

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2021

PRONOUNCED ON : .10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(P.D) Nos.1470, 1509 & 1479 of 2020 and
C.M.P.Nos.8535, 8878 & 8612 of 2020

In C.R.P.(P.D)No.1470 of 2020

K.Shanthi

...Petitioner

Vs.

1.Salem Constructions,
A Regd Partnership Firm,
Represented by its Managing partner, N.Selvam,
Having Office at
No.335, Vivekanandar St, Bharathi Nagar,
Maniyanoor, Salem-636 010.

2.N.Selvam

3.S.Parimala,

4.The Commissioner,
Corporation of Salem,
Salem.

...Respondents

In C.R.P.(P.D)Nos.1509 & 1479 of 2020

1.Salem Constructions,
A Regd Partnership Firm,
Represented by its Managing partner, N.Selvam,
Having Office at
No.335, Vivekanandar St, Bharathi Nagar,
Maniyanoor, Salem-636 010.

2.N.Selvam

3.S.Parimala ...Petitioners

Vs.

1.K.Shanthi

2.The Commissioner,
Salem Municipal Corporation,
Fort Main Road,
Salem-1.

...Respondents

Prayer in C.R.P.(P.D)No.1470 of 2020:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 22.07.2020 in I.A.No.8 of 2020 in O.S.No.741 of 2010 on the file of the Principal District Munsif Court, Salem.

Prayer in C.R.P.(P.D)Nos.1509 & 1479 of 2020:-Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside fair and decretal order dated 11.03.2020 passed in I.A.Nos.5 & 6 of 2020 in O.S.No.741 of 210 passed by the learned Principal District Munsif, Salem, Salem District and allow this Civil Revision Petition.

In C.R.P.(P.D)No.1470 of 2020

For Petitioner : Mr.A.Thiyagarajan,Senior Advocate

For Respondents : Mr.T.Mohan

In C.R.P.(P.D)Nos.1509 & 1479 of 2020

For Petitioners : Mr.T.Mohan

For Respondents : Mr.A.Thiyagarajan,Senior Advocate

COMMON ORDER

C.R.P.No.1470 of 2020 is filed against the order passed in I.A.No.8 of 2020, C.R.P.No.1479 of 2020 is filed against the order passed in I.A.No.6 of 2020 and the C.R.P.No.1509 of 2020 is filed against the order passed in I.A.No.5 of 2020 in O.S.No.741 of 2010 on the file of the Principal District Munsif Court, Salem.

2.I.A.No.8 of 2020 was filed under Order 11 Rule 14 of C.P.C., to direct the petitioner/first respondent to produce original sale deed dated 12.03.2008.

3.I.A.No.6 of 2020 was filed under Order 16 Rule 2 of C.P.C., to issue summons to Income Tax officials namely, The Income Tax Officer, Ward-III(1), No.93, Ramakrishna Road, Salem-636 007 to give evidence and (i.e) IT returns in the Assessment Year 2007-2008 and 2008-2009 in the

name of K.Shanthi and PAN:AZDPS8060N and the Salem Construction PAN is ABHFS4216J in the IT return in the Assessment year 2008-2009.

4.I.A.No.5 of 2020 was filed under Order 16 Rule 2 of C.P.C., to summon the Chief Engineer, Salem Corporation, Salem, to give evidence and to produce records relating to Salem Constructions (i.e) Tender Form, Work order, M.Book (Measurement Book) and all agreement deeds.

5.I.A.No.8 of 2020 was allowed. The Court found that the petitioner denied the possession of original sale deed dated 12.03.2008. Therefore, the Court moulded the relief to serve the purpose and in the interest of justice and directed the Sub Registrar, Dadgapatty Sub Registrar Office to produce the original thumb impression register maintained in the office with regard to the registration of sale deed dated 12.03.2008 (Document No.1783 of 2008) and all other original registers containing the signature of the petitioner K.Shanthi taken during the relevant time of registration of the aforesaid sale deed in a sealed cover within two weeks.

6. Against the order passed in I.A.No.8 of 2020, K.Shanthi, preferred the C.R.P.No.1470 of 2020. I.A.No.5 of 2020 and I.A.No.6 of 2020 were dismissed. Against the order passed in I.A.No.5 of 2020 and I.A.No.6 of 2020, The Salem Construction, Salem, preferred the C.R.P.Nos.1479 & 1509 of 2020.

