

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.2567 of 2019
and C.M.P. No.16886 of 2019

1.R.Kumar
2.R.Durai
3.R.Settu
4.R.Vetri

... Petitioners

Vs.

C.Natarajan

... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.07.2019 made in I.A. No.442 of 2019 in O.S. No.175 of 2011 on the file of the District Munsif Court, Sankarapuram and to allow the said I.A.

For Petitioners : Mr. V.Ayyapparaja

For Respondent : Mr. S.Mukunth,

for M/s. Sarvabhauman Associates

O R D E R

This petition is filed to set aside the fair and decreetal order dated passed in I.A. No.442 of 2019 in O.S. No.175 of 2011 on the file of learned District Munsif, Sankarapuram, dated 03.07.2019.

2. I.A. No.442 of 2019 is filed under Section 151 CPC for examining the executant of settlement deed dated 22.12.2010. The learned District Munsif, Sankarapuram, on considering the rival submissions, dismissed the petition. Against the said dismissal, the present Civil Revision Petition is filed.

3. Learned counsel for the petitioners submitted that the petitioners claim title through the registered settlement deed dated 22.12.2010. Therefore, the examination of executant of settlement deed is absolutely necessary to prove their title and possession. However, the petition filed by them in I.A. No.442 of 2019, was dismissed by the learned District Munsif, Sankarapuram. Therefore, they preferred this Civil Revision Petition to set aside the order of the learned District Munsif, Sankarapuram.

4. In response, learned counsel for the respondent submitted that this is not the first reopen petition filed by the petitioners. Earlier they have filed reopen petitions. Despite the opportunities given to them, repeated petitions have been filed only with a view to protract the proceedings. Therefore, the learned counsel for the respondent prays for dismissal of this petition.

5. Considered the rival submissions and perused the records. The petitioners claim right to the suit property by way of a settlement deed dated 22.05.2010, executed by their father. Admittedly, the respondent dispute the genuineness of the settlement deed. Therefore, the executant of the settlement deed must be examined to prove the settlement deed. It is true that the reopen petitions filed by the petitioners earlier were disposed. But, that cannot be the only reason for rejecting the claim which is basis for proving the case of the petitioners.

6. Considering the facts and circumstances of this case, this Court is of the view of that the petitioners must be given one last opportunity to prove their case by examining the executant of the registered settlement deed dated 22.12.2010. In this view of the matter, the fair and decretal order passed by the learned District Munsif, Sankarapuram, in I.A. No.442 of 2019 in O.S. No.175

of 2011, is hereby set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

7. It is learnt from the learned counsel for the respondent that the examination of witnesses is over and the case is pending for argument. Hence, this Court directs the learned District Munsif, Sankarapuram, to fix a date for examination of executant of registered settlement deed, dated 22.12.2010. After the examination is over, hear the parties and dispose the case as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

07.09.2021

Index: Yes / No

Speaking order / Non speaking order

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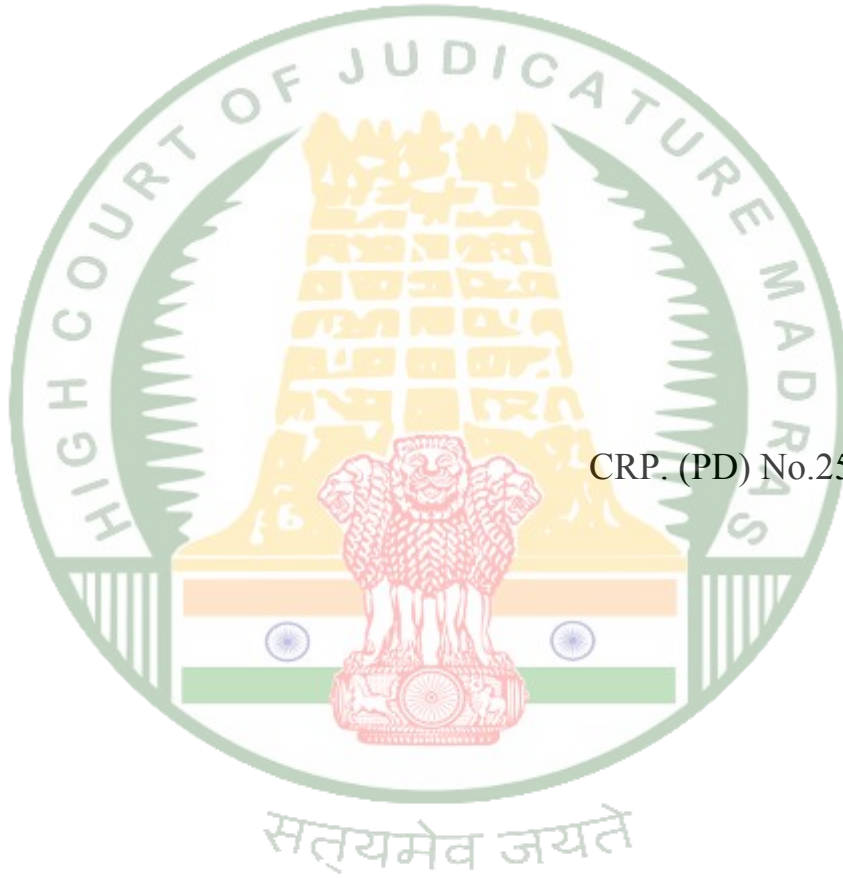
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G.CHANDRASEKHARAN. J.,

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