

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.R.P(PD)Nos. 3227, 3229, 3230, 3232,
3233, 3235 & 3236 of 2018**

1.S.Prasanna

2.Y.Alagapparasu

3.Vidyasagar

4.Indumathi

...Petitioners in
all CRPs

Vs.

Bimakumar Jain

...Respondent in C.R.P.No. 3227 of 2018

Sushil Kumar Jain

...Respondent in C.R.P.No. 3229 of 2018

Dilip Kumar Jain

...Respondent in C.R.P.No. 3230 of 2018

Anitha Jain

...Respondent in C.R.P.No. 3232 of 2018

Sandeep Kumar Jain

...Respondent in C.R.P.No. 3233 of 2018

Lalith Kumar Jain

...Respondent in C.R.P.No. 3235 of 2018

Sunitha Jain

...Respondent in C.R.P.No. 3236 of 2018

Prayer in all CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 26.04.2018 made in I.A.Nos. 51, 52, 53, 54, 55, 56 & 57 of 2017 in O.S.Nos. 71, 72, 73, 74, 75, 76 & 77 of 2014 passed by the learned Additional District Judge, Kancheepuram at Chengalpattu.

For Petitioners in all CRPs : Mr.M.Radhakrishnan

For Sole Respondent in all CRPs : Mr.K.Bijai Sundar

COMMON ORDER

The defendants in O.S.Nos. 71, 72, 73, 74, 75, 76 & 77 of 2014 have come up with these revisions against the identical orders dismissing their applications filed under Order 7 Rule 11 seeking rejection of the plaints on the ground that the suit does not disclose cause of action.

2. All the suits filed by the respective plaintiffs seeking declaration of title and recovery of possession of specific extents of properties. It is the case of the plaintiffs that the suit properties belonged to the family, though it was purchased in the name of the eldest male member viz., Puran Sand Singh. The plaintiffs would also rely upon the document filed as family arrangement dated 09.09.1989. The defendants filed application under Order 7 Rule 11 seeking rejection of the plaints mainly contending that the document dated 09.09.1989 is a document which creates rights in the parties in the presentee requiring stamping and registration. In

the absence of such stamping and registration, the document cannot be looked into even for collateral purpose. Therefore, according to the defendants, the suit based on the said document dated 09.09.1989 has no cause of action and therefore, the plaints have to be rejected.

3. This was resisted by the plaintiffs contending that the document is only a record of earlier understanding and there is a specific plea in the plaint to the effect that the document is a record of the earlier understanding. Whether the documents creates a right by itself or recognise pre-existence of right will have to be decided only after trial and the said issue cannot be made subject matter of an application under Order 7 Rule 11 so as to enable the Court to throw out the suit at the threshold. The learned Additional District Judge who heard the application concurred with the case of the plaintiffs and dismissed the application. Hence, these revisions.

4. I have heard Mr.M.Radhakrishnan, learned counsel for the petitioners and Mr.K.Bijai Sundar, learned counsel for the sole respondent in all the Revisions.

5. Mr.M.Radhakrishnan would rely heavily upon the judgment of this Court in **A.C.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and Others** reported in **2001 (1) MLJ 1** wherein, the Hon'ble Division Bench of this Court had discussed the question of admissibility of family arrangement and held that if the instrument do not create a right in a person by himself in presentee then the instrument cannot be looked into even for a collateral purpose in the absence of stamping and registration. In view of the said categorical pronouncement of the Division Bench and on a reading of the instrument dated 09.09.1989, it will be crystal clear that the instrument creates right by itself and it cannot be recorded as a writing in recognition of a past transaction. Therefore, according to Mr.M.Radhakrishnan, the Trial Court was not right in dismissing the application under Order 7 Rule 1.

