

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

C.R.P.(PD) No.513 of 2014
and M.P.No.1 of 2014

Jayakodi

.... Petitioner

Vs.

Vellaiammal (died)

1. K.Jayaprakasam(died)

2. K.Nataraj

3. K.Nallusamy

4. Ponnammal

5. Thayammal

6. Kannan

7. Rathinammal

8. Devi

9. Bakkiam

(R5 to R9 brought on records

as legal representatives of the
deceased first respondent viz.,

K.Jayaprakasam, vide Court
order dated 30.01.2020 made
in C.M.P.No.1121 of 2016 in
C.R.P.(NPD)No.513 of 2014)

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.10.2013 made in I.A.No.495 of 2013 in O.S.No.161 of 2009 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani

For Respondents

For R1 : Died

For R2, R3

and R5 to R9 : Mr.M.Rajendiran

For R4 : No appearance

ORDER

This revision petition is arising out of the fair and decreetal order dated 29.10.2013 passed by the learned District Munsif, Mettur in I.A.No.495 of 2013 in O.S.No.161 of 2009, thereby dismissing the petition filed for amendment to include the prayer of declaration by the petitioner herein.

2. The petitioner is the plaintiff. She filed suit for partition as against the defendants 1 to 5. The fifth defendant viz., Ponnammal filed separate written statement stating that the portion of the suit property was already purchased by her from the father of the petitioner/plaintiff herein by

a registered sale deed dated 13.07.1984. After the purchase, the fifth defendant is in possession and enjoyment of the same. After the period of three years from the filing of the suit, the petitioner/plaintiff filed the petition for amendment to include the prayer for declaration declaring that the sale deed executed in favour of the fourth respondent herein is null and void. The trial Court dismissed the same for the reason that already the sale was took place viz., on 13.07.1984 itself and as such the said property cannot be included in the partition suit. Further stated that though the father of the petitioner alive, he did not whisper about the sale deed.

3. The learned counsel appearing for the petitioner would submit that now only the petitioner came to understand that the alleged sale deed dated 13.07.1984 is a created and fabricated one, since the property which was purchased by the fifth defendant/fourth respondent herein is in possession and enjoyment of the respondents 2 and 3 herein. Therefore, the prayer of declaration is not at all bared by limitation. In support of his contention, he relied upon the judgement of this Court dated **05.08.2016** passed in **S.A.No.408 of 2016**, in the case of **K.Chandralekha Vs.**

S.Ravikumar and ors, in which this Court held as follows:

"18. When such being the clear and categorical case of the plaintiff, more particularly pleading of fraud, forgery, impersonation etc., I am of the view that the technical plea of limitation as raised by the appellant herein cannot be gone into at this stage.

19. It is well settled that the plea of fraud, forgery, impersonation in respect of certain transactions which are put in question, will go to the root of the matter and if such plea is proved, any transaction made however long ago, becomes void abinitio and the person claiming under such fraudulent transaction cannot be permitted to hold such fraudulent title continuously merely because a technical plea of limitation would come to his rescue. Needless to say that the technical objections if any raised should be encouraged, considered and decided by the Courts only when such objection, if allowed, would result in rendering the substantial justice between the parties and not subverting the justice.

20. This Court considered the very same issue in a recent decision reported in **2015(2) CTC 67 (Kolli Venkata MohanRao & another vs. J.M.Patricia & others)** wherein after following the decision of the Apex Court, in Laxmibai's case, it has been observed at paragraph No.33 as follows:

33. Above all, in this case, a thorough reading of the *Plaint* would show that the Plaintiffs have pleaded that the impugned transactions were made by committing the act of forgery and impersonation. According to them, the original owner, namely, Andrew Xavier Packiam died intestate on 22.8.1978, and therefore, the alleged *Power of Attorney*, dated 18.8.2000 said to have been executed by such dead person, was a rank forgery and by impersonation. This allegation is certainly a very serious one and if the same is proved, all the impugned transactions cannot be sustained and they become voidab-initio. Therefore, the Plaintiffs who made such allegation should be given sufficient opportunity to prove the same by conducting trial. Unless it is found that such allegation is baseless or false and

without supporting evidence, the person against whom such serious allegation is made, cannot be permitted to raise certain technical objections to escape from the clutches of trial. It is well settled that if technicalities and substantial justice are pitted against each other, only the latter should be preferred. At this juncture, the observations made by the Honourable Supreme Court in the case reported in Laxmibai v. Bhagwantbuva, 2013 (1) MWN (Civil) 446 (SC) : (2013) 4 SCC 97, in Paragraph 49 in particular, are relevant to be quoted: “49. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the Courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass Orders which will serve the interest of justice best.” Therefore, these technical objections raised by the defendants 1 & 2 in their application for rejection of Complaint, cannot be sustained at this stage, especially when those objections are matters for trial. This Court is not

to be mistaken as if it holds that no such technical objections can be raised in the Application under Order 7, Rule 11, C.P.C. What it wants to emphasise is as to who can raise such technical objections. As stated supra, a person against whom forgery and impersonation are pleaded, is not certainly a person entitled to speak about the technicalities and seek for a decision on such technical objections first at the threshold, without submitting himself to the trial to disprove such serious allegations."

4. The petitioner filed the suit in the month of June, 2009. The fifth defendant filed written statement on 29.09.2009. In the written statement, she categorically stated that the portion of the suit property was purchased by a registered sale deed vide document No.1830 dated 13.07.1984 from the father of the petitioner herein. Even then, the petitioner did not take any steps to amend the prayer by including the prayer for declaration declaring that the said deed is null and void, within the stipulated time.

5. In the judgment cited by the learned counsel appearing for the petitioner, this Court held that it is well settled that the plea of fraud, forgery, impersonation in respect of certain transactions which are put in question will go to the root of the matter and if such plea is proved, any transactions made however long ago, becomes void abinitio and the person claiming under such fraudulent transaction cannot be permitted to hold such fraudulent title continuously merely because a technical plea of limitation would come to his rescue. Therefore, the question of limitation does not arise, since the petitioner specifically stated in her affidavit filed in support of the main petition that the sale deed must be created and fraudulent one.

6. In view of the above discussion, the order passed by the trial Court is perverse and liable to be set aside. Accordingly, the order dated 29.10.2013 passed by the learned District Munsif, Mettur in I.A.No.495 of 2013 in O.S.No.161 of 2009, is hereby set aside. Considering the fact that the suit is of the year 2009 and also the nature of the suit, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

7. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes/No

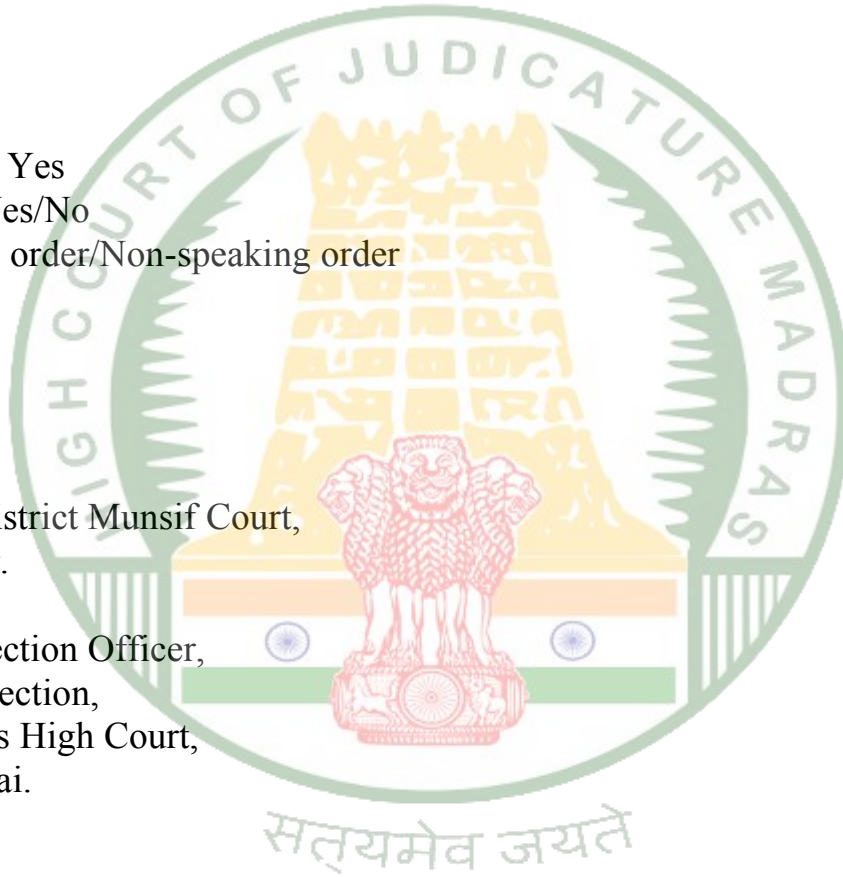
Speaking order/Non-speaking order

rts

To

1. The District Munsif Court,
Mettur.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

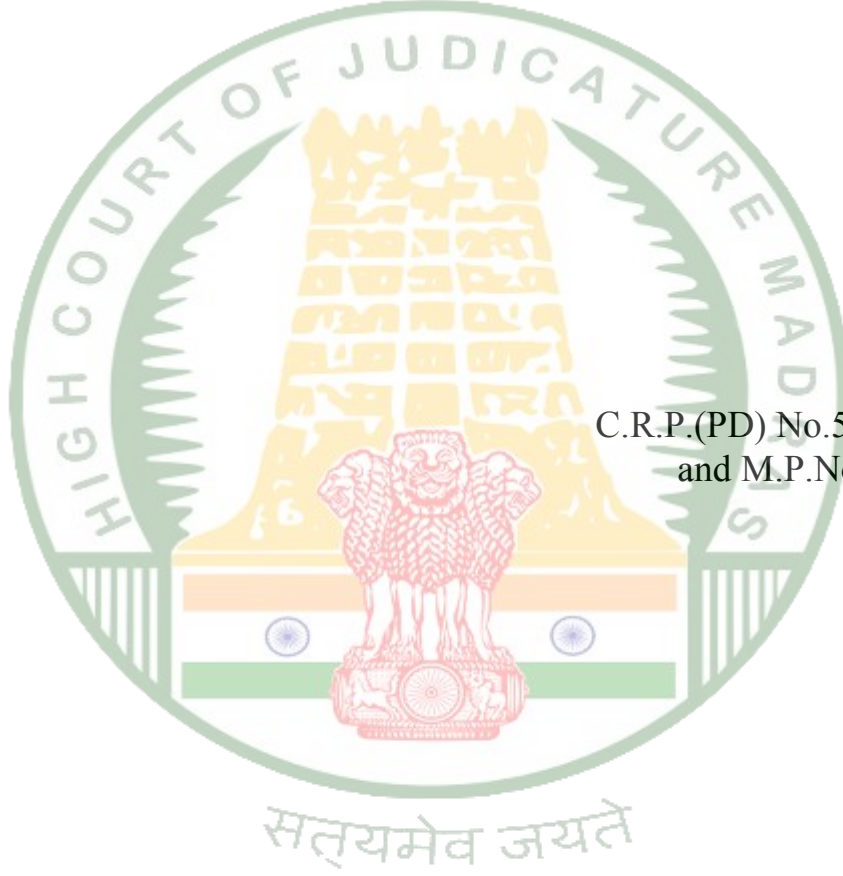


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G.K.ILANTHIRAIYAN, J.

rts



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