7. The learned counsel for the petitioner in C.R.P.No.1470 of 2020 submitted that the petitioner K.Shanthi, had not signed in the alleged retirement deed dated 09.10.2007. Her signature in this document is forged. A police complaint has been filed for forging her signature and only to delay the criminal proceedings, the I.A.No.8 of 2020 was filed. Though the prayer was only for production of sale deed dated 12.03.2008 by the petitioner. On being informed by the petitioner that she is not in possession of the sale deed dated 12.03.2008, the court ordered production of registers containing signature and thumb impression. That is beyond the scope of the petition filed. Therefore, the order passed by the learned Principal District Munsif, Salem, has to be set aside. He relied on the judgment reported in **(2019) 14 Supreme Court Cases 220**, “for the proposition that the case of the parties

have to be proved by oral and documentary evidence. The evidence of hand writing expert is not a conclusive proof of disputed handwriting”.

8.In reply, the learned counsel for the respondent submitted that the respondent had filed I.A.No.7 of 2020 to appoint an Advocate Commissioner with a direction to take the retirement deed dated 09.10.2007 (Ex.A3) containing the signature of the petitioner/respondent and send it to the Handwriting Expert, Forensic Science Department, Chennai. This petition was dismissed. Against the order of dismissal, the respondent preferred C.R.P.No.1342 of 2020. This C.R.P.No.1342 of 2020 was disposed of directing the Court to appoint an Advocate Commissioner and hand over Ex.A3 and sale deed dated 12.03.2008, partnership deed dated 01.12.2006 to the Advocate Commissioner in a sealed cover for examining the documents by Handwriting Expert. The Handwriting Expert was directed to examine all the documents and give a report. The court was directed to dispose the case within a period of six months after giving opportunity to both the parties. The learned counsel for the respondent in pursuance of this order, filed a petition in I.A.No.8 of 2020 for directing the petitioner

K.Shanthi to produce the original sale deed dated 12.03.2008 in document No.1783 of 2008 for the purpose of comparison with the disputed partnership retirement deed dated 09.10.2007. Since, the petitioner said that she was not in possession of the original sale deed dated 12.03.2008, in the interest of justice, the learned Principal District Munsif, Salem, directed the Sub Registrar, Dadgapatty Sub Registrar Office, to produce the original thumb impression register maintained in the office with regard to the registration of sale deed dated 12.03.2008 (Document No.1783 of 2008) and all other original registers containing the signature of the petitioner K.Shanthi taken during the relevant time of registration of the aforesaid sale deed in a sealed cover within two weeks.

9.It is also submitted by the learned counsel for the respondents in C.R.P.No.1470 of 2020 and for the petitioners in C.R.P.No.1479 of 2020 and C.R.P.No.1509 of 2020 that the summoning of Income Tax officials and the Corporation officials are absolutely necessary, in the facts and circumstances of the case, to prove that the petitioner had not taken part in the business, and it was other partners who have been running the

partnership business. However, without considering the merits of the petition in I.A.No.5 of 2020 and I.A.No.6 of 2020, the learned Principal District Munsif, Salem, dismissed the petition.

10.The learned counsel appearing for the petitioner in C.R.P.No.1470 of 2020 and respondents in C.R.P.No.1479 of 2020 and C.R.P.No.1509 of 2020 submitted that those documents are not necessary for adjudicating dispute involved in this case. The filing of these applications is an exercise intended only for the purpose of dragging the matter.

11.Considered the rival submissions and perused the records.

12.In order to appreciate the rival claim, it is necessary to understand the case of the plaintiffs in the suit. The suit in O.S.No.741 of 2010 was filed by the plaintiffs to declare that the plaintiffs 2 and 3 alone are the partners in the first plaintiff's partnership firm and the first defendant is not a partner; directing the second defendant to release and pay all the

work bills, cheques etc., in favour of the first plaintiff's firm name and deliver the cheques etc., to the plaintiffs 2 and 3 in respect of all the civil construction work done by the plaintiffs for second defendant by means of a mandatory injunction; restraining the second defendant not to release or pay any work bill payments, cheques in the name of first plaintiff and deliver the cheques, work bills etc., in the hands of first defendant by means of a mandatory injunction and for costs.