6. Contending contra, Mr.K.Bijai Sundar, learned counsel for the respondents / plaintiffs would submit that the rejection of an application by the Appellate Court is also based on certain observations of this Court made

in C.M.A.Nos. 2718 to 2731 of 2015. Apart from that he would also submit that the question whether the document is a family arrangement or is a partition creating rights in parties would have to be decided on the basis of evidence that is to be let in.

7. I am inclined to agree with the contention of the learned counsel for the respondents. It is a settled law that in an application under Order 7 Rule 11, the Court cannot go into the defence or to test the veracity of the evidence. The Court has to only go by the pleadings made in the plaint. It is axiomatic that the nature of the document or the nature of the deposition particularly, the instrument will have to be decided on the basis of the evidence and intention of the parties on the instrument. It is the question which requires some evidence atleast. Therefore, the issue whether the document in question creates right in presentee or it is a record on a past transaction will have to be necessarily decided on the evidence that is to be let in and it cannot be made subject matter of the application under Order 7 Rule 11 of C.P.C.

8. I therefore, do not find any material irregularity or illegality in the orders of the Appellate Court in dismissing the application under Order 7 Rule 11. It is made clear that the Trial Court shall not be influence by any of the observations of either in the order made in this revision or in this order while deciding the nature of the document in the suit. These Civil Revision Petitions therefore fails and it is accordingly dismissed. No costs.

18.12.2020

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Internet: Yes/No

Index: Yes/No

Speaking / Non-speaking.

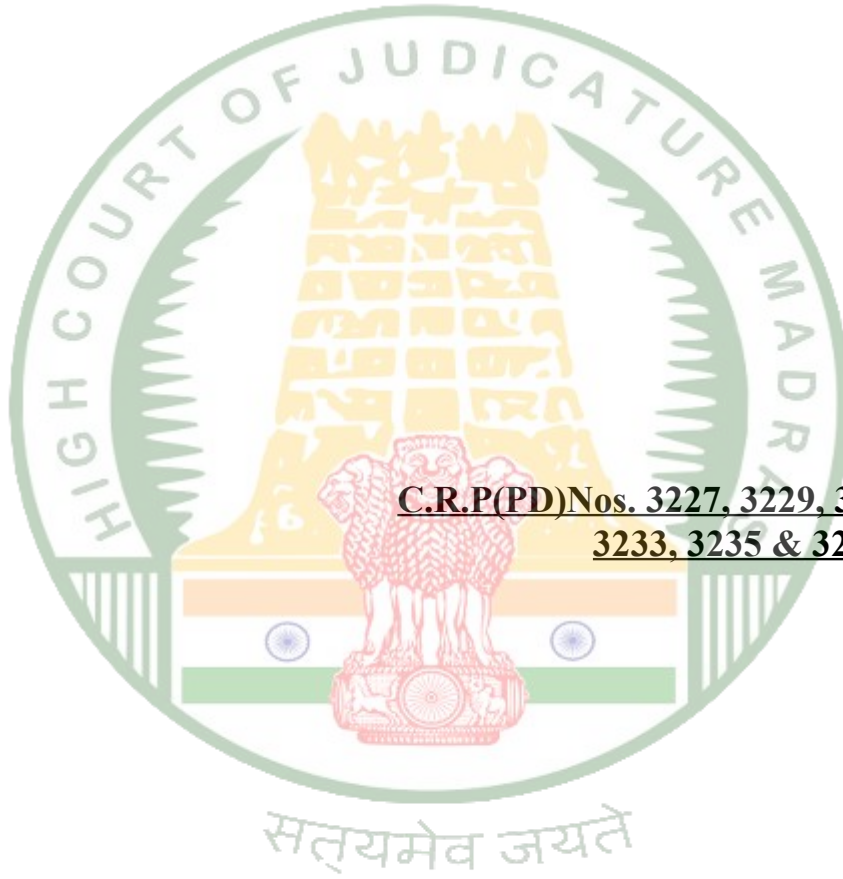
To:

The Additional District Judge,
Chengalpattu, Kanchipuram.

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R.SUBRAMANIAN, J.

KKN



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