

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRP(PD)Nos.2549 and 2550 of 2015

and

MP.No. 1 of 2015

V.Thangamuthu

... Petitioner
(in both cases)

Vs.

1. E.K.Ramasamy
2. Muthulakshmi
3. S.Velusamy
4. Govindammal
5. Muthusamy

... Respondents
(in both cases)

Prayer in CRP(PD)No.2549 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.03.2015 in I.A.No.1918 of 2014 in OS.No.98 of 2013 on the file of the District Munsif Court, Kangayam and to allow the Civil Revision Petition.

Prayer in CRP(PD)No.2550 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.03.2015 in I.A.No.1919 of 2014 in OS.No.98 of 2013 on the file of the District Munsif Court, Kangayam and to allow the Civil Revision Petition.

For Petitioner : Mr.C.Ramraj
for M.Guruprasad
(in both cases)
For Respondents : No Appearance
(in both cases)

COMMON ORDER

CRP(PD)No.2549 of 2015: This petition has been filed by the second respondent/second defendant against the order passed by the District Munsif, Kangayam in IA.No.1918 of 2014 in OS.No.98 of 2013 dated 18.03.2015.

CRP(PD)No.2550 of 2015: This petition has been filed by the second respondent/second defendant against the order passed by the District Munsif, Kangayam in IA.No.1919 of 2014 in OS.No.98 of 2013 dated 18.03.2015.

2. The respondents herein had filed an application in IA.No.1918 of 2014 in OS.No.98 of 2013 on the file of the District Munsif, Kangayam under Section 151 to re-open the case. They also filed an application in IA.No.1919 of 2015 under Order 26 Rule 10 and Section 151 of CPC to send exhibits Ex.B1 and Ex.B2 to the Tamil Nadu Forensic Lab, Chennai to compare their admitted signatures found in

Ex.B1 with their disputed signatures found in Ex.B2 and get the report. The learned District Munsif, Kangayam by the common order dated 18.03.2015 had allowed both the applications and appointed one Advocate Mr.E.S.Ranjith as Commissioner to take the aforesaid documents from the Court and produce before the Forensic Laboratory, Chennai and get hand writing expert's opinion and return the said documents to the Court. Feeling aggrieved, the second respondent/second defendant has filed the present Civil Petitions.

3. When these matters came up for hearing on 09.11.2020, the learned counsel for the petitioner has submitted that he is ready for arguments, however, no representation for the respondents and hence, these matter were adjourned to 02.12.2020 and posted this matter under the caption, “ for Orders”. On 02.12.2020 also, no representation for the respondents and hence, these matters have been adjourned and posted today (21.12.2020). Today also, no representation for the respondents. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with these petitions, common order is being passed in these petitions.

4. The learned counsel for the petitioner has submitted that the respondents 1 and 2 had filed a suit in OS.No.98 of 2013 on the file of the District Munsif, Kangayam to declare that the defendants therein have illegally terminated them from the partnership by creating forged documents and for permanent injunction. He further submitted that the partnership between the respondents 1 and 2 and the defendants 1 and 2 was constituted on 30.04.2004 for running a construction firm and the same was duly registered, subsequently, the respondents 1 and 2 have voluntarily retired from the said partnership after getting their shares in the partnership and also executed a deed of retirement. Thereafter, they have filed a suit in the year 2013 stating that they have not executed the said document of retirement. He further submitted that the petitioner herein who has been arrayed as second defendant had filed his written statement in the suit, stating that the respondents 1 and 2 herein had already retired from the partnership by executing deed of retirement dated 31.03.2006 and thereafter, a new firm has been constituted by incorporating the other defendants as partners. He further submitted that based on the said written statement, issues have been framed and the matter was posted for trial. During trial, on both sides, evidence has been

adduced and thereafter, the matter was posted for arguments and at that stage, the respondents 1 and 2 herein had filed an application in IA.No.1918 of 2014 to re-open the case and another application in IA.No.1919 of 2014 to send Exs.B1 and B2 to the Forensic Laboratory, Chennai and get hand writing expert's opinion.