13. Admittedly, the plaintiffs 2 and 3 and first defendant were partners of the first plaintiff's firm. It is the case of the plaintiff that the first defendant retired from plaintiff's partnership firm and executed a retirement deed on 09.10.2007. Therefore, she has no right to claim as a partner in the first plaintiff's partnership firm after 09.10.2007. Since, the first defendant tried to get cheques and work bill for the work done by the plaintiff for the second defendant, the suit was filed for the relief aforesaid.

14. This is the facts of the case, in brief, we understand from the plaint. It is thus clear that the first defendant who is the petitioner in

C.R.P.No.1470 of 2020 disputes the execution of retirement deed dated 09.10.2007 and claims that she is still a partner. Therefore, it is necessary to prove that whether she had executed the retirement deed dated 09.10.2007 or not. For this purpose, the plaintiff's filed I.A.No.7 of 2020 for comparing the disputed signature in retirement deed dated 09.10.2007 with sale deed dated 12.03.2008 and partnership deed dated 01.12.2006. That petition was dismissed by the Trial Court. The C.R.P.No.1342 of 2020 filed against the dismissal order. This Court directed the comparison of disputed signature with the admitted signatures. As already said petitioner denied having possession of sale deed dated 12.03.2008. In such circumstances, the learned Principal District Munsif, Salem, has directed the Sub Registrar, Dadgapatty Sub Registrar Office to produce the original thumb impression register maintained in the office with regard to the registration of sale deed dated 12.03.2008 (Document No.1783 of 2008) and all other original registers containing the signature of the petitioner K.Shanthi taken during the relevant time of registration of the aforesaid sale deed in a sealed cover within two weeks. Experts evidence may not itself a conclusive proof of a handwriting. But it will certainly be a corroborative evidence to lend

support to the evidence of other witnesses. In the considered view of this Court, order dated 22.07.2020, in I.A.No.8 of 2020 in O.S.No.741 of 2010 passed by the learned Principal District Munsif, Salem, does not suffer from any irregularity and illegality. On the other hand it is just and fair order passed with an object to advance the cause of justice. Therefore, this court finds no reason to interfere with the order of the learned Principal District Munsif, Salem, passed in I.A.No.8 of 2020 in O.S.No.741 of 2010.

15. So far as other applications I.A.No.5 of 2020 and I.A.No.6 of 2020 for summoning the Chief Engineer, Salem Corporation, Salem and the Income Tax Officer, Ward-III(1), No.93, Ramakrishna Road, Salem-636 007, for production of documents mentioned in these applications, this Court is of the considered view that, considering the nature of the suit, the relief's claimed, production of these documents will help the Court in appraising the real issue in controversy between the parties and adjudicate the matter effectively and correctly. The documents sought for will help the court in coming to the conclusion as to whether K.Shanthi participated in the partnership business, after her alleged retirement from partnership on

09.10.2007. This would ultimately help this court in resolving the issue between the parties. Therefore, this Court finds that the dismissal of I.A.No.5 of 2020 and I.A.No.6 of 2020 is not correct and dismissal order is liable to be set aside and accordingly set aside. I.A.No.5 of 2020 and I.A.No.6 of 2020 in O.S.No.741 of 210 are allowed.

16.Resultantly, the Civil Revision Petition in C.R.P.No.1470 of 2020 is dismissed and C.R.P.No.1479 of 2020 and C.R.P.No.1509 of 2020 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

17.Considering the fact that, the suit was filed in the year 2010, the court below is directed to dispose of the case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

