

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 10.08.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**C.R.P. (PD) No.1561 of 2021**  
**and C.M.P.No.12211 of 2021**

K.Prabhakaran

...

Petitioner /  
Plaintiff

*versus*

1.A.Natarajan

2.A.Gopalraj

3.V.Saraswathy

Pechiammal (died)

Palaniammal (died)

4.Chandran

5.Mallika

6.S.Gopal

7.C.V.Thambidurai

...

Respondents /  
Defendants

**PRAYER:** Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 30.09.2019 made in I.A.No.885 of 2018 in O.S.No.320 of 2007 on the file of the III Additional Subordinate Court, Coimbatore.

For Petitioner

: Mr.S.Annamalai

**ORDER**

This Civil Revision Petition is filed to set aside the order dated 30.09.2019 made in I.A.No.885 of 2018 in O.S.No.320 of 2007 passed by the learned III Additional Subordinate Judge, Coimbatore.

2. I.A.No.885 of 2018 was filed under Order 18 Rule 17 of C.P.C., to recall P.W.1. The case of the respondents is that, the petitioner filed the suit for specific performance. It is the specific case of the respondents that, the plaintiff along with 6<sup>th</sup> defendant had created Sale Agreement with a view to sell the properties of the respondents. The 6<sup>th</sup> defendant was appointed as a power agent of the respondents on 09.03.1994 and that, the Power of Attorney Deed was cancelled on 16.03.2007 and it was intimated to the 6<sup>th</sup> defendant through an advocate notice dated 19.03.2007. Thereafter, it is alleged that the plaintiff and 6<sup>th</sup> defendant had created Sale Agreement with the help of anti-dated stamp papers. In this regard, they obtained information through Right to Information Act and the documents secured had already been marked. In view of the specific allegation that, the suit Sale Agreement was created using the anti-dated stamp papers and in view of the information furnished, it has become

necessary to confront P.W.1 with a document already marked. Therefore, this petition.

3. This petition was resisted by the petitioner before the trial Court alleging among other things, that this is a frivolous petition and liable to be rejected in limini. This petition is filed only to fill up the lacuna. P.W.1 was already cross examined. The document sought to be shown to P.W.1 was already available in the custody of the respondents. P.W.1 was extensively cross examined with respect to the Sale Agreement. Therefore, the present petition is misconceived, has to be dismissed.

4. The learned trial Judge after considering the rival submissions allowed the petition for recalling P.W.1 on the ground that the District Registrar Administration was examined as D.W.3 on 05.10.2018 and one document has been marked through him. Therefore, the Court found that the respondents herein must be given a chance to confront P.W.1 with the documents produced. In such view of the matter, the petition was allowed. Against the said order, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner submitted that P.W.1 was extensively cross examined with regard to the Sale Agreement. The respondents have to prove their case only by examining their witnesses. They cannot seek to recall and re-examine P.W.1, who was already examined in detail with reference to the Sale Agreement, again, to prove the respondents case. The learned trial Judge has passed an order, without appreciating this position and without assigning the reason, therefore, he seeks to set aside the order of the learned III Additional Subordinate Court, Coimbatore.

6. Considered the submissions made by the learned counsel for the petitioner.

7. It is seen from the affidavit filed in support of this petition for recalling P.W.1, the specific case of the respondents is that, 6<sup>th</sup> defendant was given Power of Attorney to deal with the suit property on 09.03.1994. Thereafter, the said Power of Attorney was cancelled on

16.03.2007 and that was intimated to the 6<sup>th</sup> defendant through the advocate notice dated 19.03.2007. Thereafter, it is alleged that the plaintiff and the 6<sup>th</sup> defendant colluded together in creating the suit Sale Agreement using the anti-dated stamp papers. In this regard, it is submitted that the information had been obtained from the District Registrar Office and D.W.3 was examined and documents had been marked to prove the case of the respondents.

8. In the said circumstances, it is absolutely necessary to re-call P.W.1 to confront the document to prove the allegations that the suit Sale Agreement was created using the anti-dated stamp papers. When the specific case is that the suit Sale Agreement is forged and in support of this claim certain documents had been summoned through Right to Information Act and marked, it is absolutely necessary for the party, who wants to prove the suit Sale Agreement is a forged document to confront the party to the document namely, P.W.1 with the document and cross examine him with reference to the genuineness of the Sale Agreement. Therefore, this Court is of the considered view that the learned trial Judge has considered this aspect

in right perspective and allowed this petition. In the facts and circumstances of the case and the materials available, it is necessary to give an opportunity to the respondents to re-call P.W.1 to confront him with the document. This Court finds no reason to interfere with the order of the learned III Additional Subordinate Judge, Coimbatore.

9. In such view of the matter, the order passed by the learned III Additional Subordinate Judge, Coimbatore in I.A.No.885 of 2018 in O.S.No.320 of 2007 dated 30.09.2019, is hereby confirmed, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

10.08.2021

Speaking order / Non-speaking order  
Index : Yes / No

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To

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The III Additional Subordinate Court, Coimbatore.



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**G.CHANDRASEKHARAN, J.**

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