5. He further submitted that the the respondents 1 and 2, after waiting for seven years, had filed a suit stating that the defendants had created false documents. He further submitted that the petitioner herein had filed a written statement by denying the allegations made in the plaint and specifically pleaded that in the year 2006 itself, the respondents 1 and 2 herein retired from the partnership by executing a deed of retirement dated 31.03.2006 and also received all the benefits and after waiting for seven years with a view to get unlawful gain, they filed false and vexatious suit claiming that the retirement deed dated 31.03.2006 is a forged one. He further submitted that the trial court had allowed the said applications without considering the said fact that the respondents 1 and 2 herein have not produced any other documents containing admitted signatures relating to the period of the year 2006. He

further submitted that since the respondents 1 and 2 have filed suit after seven years, the petitioner herein suspect that the respondents 1 and 2 herein would have signed in the deed of retirement purposely in a different manner and filed a petition to send the said document to the hand writing expert. He further submitted that unless the respondents 1 and 2 produced some other documents also which are containing their signatures, mere sending Exs.B1 and B2 to hand writing experts opinion would not serve the purpose . Hence, he prayed to allow these Civil Revision Petitions and set aside the orders passed by the learned District Munsif, Kangayam.

6. A perusal of typed set of papers filed by the petitioners shows that the respondents 1 and 2 herein had filed a suit in OS.No.98 of 2013 on the file of the District Munsif, Kangayam against four persons, in which, the petitioner herein has been arrayed as second defendant, for the relief of declaring that they were illegally terminated from partnership by creating false and forged documents and for permanent injunction. The petitioner herein had filed a written statement stating that the respondents 1 and 2 had retired from the said partnership firm by

executing a deed dated 31.03.2006 and also received their shares. Since the respondents 1 and 2 had filed the suit stating that the defendants had created false documents with a view to terminate them from the partnership firm, the burden is upon the defendants to prove that the plaintiffs had executed the deed of retirement dated 31.03.2006, but, they have not taken any steps for getting hand writing experts opinion. The plaintiffs themselves had filed an application to send Ex.B1 (Partnership Deed dated 30.04.2004) in which their admitted signatures are there and Ex.B2 (Retirement Deed dated 31.03.2006) in which, the disputed signatures of the respondents 1 and 2 are there to the Forensic Lab for comparing and getting expert's opinion. The learned District Munsif after taking into consideration of the facts of the case, he had allowed the said applications.

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7. The only contention of the petitioner herein is that the respondents apart from requesting the court to compare their admitted signatures found in Ex.B1 with the disputed signatures found in Ex.B2, they have not produced any other documents containing their admitted

signatures. Since the petitioner herein himself had produced Ex.B1 and admitted the signatures found in the said document and as the respondents 1 and 2, there is no necessity to produce any other document containing admitted signatures. Ex.B2 document came into existence in the year 2006, Ex.B1 came in to existence in the year 2004. So, hardly, only two years gap. Therefore, the signatures found in the said documents can be compared by a hand writing expert and give opinion with regard to the fact whether the signatures found in Ex.B2 were signed by the respondents 1 and 2 or not.

8. A perusal of the order passed by the trial court would show that after taking into consideration of the facts and circumstances of the case, it had allowed the applications which were filed to re-open the case and to send Exs.B1 and B2 to the hand writing expert's opinion. This Court does not find any infirmity in the said orders. Hence, these Civil Revision Petitions are liable to be dismissed.

