

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD).No.218 of 2017

Ambedkar Makkal Sangam
Sirkazhi, rep by its President K.Krishnamurthy
son of Kesavan
Periyavagappu Kattalai Street,
Sirkazhi Town and Taluk,
Nagapattinam District. ... Petitioner

Vs.

1. Sivasamy
2. S.Kalyanasundaram
3. Sri Sattanathaswamy Devasthanam
Rep by its Hereditary Trustee
Sri-La-Sri Shanmuga Desika
Gnanasambanda Paramachariya
Swamigal Adheenakarhar,
Dharmapuram Adheenam,
Dharmapuram, Mayiladuthurai Taluk. ... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside the order and decretal order dated
22.06.2016 passed in IA.No.174 of 2016 in OS.No.286 of 2005 on the
file of the District Munsif, Sirkazhi.

For Petitioner	:	Mr.S.Sadasharam
For Respondents	:	Mr.A.Arunbabu for R1 and R2. Mr.S.Sounther for R3.

ORDER

(This case has been heard through video conference)

This civil revision petition has been filed seeking to set aside the order and decreetal order dated 22.06.2016 passed in IA.No.174 of 2016 in OS.No.286 of 2005 on the file of the District Munsif, Sirkazhi.

2. The brief facts of the case is as follows :-

The revision petitioner is the first defendant in OS.No.286 of 2005 on the file of the District Munsif, Sirkazhi filed by the 3rd respondent/plaintiff seeking for mandatory injunction and to direct the revision petitioner/defendant not to divide the property as housing plots. The plaintiff/Devasthanam had filed the suit against the petitioner and the first respondent/Sivasamy. In the suit it had been stated that the property belong to the plaintiff/Devasthanam and the second defendant/Sivasamy was a cultivating tenant. Since the revision petitioner/first defendant had sent a caveat claiming themselves to be in possession of the property. The plaintiff/temple apprehending that the revision petitioner/1st defendant and their henchmen were attempting to encroach upon the property had filed the suit for mandatory injunction against the revision

petitioner/1st defendant and the 2nd defendant/Sivasamy seeking for a relief that the 2nd defendant should only cultivate the property and should not sub-divide as housing sites. The revision petitioner/1st defendant had filed written statement stating that the suit was filed by the plaintiff and second defendant to evict them by force.

3. While the suit was pending, the first respondent/Sivasamy had given power of attorney dated 19.08.2009 to the 2nd respondent/S.Kalyanasundaram to conduct the case on behalf of him. Based on the power of Attorney dated 19.08.2009 the first respondent had filed IA.No.533 of 2012 seeking permission to permit the 2nd defendant to contest the case on behalf of him, it was objected to by the petitioner. While IA.No.533 of 2012 was pending, the first respondent had given another Special Power of Attorney dated 08.02.2016 to the 2nd respondent and filed petition in IA.No.174 of 2016 seeking to grant permission to 2nd respondent based on the Special Power of Attorney dated 08.02.2016. The revision petitioner objected to granting permission and it was contended that Sivasamy was not a cultivating tenant and that he had left Sirkali and settled elsewhere and that

S.Kalyanasundaram who is a influential person based on a fabricated power had sought permission to conduct the case on behalf of Sivasamy. The trial Court holding that it is for Sivasamy to question whether the power of attorney is genuine or not and that the revision petitioner cannot question the same, had allowed the petition and permitted S.Kalyanasundaram to conduct the case on behalf of Sivasamy by an order dated 22.06.2016 in IA.No.174 of 2016, against which the present revision has been filed.

4. Mr.S.Sadasharam, the learned counsel appearing for the revision petitioner would submit that the members of the revision petitioner Sangam are in possession of the property and the plaintiff/temple in collusion with the 2nd defendant/Sivasamy falsely claiming him to be its cultivating tenant had filed the collusive suit. The said Sivasamy had left Sirkazhi and settled at Karur and he has no interest in the case. Originally the said Sivasamy entered appearance and thereafter had left Sirkazhi and he has no interest in proceeding with the suit. The plaintiff and his counsel had attempted to implead one S.Kalyanasundaram in the suit and based on a fabricated power

documents permission was sought to allow S.Kalyanasundaram to conduct the case on behalf of Sivasamy. The trial Court without conducting proper enquiry, holding that it is for Sivasamy to question whether the power of attorney is genuine or not had negated the objections of the petitioner and allowed the petition thereby permitting S.Kalyanasundaram to conduct the case on behalf of Sivasamy. The order passed by the trial Court without conducting proper enquiry is bad and would seek for allowing the revision and setting aside the order passed by the trial Court.

5. Mr.A.Arunbabu, the learned counsel appearing for the respondent would submit that the 2nd defendant/Sivasamy had originally given Power of Attorney dated 19.08.2009, based on that he had filed IA.No.533 of 2012 to permit S.Kalyanasundaram to conduct the case on behalf of Sivasamy. Since, the revision petitioner suspected the power of attorney, a Special power of attorney dated 08.02.2016 was executed by the said Sivasamy in favour of S.Kalyanasundaram, based on the Special power of attorney IA.No.174 of 2016 was filed, if at all there is any doubt with regard to the Special power of attorney, it is for Sivasamy to object

the same and the trial Court rightly finding that the revision petitioner has no locus-standi to question power of attorney had rightly allowed the petition. He would submit that there is no infirmity or error in the year.

