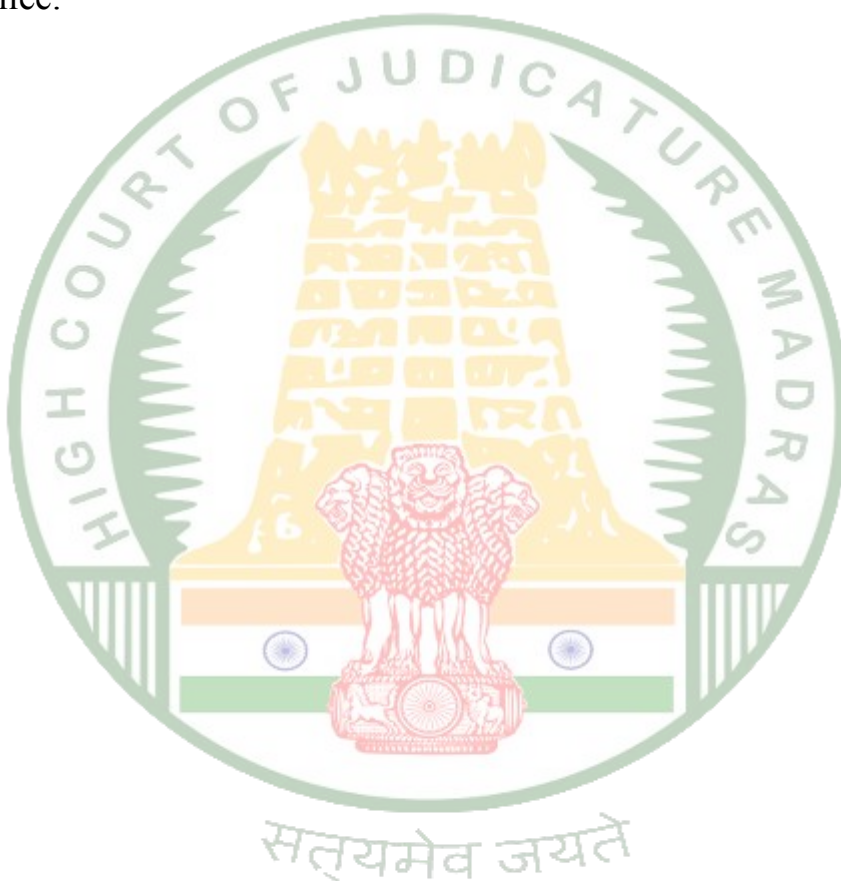
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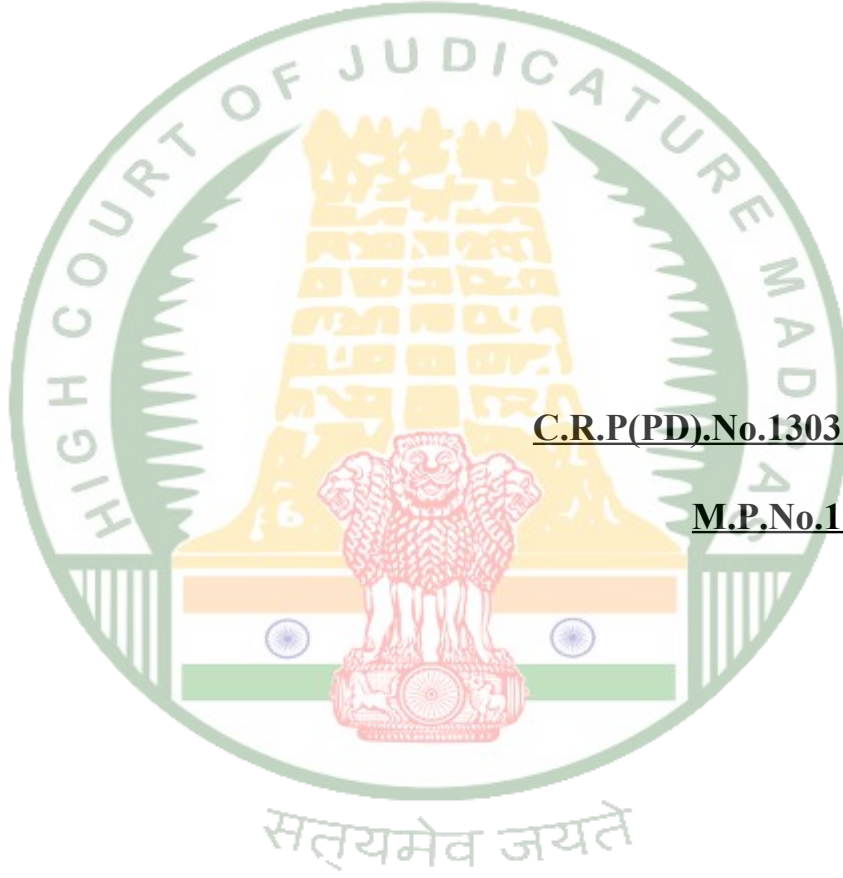
The Principal District Munsif Court,
Poonamallee.



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