

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos. 2282 and 2285 of 2016
and
CMP.No.11807 of 2016

CRP.PD.No. 2282 of 2016

1. P.Geetha

2. Minor P.Kalaivani

2nd petitioner represented by
Muniyammal
W/o.Muniappan

..Petitioners

Vs.

P. Krishnan

..Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the District Munsif Court at Dharmapuri, dated 17.03.2015 in I.A.No.180 of 2015 in O.S.No.12 of 2012.

For Petitioners

: Mr. P.Valliappan

For Respondent

: No Appearance

CRP.PD.No. 2285 of 2016

1. P.Geetha

2. Minor P.Kalaivani

2nd petitioner represented by

Muniyammal

W/o.Muniappan

..Petitioners

Vs.

P. Krishnan

..Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order of the District Munsif Court at Dharmapuri, decree dated 04.09.2015 in I.A.No.624 of 2015 in O.S.No.12 of 2012.

For Petitioners : Mr. P.Valliappan

For Respondent : No Appearance

COMMON ORDER

These Civil Revision Petitions are directed as against the fair and decretal orders passed in IA.Nos.180 and 624 of 2015 in O.S.No.12 of 2012 on the file of the District Munsif Court, Dharmapuri dated 17.03.2015 and 04.09.2015 praying to allow these Civil Revision Petitions.

2. Both the Civil Revision Petitions are filed against the orders allowing the petitions to re-open and to receive the additional document in the suit.

3. The petitioners are the plaintiffs, they have filed a suit for declaration and injunction, in respect of the suit schedule property as against the respondent herein. After completion of both sides evidence, the respondent has come forward with the petition to re-open and to receive the additional document, which is sought to be marked on behalf of the respondent herein.

4. The learned counsel for the petitioners would submit that the suit was posted for pronouncement of judgment and at this juncture, the respondent filed a petition to re-open and to receive the additional document in the suit. In fact, there is absolutely no whisper about the said document in the written statement filed by the respondent herein. Therefore, without any pleading, in respect of the said document, the said document

can not be marked and it is impermissible under law. He further submitted that in fact, the respondent on three occasions filed the petition to re-open for marking of documents and the same were allowed. The additional documents were also marked on his side. While being so, when the matter was posted for judgment, the respondent has come forward with a plea that in the appeal suit filed by the grandfather of the first petitioner herein in A.S.No.15 of 2008, there was a compromise between the respondent and the appellant.

5. The respondent has now come with the application on 01.12.2005 that there was settlement between the petitioners' mother and the respondent herein and the same was misplaced and now only the respondent found the said document. When there was settlement in respect of the suit schedule property definitely the respondent would have mentioned about the settlement entered between the petitioners' mother and the respondent in the pleadings. Therefore, he is attempting to introduce new fact and wanted to mark the said document. The said document is nothing but fabricated one and the trial Court ought not to have allowed to receive the said document that was posted in the suit for arguments.

6. Though Mr.M.Ravi, learned counsel entered appearance on behalf of the respondent, he did not appear today. Heard the learned counsel for the petitioners.

7. The petitioners are the plaintiffs and they have filed a suit for declaration and injunction in respect of the suit schedule property against the respondent herein. After closing both sides evidence the matter was posted for arguments and at this juncture, the respondent filed the petition to re-open and to receive the additional document, the settlement entered between the petitioners' mother and the respondent dated 01.12.2005. In fact, the respondent already filed the petition to file re-open and mark the additional documents and the same was allowed and the document which was sought to be marked was also marked by the trial Court. When the matter was posted for arguments, the respondent filed the petition to re-open for the purpose of marking the settlement between the petitioners and the respondent herein.

8. On a perusal of the written statement, though the respondent stated that there was settlement between the respondent and the petitioners' mother in A.S.No.15 of 2008, the respondent never whispered about the settlement deed entered between them. In fact, the settlement deed also is not part and parcel of the decree in appeal suit. The petitioners' mother simply withdrawn the appeal suit and the said decree was also marked in the suit. Without considering the above facts, the trial Court simply allowed the petition for the reason "interest of justice". If the respondent allowed to re-open and mark the documents it would cause prejudice to the petitioners herein. Therefore, the order passed by the District Munsif Court, Dharmapuri is perverse and illegal.

