

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.2878 of 2018
and C.M.P.No.16908 of 2018

- 1.Vilsapathy (Deceased)
- 2.Viji @ Vijayakumari
- 3.Kavitha @ Thenmozhi
- 4.Kanimozhi
- 5.Arulmozhi
- 6.Elakkiya

... Petitioners

Vs

Periyasamy (Deceased)

- 1.Sekar
- 2.Vasanthi
- 3.Usha
- 4.Chitra

5.The Sub Registrar,
Sub Registrar Office,
Sirkali, Nagapattinam Distrit.

6.State of Tamil Nadu,
Represented by District Collector,
Nagapattinam District,
Nagapattinam.

7.Parimala

8.Amudha

9.Renuga

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2018 made in I.A.No.832 of 2018 in O.S.No.30 of 2013 on the file of the District Munsif, Sirkali.

For Petitioners : Mr.A.Muthukumar for P2 to P6

For Respondents : Mr.S.Sounthar for R1 to R4, R7 to R9
Dr.S.Suriya, GA (CS) for R5 and R6

ORDER

The memo dated 01.07.2021 is taken on record. The factum of the death of the first petitioner is recorded and the petitioners 2 to 6 are recognized as her Legal Heirs in this Civil Revision Petition amended as per memo today by this Court.

2. This Civil Revision Petition is filed against the fair and decreetal order dated 01.08.2018 made in I.A.No.832 of 2018 in O.S.No.30 of 2013 on the file of the District Munsif, Sirkali, thereby dismissing the application to send for the documents.

3. The petitioners herein are the plaintiffs and the respondents herein are the defendants in the said suit. The petitioners herein filed the said suit for partition and separate possession.

4. Pending the said suit, after examination of P.W.1, the petitioners herein filed an application to send for the documents which was already marked as Ex.A32 through P.W.1 from A.S.No.6 of 2018 on the file of the Additional Subordinate Judge, Mayiladuthurai and the same was dismissed on 01.08.2018. Aggrieved by the same the above Civil Revision Petition has been filed.

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5. The learned counsel for the petitioners herein would submit that though Ex.A32 was marked, it is a certified copy of the Panchayat Resolution Note, in which, the second defendant signed as one of the

parties. Even then, the second defendant denied his signature. Therefore, it is the duty of the petitioners herein to prove the signature in a manner known to law. That apart, Ex.A32 can be marked through anyone of the Panchayathars. Therefore, the reasons stated by the Court below to dismiss the application are untenable and the learned counsel prayed to allow this Civil Revision Petition.

6. Per contra, the learned counsel for the respondents herein would submit that when the application has been filed under Order XIII Rule 10 of the CPC to send for the documents from any other Court, it should be supported by an affidavit showing as to how the record is material to the said suit, whereas the petitioners herein filed the application in the form of verified application not supported by any affidavit sworn to by the petitioners herein.

7. That apart, though the learned counsel for the petitioners herein argued that to prove the second defendant's signature, which was a original Panchayat Resolution Note and which was already marked as Ex.A32, the application does not contain any reason to send for the said document.

Therefore, the Court below rightly dismissed the same and the learned counsel prayed for dismissal of this Civil Revision Petition.

8. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioners herein and Mr.S.Sounthar, learned counsel appearing for the respondents 1 to 4 and respondents 7 to 9 herein and Dr.S.Suriya, learned Government Advocate (CS) appearing for the respondents 5 and 6 herein.

9. The said application has been filed by the petitioners herein under Order XIII Rule 10 of the CPC seeking send for the Panchayat Resolution Note which was already marked as Ex.A32 in the said suit. A perusal of the application filed by the petitioners reveals that it was filed in the form of verified application not supported by any affidavit as contemplated under Order XIII Rule 10(2) of the CPC. In this regard, it is relevant to extract under Order XIII Rule 10(1) and 10(2) reads as follows:

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*"10 (1). The Court may of its own motion,
and may in its discretion upon the application of
any of the parties to a suit, send for, either from*

its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

10 (2). Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice."

10. Admittedly, the petitioners herein filed an application in the form of verified application not supported by way of the affidavits showing how the record is material to the suit in which the application is made.

11. As rightly pointed out by the learned counsel for the respondents herein, the learned counsel for the petitioners herein argued that to prove the signature of the second defendant found in the Panchayat Resolution Note which was categorically denied by the defendants in their written statement. Therefore, the petitioners herein ought to have proved the same. Whereas, as stated supra, on a perusal of the application, this Court finds that it does not contain any valid reason to send for Ex.A32. In fact, the certified copy of Ex.A32 was already marked through P.W.1.

12. Therefore, the Court below rightly dismissed the application and this Court finds no infirmity or illegality in the order passed by the Court below.

13. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is dismissed. No order as to costs.

16.07.2021

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

To

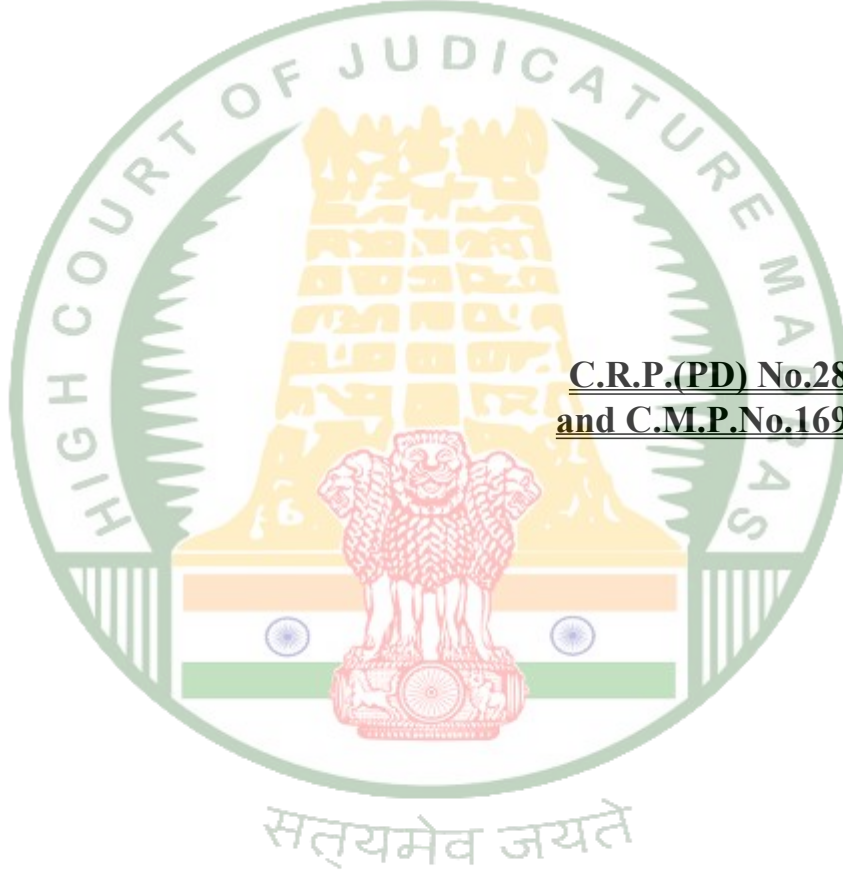
- 1.The District Munsif Court,
Sirkali.
- 2.The Sub Registrar,
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Sirkali, Nagapattinam Distrit.
- 3.The District Collector,
Nagapattinam District,
Nagapattinam.



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G.K.ILANTHIRAIYAN. J,

rna



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