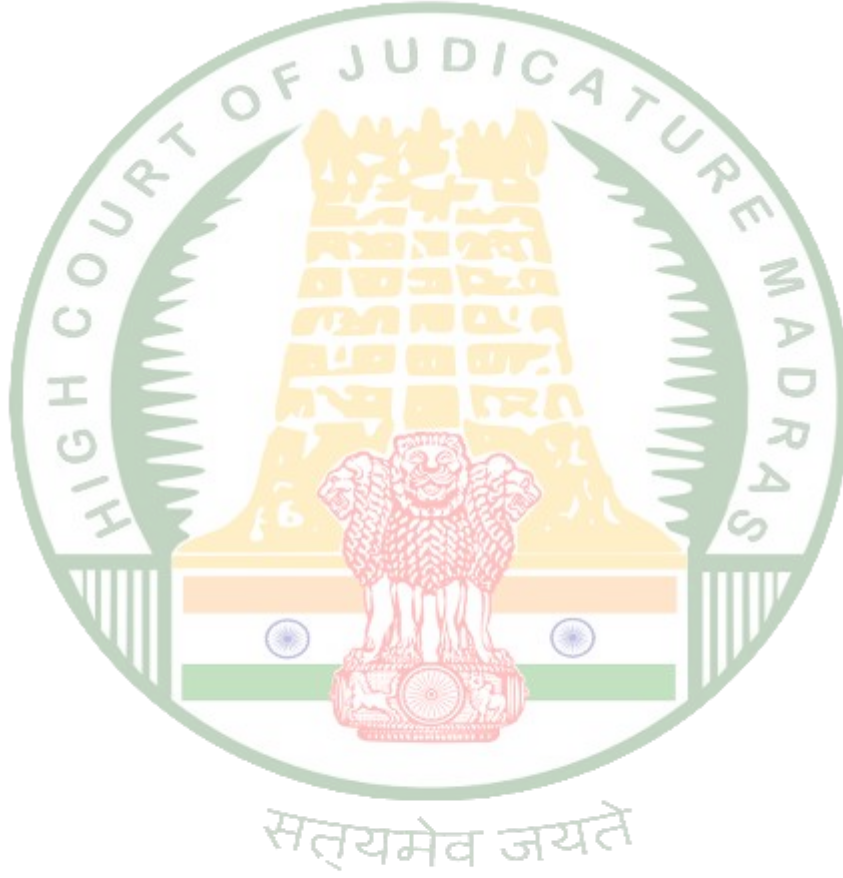
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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

.10.2021

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To

1. The Principal District Munsif Court,
Salem.
2. The Section Officer,
VR Section,
High Court of Madras.

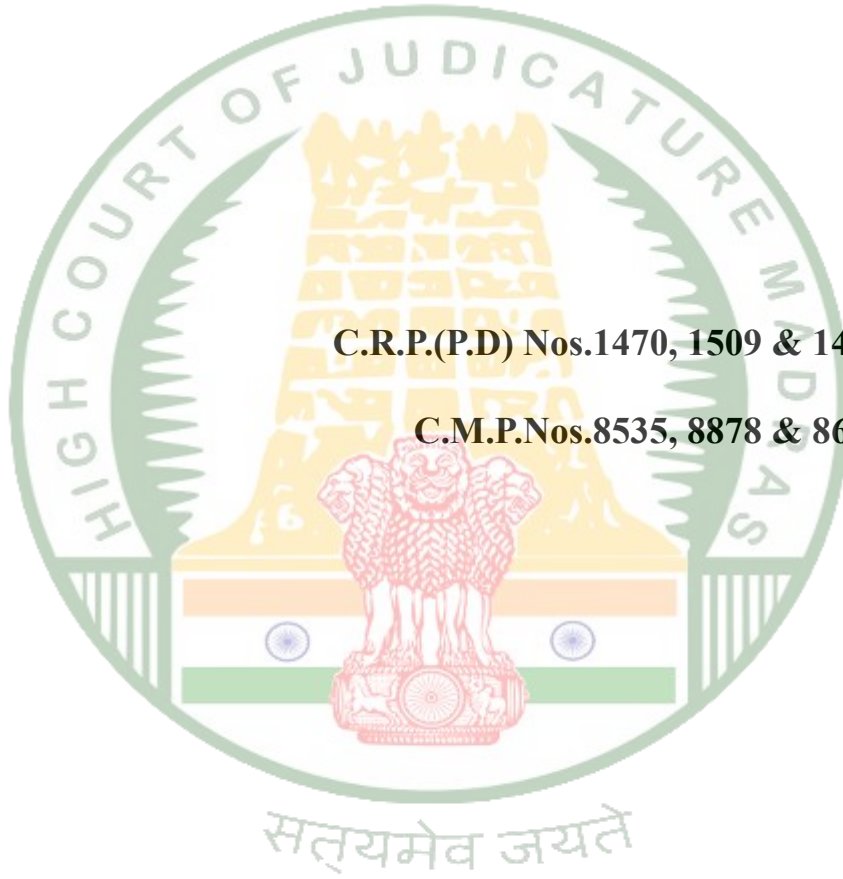


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G.CHANDRASEKHARAN.J,

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and
C.M.P.Nos.8535, 8878 & 8612 of 2020**

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