

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.32, 35 & 36 of 2020
and
CMP.Nos.163, 175 & 178 of 2020

(Through Video Conference)

R. Santha

...Petitioner in all C.R.Ps.

Versus

1. Ramalinga Gounder
Mani (deceased)

2. Anbalagan
Elango (deceased)

...Respondents in all C.R.Ps.

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order and decree dated 19.10.2019 passed by the Learned Additional Sub-Ordinate Judge at Kancheepuram in I.A.Nos.201, 202 and 203 of 2019 in O.S.No.142 of 2007.

In all cases:

For Petitioner : Mr.N.Kumar Rajan

For Respondent-2 : Mr.Adinarayna Rao

COMMON ORDER

Since the issue involved in these Civil Revision Petitions are one and the same, they are disposed of by this common order.

2. These Civil Revision Petitions are filed against the order passed in I.A. Nos.201, 202 and 203 of 2019 in O.S. No.142 of 2007 pending on the file of the learned Additional Sub Judge, Kancheepuram, on 19.10.2019.

3. I.A.201 of 2019 was filed to re-open the trial for plaintiff's side evidence, I.A. No. 202 of 2019 was filed to re-call the P.W.1 and I.A. No. 203 of 2019 was filed to receive the settlement deed dated 12.04.2007, executed by Devakiammal in favour of Mani, as evidence.

4. The learned Counsel for the petitioner submitted that it was pleaded in the written statement filed by the respondents/defendants that Ramalinga Gownder left the house during April 2017, due to mental depression and his family members are trying to trace him. In the aforesaid settlement deed, Ramalinga Gownder was shown as a dead person. In such circumstances, it absolutely necessary to bring to the notice of the Court by the

respondents/defendants that first defendant Ramalinga Gownder was dead. For this purpose, the settlement deed dated 12.04.2007, was sought to be produced for re-opening the case of the plaintiffs and for re-calling P.W.1. However, without considering the merits of the case of the petitioner, the learned Additional Sub-Judge, Kancheepuram, dismissed the petitions. Against the said dismissal, these Civil Revision Petitions are preferred.

5. In response, the learned counsel for the second respondent submitted that the petitioner cannot seek to prove the death of Ramalinga Gownder on the basis of recitals in the aforesaid settlement deed. His death has to be proved in the manner known to the law and not on the basis of settlement deed. Therefore, he prays for confirmation of the orders of the learned Additional Sub-Ordinate Judge at Kancheepuram and dismissal of these petitions.

6. Considered the rival submissions and perused the records. The suit is filed for the relief of specific performance against Ramalinga Gownder and others. The issue is very limited as to find whether the first respondent/defendant Ramalinga Gownder is alive or not. As pointed out by the learned counsel for the petitioner, it is specifically pleaded in the written

statement that Ramalinga Gownder left the house in April 2017 due to mental depression and his family members are trying to reach him out. The settlement deed is of the year 2017 and the suit is pending from the year 2007. These Interlocutory applications were filed in the year 2019. Even after completion of 12 years, it appears that the respondents/defendants have not located Ramalinga Gownder. On the other hand, the settlement deed dated 12.04.2007, was not disputed by them and in the settlement deed it is mentioned that Ramalinga Gownder was dead. Therefore, in the considered view of the Court, this is one of the evidences that can be relied upon by the petitioner to presume that Ramalinga Gownder was dead.

7. Section 107 and 108 of the Indian Evidence Act, deal with the burden of proving death of a person known to have been alive within thirty years and the burden of proving that a person is alive who has not been heard of for seven years. It is for the parties to follow Sections 107 and 108 of Indian Evidence Act and produce appropriate evidences to prove their rival claim with regard to the death or existence of the Ramalinga Gownder. Be that as it may, the present applications filed by the petitioner to receive the settlement deed dated 12.04.2007, to re-open the case and to re-call P.W.1 for producing the

settlement deed, is absolutely necessary to take this case forward.

8. In this view of the matter, the fair and decretal orders of the learned Additional Subordinate Judge, Kancheepuram, in I.A. Nos. 201, 202 and 203 of 2019 in O.S. No.142 of 2007, are hereby set aside and these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed. The suit was filed in the year 2007 and it appears that the case is pending for arguments. Therefore, both the parties are directed to take appropriate steps in prosecuting the case and the learned Additional Subordinate Judge, Kancheepuram is directed to dispose of O.S. No.142 of 2007, as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order.

01.10.2021

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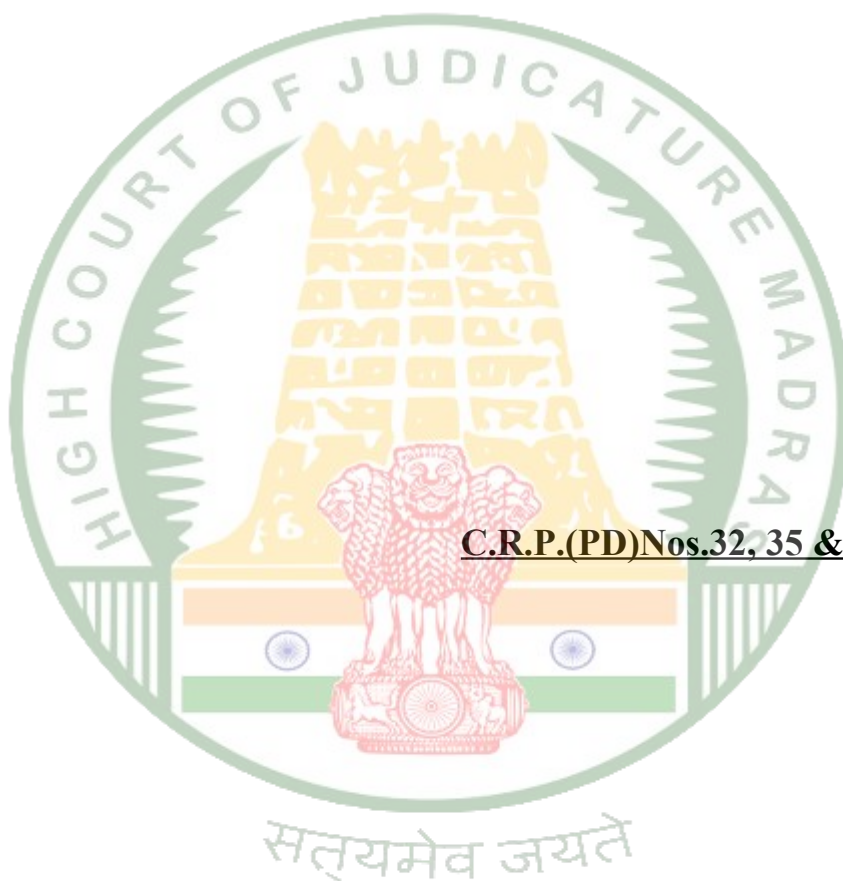
Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The Additional Sub Judge,
Kancheepuram

G.CHANDRASEKHARAN, J.,

jai/bkn



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Dated:
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