

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2368 of 2018 and
CMP No.14687 of 2018

Govindammal,
Rep by Power Agent
G.Elumalai

... Petitioner

Vs

R.Ramachandran

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 12.06.2018 passed in I.A No.162 of 2016 in O.S.No.74 of 2011 on the file of the Sub Court, Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

For Respondent :Mr.N.Nagusah

ORDER

The 8th defendant in O.S.No.74 of 2011 challenges the dismissal of her application for rejection of the plaint on the ground that the

contentions raised by her in the said application will have to be gone into only at the time of trial.

2. The suit was laid for specific performance by the plaintiff / respondent herein seeking execution of the Sale Deed as per the agreement dated 20.06.2007. An agreement was executed by one Praveen who is the Power Agent of the vendors namely Boopathy, Ramadoss and Shanthi in favour of the plaintiff / 1st respondent herein. The plaintiff / 1st respondent herein sought for specific performance of the suit agreement. The petitioner herein who is the 8th defendant in the suit, a subsequent purchaser of the property from the vendors filed the instant application seeking rejection of the plaint on the ground that one of the vendors namely Ramadoss Naicker had died even prior to the agreement and therefore the Power executed by him in favour of Praveen was not valid and the said Praveen had no authority to execute the Sale Agreement.

WEB COPY

3. This was resisted by the respondent namely the plaintiff contending that the Power of attorney is one coupled with interest and

therefore, Praveen who is the Power Agent of the deceased Ramadoss Naicker had every right to execute the Sale agreement .

4. The trial Court upon consideration of the averments contained in the affidavit filed, concluded that the issue has to be gone into based on evidence and it cannot form the basis for rejection of the plaint, particularly under Order VII Rule 11 of the Code of Civil Procedure. Upon such conclusion, the trial Court dismissed the application.

5. I have heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioner and Mr.N.Nagusah, learned counsel appearing for the respondent/plaintiff.

6. Basis of the claim of the petitioner is that the Power of Attorney become invalid on the death of the executant. This plea is countered by contending that the Power of Attorney is one coupled with interest. Therefore the validity of the agreement hinges upon the evidence to be let in relating to the Validity of the Power of Attorney. This question can be

decided only on the evidence and in an application under Order VII Rule 11 of the Code of Civil Procedure, the Court cannot go into the evidence and pronounce upon the validity or otherwise of the evidence. Therefore, I do not see any illegality or irregularity in the order of the trial Court. The Civil Revision therefore fails and it is accordingly dismissed.

7. It is open to the 8th defendant to urge this contention at the time of trial and the trial court will decide on this question without being influenced by any of the observations made in the order of the trial Court which is impugned in this revision or in this order. No costs. Consequently, connected miscellaneous petition is closed.

20.11.2020

vum

Index: Yes/No

Speaking order / Non speaking order

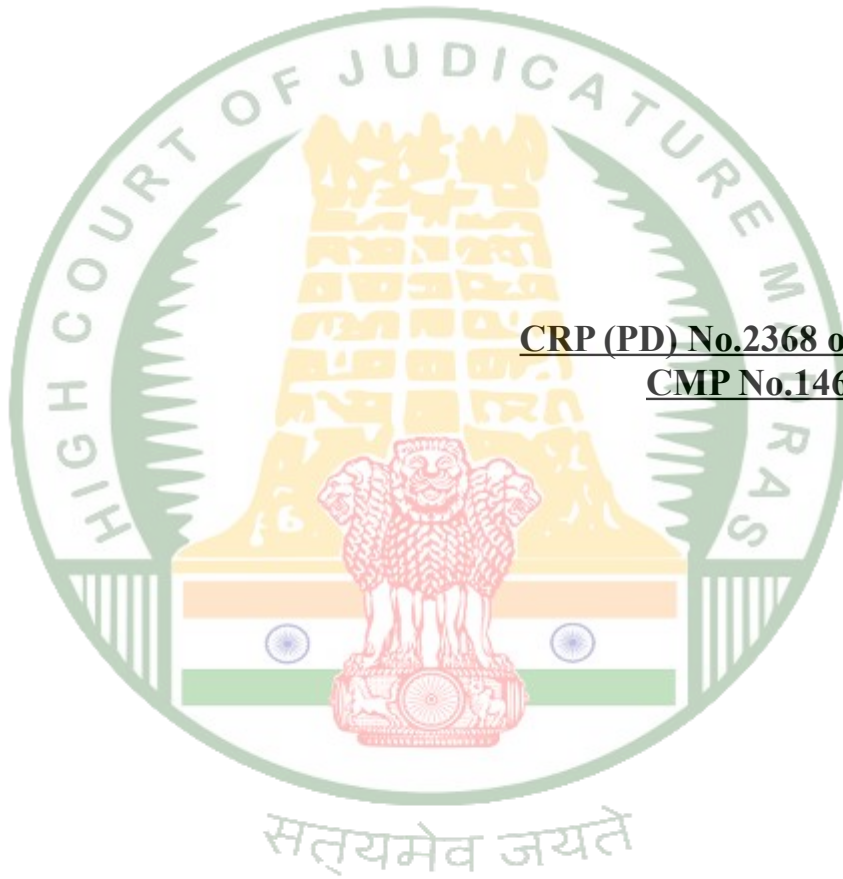
To

The Sub Court, Madurantagam.

CRP (PD) No.2368 of 2018

R.SUBRAMANIAN, J.

vum



CRP (PD) No.2368 of 2018 and
CMP No.14687 of 2018

WEB COPY

20.11.2020