



C.R.P.(PD)No.3680 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.3680 of 2013  
and M.P.No.1 of 2013

1.Arumugam

2.Kailasam (died)

3.K.Somasundaram

4.K.Jeyakumar

5.R.Periyasamy

6.R.Krishnamoorthi

7.S.Jegadhesan

8.Valliammal

.. Petitioners

(Petitioners 3,4 and 8 as the legal heirs of the deceased  
2<sup>nd</sup> petitioner vide Court Order dt. 14.11.2019 in  
CMP.No.5256/2016 in CRP.PD.No.3680 of 2013)

Vs.

1.Ammaniammal

2.K.Loganathan

3.P.Muthulakshmi

4.Lakshmi

5.Sundarambal

.. Respondents



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**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 28.06.2013 made in I.A.No.213 of 2013 in O.S.No.670 of 2011 on the file of the II Additional District Munsif Court, Erode.

For Petitioners : Mr.A.Sundaravadhanan

For Respondents : Mr.V.Ragunathan for R1 to R3  
R4 – dismissed vide Court order dated 03.09.2020  
R5 - abated

### ORDER

This Civil Revision Petition is filed to set aside the judgment and decree dated 28.06.2013 made in I.A.No.213 of 2013 in O.S.No.670 of 2011 on the file of the II Additional District Munsif Court, Erode.

2.The petitioners are the defendants 1 to 4 and 7 to 9 in O.S.No.670 of 2011 on the file of the II Additional District Munsif Court, Erode. The said suit was filed by the respondents 1 to 3 against the petitioners and respondents 4 and 5 for declaration and injunction in respect of cart track and mandatory injunction, directing the petitioners 1



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to 4 and 5<sup>th</sup> respondent to restore the 1<sup>st</sup> item of the suit properties to its original position. The petitioners and 5<sup>th</sup> respondent filed written statement and contested the suit. The petitioners filed I.A.No.213 of 2013 under Section 76 of Civil Rules of Practice, to issue summons to the Registrar, Sivagiri Registrar Office, Erode to produce the documents mentioned in the petition. According to the petitioners, the agreement dated 18.01.1979, alleged to have been executed between Muthusamy Gounder, father of the 1<sup>st</sup> petitioner and Kolanthasamy Gounder, father of the respondents 1 to 3 is fabricated one and it was not executed by the said Muthusamy Gounder. The said Muthusamy Gounder did not execute the said agreement before the Sub-Registrar Office, Sivagiri, Erode and prayed for relief sought for in the application.

3.The respondents 1 to 3 filed counter affidavit and denied all the averments made by the petitioners in the affidavit filed in support of the application. The respondents 1 to 3 submitted that in O.S.No.122 of 1986 filed by Kolanthasamy Gounder, the father of the respondents 1 to



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3, he produced the agreement dated 18.01.1979 and Muthusamy Gounder was the 3<sup>rd</sup> defendant and the husband and father of the 4<sup>th</sup> respondent and 5<sup>th</sup> petitioner namely, one Ramasamy Gounder was the 2<sup>nd</sup> defendant in the said suit. The petitioners 1 and 2 are the defendants 5 and 4 in O.S.No.122 of 1986. The said agreement was not disputed by them in the said suit, First Appeal in A.S.No.84 of 1989 and Second Appeals in S.A.Nos.1181 & 1702 of 1990. Only to protract the proceedings, the petitioners have come out with the present application and prayed for dismissal of I.A.No.213 of 2013.

4.The learned Judge considering the averments in the affidavit, counter affidavit, sale deed dated 29.03.1978 and the original agreement dated 18.01.1979, dismissed the application holding that the petitioners filed the present application, only to protract the matter and no purpose would be served, if the application is allowed.



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5. Against the said order of dismissal dated 28.06.2013 made in I.A.No.213 of 2013 in O.S.No.670 of 2011, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioners contended that it is the specific case of the petitioners that Muthusamy Gounder did not execute an agreement dated 18.01.1979 and the said agreement is fabricated and executed by impersonation. In view of such stand taken by the petitioners, the learned Judge erred in holding that the original agreement produced by the respondents 1 to 3 is correct and the same can be compared and hence, the original thumb impression from the records of the Sub-Registrar Office, Sivagiri, Erode Taluk, is very much required for better adjudication of the case and prayed for allowing the Civil Revision Petition.

7. The learned counsel appearing for the respondents 1 to 3 made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.



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8. Heard the learned counsel for the petitioners, who is appearing before this Court physically as well as the learned counsel appearing for the respondents 1 to 3 through Video conferencing/Hybrid mode and perused the entire materials available on record.

9. The petitioners have come out with the present application to call for the records of thumb impression relating to the agreement dated 18.01.1979 alleged to have been executed by Muthusamy Gounder. According to the petitioners, Kolanthasamy Gounder, father of the respondents 1 to 3 has fabricated the said agreement and by impersonation, the same was executed and registered before the Sub-Registrar Office, Sivakiri, Erode. On the other hand, the respondents 1 to 3 in the counter affidavit have stated that the said agreement was produced before the trial Court in O.S.No.122 of 1986 filed by Kolanthasamy Gounder and in the said suit, Muthusamy Gounder, the petitioners 1 and 2 and husband and father of the 4<sup>th</sup> respondent and 5<sup>th</sup> petitioner were party defendants and they did not dispute the said agreement in the said suit, the First Appeal in A.S.No.84 of 1989 and



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Second Appeals in S.A.Nos.1181 & 1702 of 1990. Further, the original sale deed dated 29.03.1978 is on file and the petitioners are not disputing the genuineness of the signature and thumb impression of Muthusamy Gounder. The learned Judge considering the fact that documents of contemporary period are available in the Court, the petitioners could have taken steps to compare the admitted signature and thumb impression in the said documents with disputed agreement dated 18.01.1979 and there is no necessity to send for the document, dismissed the application. It is to be noted that I.A.No.812 of 2012 filed by the petitioners to compare signature found in the agreement dated 18.01.1979 with the sale deed dated 29.03.1978 and mortgage receipt dated 03.04.1970 to get the opinion from the expert, is pending on the date of filing of the present application as well as the order of the learned Judge. In view of the above fact, the reason given by the learned Judge for dismissing the application is valid and there is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

10.The learned counsel appearing for the respondents 1 to 3



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submitted that the suit is of the year 2011 and prayed for speedy disposal of the suit. On the other hand, the learned counsel appearing for the petitioners submitted that some of the parties in the suit died and steps to bring the legal heirs of the deceased parties are pending. The learned II Additional District Munsif, Erode is directed to dispose of the suit in O.S.No.670 of 2011 as expeditiously as possible, in any event within a period of one year from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

24.11.2021

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To

The II Additional Judge,  
District Munsif Court, Erode.

**V.M.VELUMANI, J.**

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