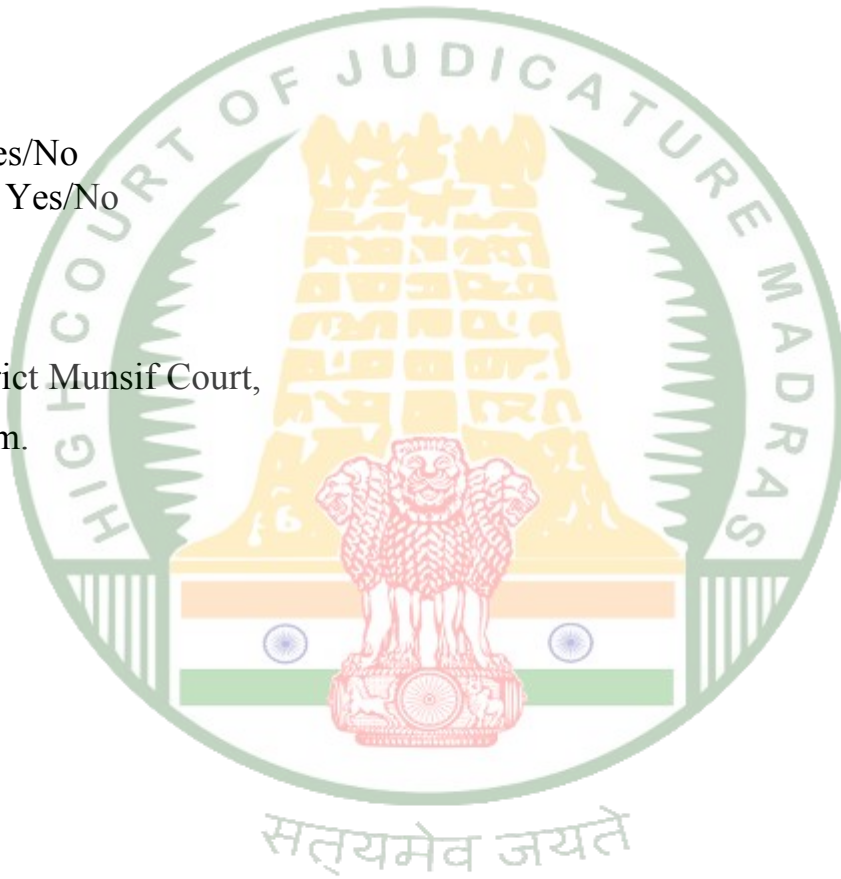
9. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2020

Vv

Index :Yes/No
Internet : Yes/No

To
The District Munsif Court,
Kangayam.

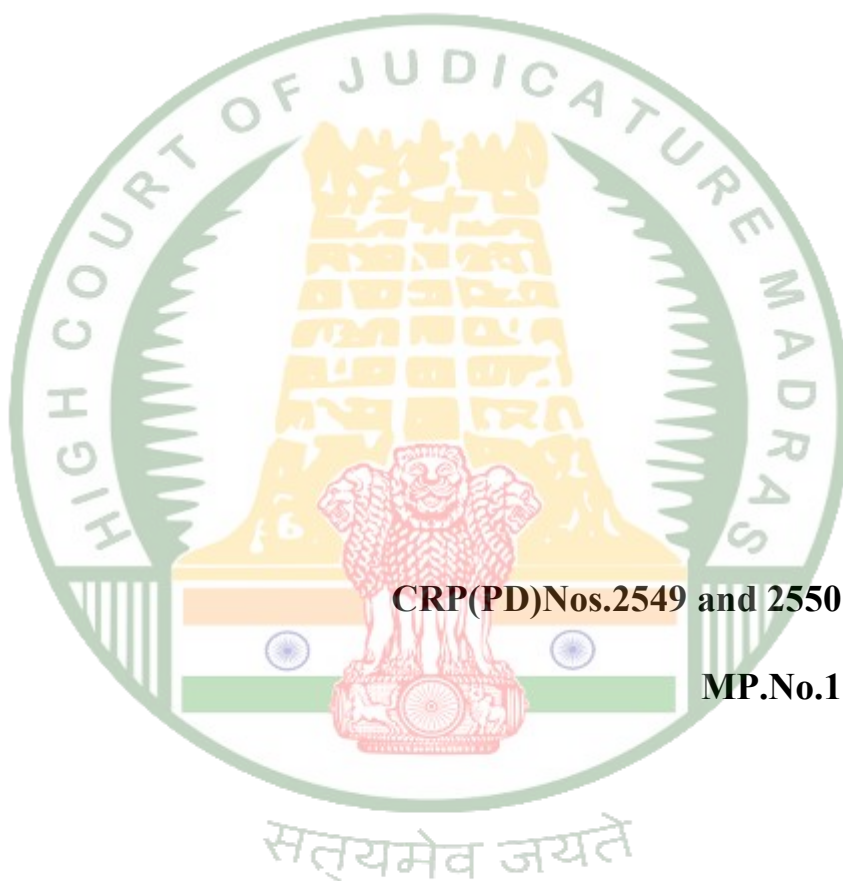


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