6. Heard the counsels and perused the materials available on record.

7. This Court on earlier occasion entertaining doubts with regard to the power of attorneys, had directed Mr.V.Arunbabu, to instruct Mr.Sivasamy to be present before this Court and file necessary supporting affidavits to prove his genuineness. On earlier occasion time was sought for by the counsel stating that he was unable to contact Sivasamy. Subsequently, the said Sivasamy had filed two affidavits before this Court (i)affidavit dated 23.06.2021 signed in the presence of Mr.I.Manimaran, B.A., B.L., Advocate Sirkali and (ii)affidavit dated today i.e., 19.07.2021 attested by Mr.S.Sundaraiya, Advocate. This Court finds vast differences in the signatures of Sivasamy in both the affidavits. On the instruction of this Court, Mr.S.Sivasamy appeared before this Court through Video Conference, strangely it is submitted by

Mr.Sivasamy that the signatures in affidavits dated 23.06.2021 and 19.07.2021 are his and it is also submitted by him that he has given Special power of attorney to S.Kalyanasundaram to conduct the case on his behalf.

8. This Court is of the opinion that the trial Court ought to have conducted a proper enquiry in IA.No.174 of 2016 before granting permission to S.Kalyanasundaram to conduct the case on behalf of S.Sivasamy.

9. In view of the above, the order dated 22.06.2016 passed in IA.No.174 of 2016 in OS.No.286 of 2015 is set aside and the matter is remitted back to the trial Court. The trial Court shall conduct due enquiry with regard to the genuineness of the power of attorney and pass orders in accordance with law.

10. At this juncture, Mr.Sounthar, learned counsel appearing for the 3rd respondent/plaintiff-temple would submit that due to the tussle

between the defendants, the suit is getting delayed, he would submit that the suit is of the year 2005 and thereby would pray that appropriate direction may be issued to the trial Court to complete the trial at the earliest. In view of the above, the trial Court is directed to complete the trial and render judgment preferably within a period of (12) twelve months from the date of receipt of a copy of this order.

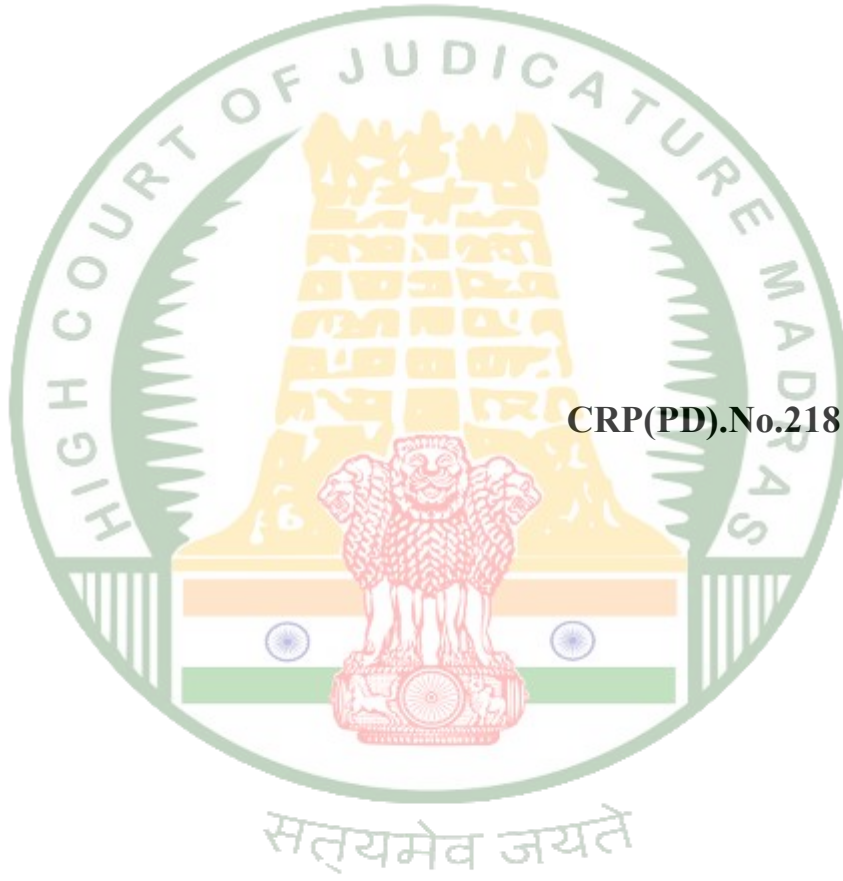
11. With the above observation, the civil revision petition is disposed of. No costs.

19.07.2021.

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To
The District Munsif, Sirkazhi.

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A.D. JAGADISH CHANDIRA, J.,



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