9. In view of the above discussion, these civil revision petitions are allowed and the orders passed in IA.Nos.180 and 624 of 2015 in O.S.No.12 of 2012 dated 17.03.2015 and 04.09.2015 are set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

08.01.2021

Speaking/Non-speaking order
Index : Yes/No

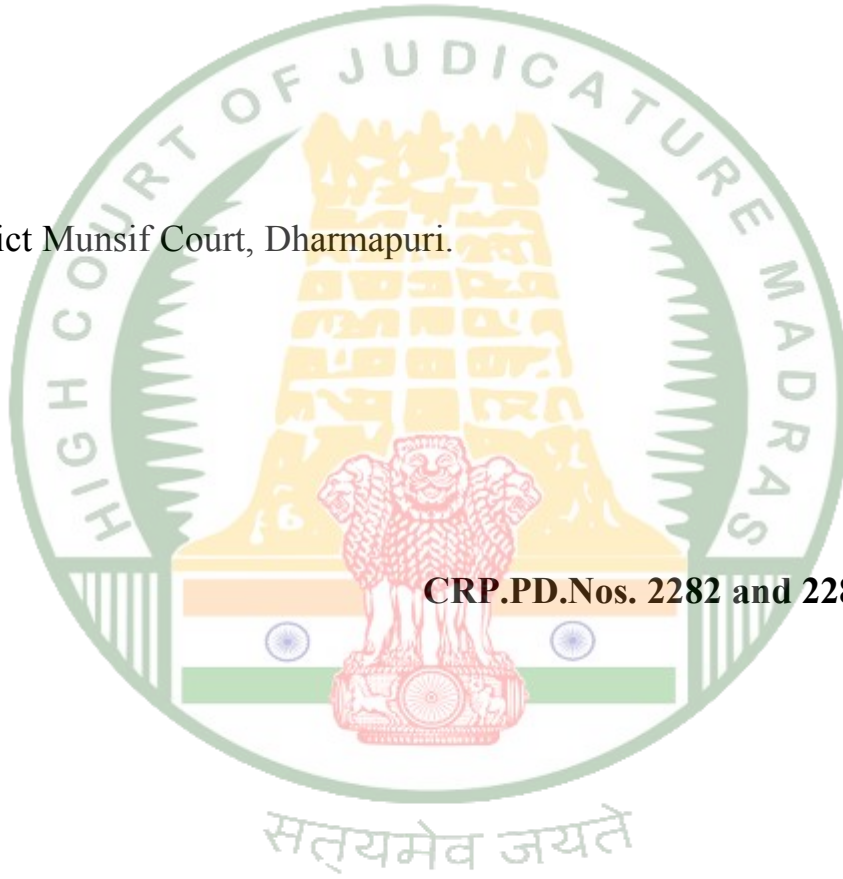
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kv

G.K.ILANTHIRAIYAN,J.

kv

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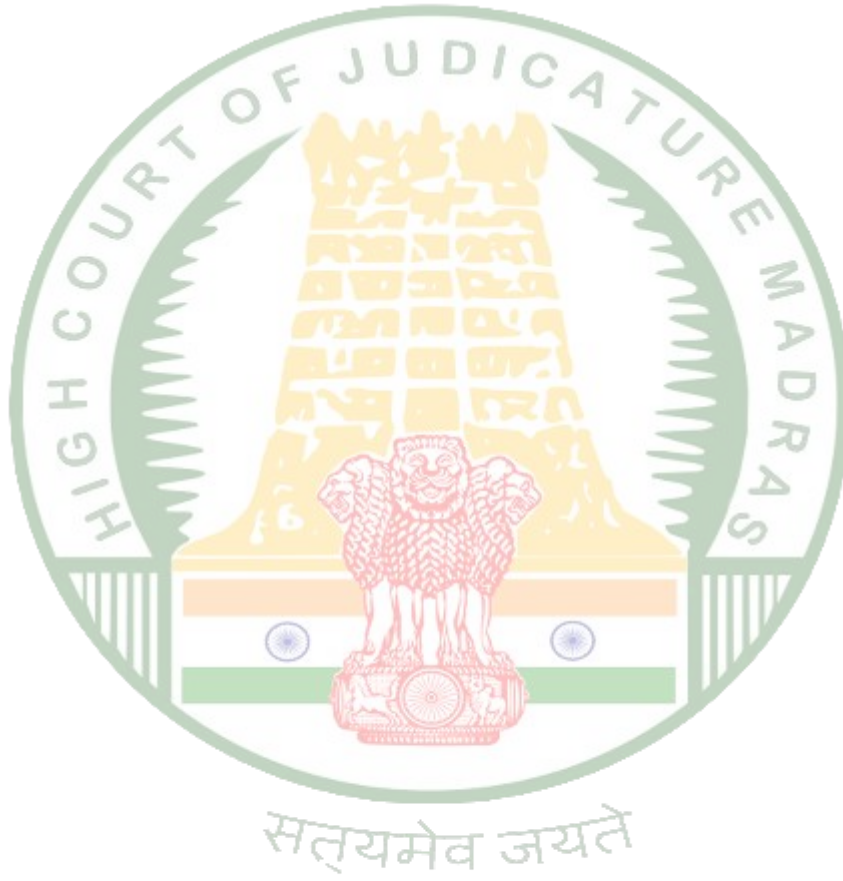
The District Munsif Court, Dharmapuri.



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