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C.R.P.(P.D).Nos.2363 & 2364 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021

PRONOUNCED ON : 12.11.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D)Nos.2363 & 2364 of 2021 and
C.M.P.No.17916 of 2021**

Muthamilselvan

...Petitioner

Vs.

1.The Secretary,
Residing at
Veeraganur Co-op Housing Society,
Veeraganur Town & Post,
Gangavalli Taluk,
Salem District.

2.The Special Officer,
Residing At
Veeraganur Co-op Housing Society,
Veeraganur Town & Post,
Gangavalli Taluk,
Salem District.

3.The Co-op Sub Registrar,
(Housing) having office opp. To
New Bus Stand,
Salem Town & District

...Respondents



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Prayer:- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 28.04.2021 in I.A.No.1 of 2019 and I.A.No.2 of 2019 in O.S.No.126 of 2006 on the file of the Additional District Munsif, Attur.

For Petitioner : Mr.D.Babu Varadharajan

ORDER

C.R.P.No.2363 of 2021 and C.R.P.No.2364 of 2021 are filed challenging the order passed in I.A.No.1 of 2019 and I.A.No.2 of 2019 in O.S.No.126 of 2006 on the file of the Additional District Munsif, Attur.

2.I.A.No.1 of 2019 is filed to reopen the case of the plaintiff and I.A.No.2 of 2019 is filed to appoint an Advocate Commissioner to collect the left thumb impression register of mortgage deed dated 25.03.1991 (Book-I, volume-707, Pages 181-185) and the mortgage deed dated 10.05.1999 (Book-I, volume-857, Pages 5-11) registered in Gangavalli Sub-Registrar Office, to the expert at Forensic Lab at Chennai, and get an expert opinion by comparing them and submit the report. It is further submitted by the learned counsel for the petitioner



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that petitioner has not executed the mortgage deed dated 10.05.1999. He had executed only mortgage deed dated 25.03.1991. On the basis of the mortgage deed dated 10.05.1999 alleged to have been executed by the petitioner, respondents are initiating action to bring the suit property for sale. Therefore, he filed the suit for permanent injunction restraining the respondents from bringing the suit property in auction. Thus it is necessary that his thumb impression in both the mortgage deeds have to be analysed by the finger print expert to prove his case that he had not executed the mortgage deed dated 10.05.1999.

3.He filed these applications for reopening the case and for subjecting these two documents to finger prints expert's opinion. However, the learned Additional District Munsif, Attur without considering the merits of the petitioner's case, dismissed the petitions not on the averments made in the interlocutory applications, but on the merits of the main case. The finding that, the suit is not maintainable under Tamilnadu Co-operative Societies Act, 1983 is not an issue before the learned Additional District Munsif, Attur in the interlocutory



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applications. Therefore, the learned counsel for the petitioner prayed for setting aside the order of the learned Additional District Munsif, Attur and for allowing the applications. He relied on the judgment reported in **1997 (1) CTC 378 (Mattadhari Primary Agricultural Co-operative Bank Vs. Saroja Ammal & Another)** for the proposition that rejection of application for framing preliminary issue on the maintainability of the suit against the Co-operative Society cannot be challenged in revision.

4.Considered the submissions and perused the records.

5.As narrated above, the suit was filed by the petitioner for the relief of permanent injunction restraining the respondents from bringing the suit property in auction sale. The written statement filed by the respondents show that petitioner's father had obtained loan from the Society by executing mortgage in favour of the Society in 1999. Since, the amount was not paid proceedings had been initiated and a decree was passed. E.P.No.140 of 2006 was filed and pending. A sum of Rs.11,77,644 is due from the petitioner. In the counter also it is



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contended by the respondents that petitioner has not taken any steps for sending the mortgage deed dated 10.05.1999 to the finger print expert's opinion immediately after filing of the suit. This application is filed 14 years after filing the suit and when the case is about to be terminated. It is not necessary for the respondents to create false and forged mortgage deed.

6.The learned counsel for the petitioner relied on the letter dated 14.05.1999 said to have been given by the first respondent to show that his father had repaid the loan amount. He also relied on the evidence of the DW1 in this regard. However, DW1 stated that the loan in question was given to Rajalingam after he repaid the previous loan. Thus this document is of no use to the petitioner. Admittedly respondents are the Co-operative Society and it is officers. There is no reason for the respondents to create or fabricate the mortgage deed dated 10.05.1999. Petitioner has also not taken steps for sending the disputed and admitted mortgage deeds to the finger print expert's opinion immediately after filing the suit. He filed the application only when the case is about to be



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disposed. Therefore, this Court finds no merits in the claim of the petitioner to send the mortgage deeds dated 25.03.1991 and 10.05.1999 for finger print expert's opinion. Apparently, this application is filed only to protract the proceedings.

7. With regard to the finding given by the learned Additional District Munsif, Attur that there is bar under Section 156 of Tamilnadu Co-operative Societies Act, 1983, this Court does not want to give any opinion now since the issue before the Court is not on the maintainability of the suit. The issue with regard to maintainability of the suit is kept open to be decided by the Trial Court at the time of final disposal. Therefore, this Court confirms the order of dismissal of the petition filed by the petitioner for reopening, sending the documents for finger print expert's opinion not for the reasons stated in the order but for the reasons stated above in this order.



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8.In view of this matter, both the Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition stands closed.

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12.11.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No



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To

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1. The Additional District Munsif,
Attur.
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

Ep

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