

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

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

CRP.PD.No.2763 of 2017 and
CMP.No.13112 of 2017

Kaliammal

..Petitioner

Vs.

- 1.Karuppusamy Gounder
- Muthammal(died)
- 2.Natrayan @ Muthusamy
- 3.C.Subramani
- 4.Jeyakumar
- 5.Sudha
- 6.Chennimalai Gounder
- 7.N.Sridhar
- 8.S.Narayanamurthi
- 9.Muthusamy Gounder
- 10.Rathinasamy
- 11.Viji @ Viswanathan

(Respondents 2 to 11 called absent, set
ex-parte in lower court, hence notice
not necessary, given up)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 14.03.2017 passed in IA.No.176 of 2016 in OS.No.10 of 2009 by the District Munsif Court, Kangayam, Tiruppur District.

For Petitioner : Mr.S.Saravanan

For Respondents

For R1 : Mr.K.Govi Ganesan

R2 to 11 : given up

ORDER

This civil revision petition is filed against the fair and final order dated 14.03.2017 passed in IA.No.176 of 2016 in OS.No.10 of 2009 by the District Munsif Court, Kangeyam, Tiruppur District thereby allowing the petition to call for thumb impression register from the Registrar Office for expert opinion.

2. The petitioner is the plaintiff and the first respondent is the first defendant and others are defendants 2 to 9. The petitioner filed suit for partition in respect of the suit property. After cross examination of plaintiff's witnesses, the first respondent filed petition to call for thumb impression register from the Registrar Office for expert opinion. The same was allowed and aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that he filed suit for partition in respect of the suit property. The first

respondent filed written statement accepting the settlement deed executed by one, Kaliappa Gounder dated 30.03.1959. However, disputed the joint possession of the suit property and further contended that he executed Will dated 21.04.1990 bequeathing the other properties which were not included in the settlement deed. Without producing the Will for the purpose of proving its genuineness, he filed petition to send for the register relating to document No.2102 of 2006 from the file of the Sub Registrar Office, Kangeyam, which contains the petitioner's signature. He further submitted that the petition was filed under Rule 73 of Civil Rules of Practice instead of Rule 75. Therefore, the petition is not maintainable and there is absolutely no necessity to send for thumb impression register from the Registrar Office to verify the signature or thumb impression of the petitioner. All the other documents are very much available with the court records to verify the signature to compare with the original document No.2102 of 2006.

4. Per contra, the learned counsel for the respondents would submit that the petitioner and the seventh respondent herein executed sale deed in favour of the first respondent herein. Now the petitioner denied the execution of the sale deed and as such the first

respondent ought to have proved the sale deed in the manner known to law. Therefore, the first respondent filed petition to send for thumb impression record from the Registrar Office concerned and the same was allowed. Thereafter, the thumb impression record was called for and it is in possession of the trial court. Only because of the pendency of the present civil revision petition, the court below could not send the same for expert opinion.

5. Heard, Mr.S.Saravanan, the learned counsel for the petitioner and Mr.K.Govi Ganesan, the learned counsel for the first respondent.

6. The petitioner filed suit for partition in respect of the suit properties. While pending the trial, the first respondent filed petition to send for thumb impression register from the Office of the Sub Registrar, Kangeyam to verify the thumb impression and signature as found in document No.2102 of 2006. The case of the first respondent is that the sale deed dated 29.09.2005 was executed in his favour by the petitioner and seventh respondent herein. Whereas, the petitioner denied the execution of the said document during his cross examination. Therefore, it

is just and necessary for the first respondent to prove the sale deed in the manner known to law and as such the court below rightly allowed the petition to send for the thumb impression record from the Registrar Office. Insofar the provision under Rule 73 of Civil Rules of Practice, pertaining to refusal or neglect to furnish copy. The first respondent ought to have filed under Rule 75 of Civil Rules of Practice. However, wrong quoting of provision is curable defect and as such it would not affect the rights of the first respondent. Therefore, this Court finds no infirmity or irregularity in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. The trial court is directed to complete the process within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

31.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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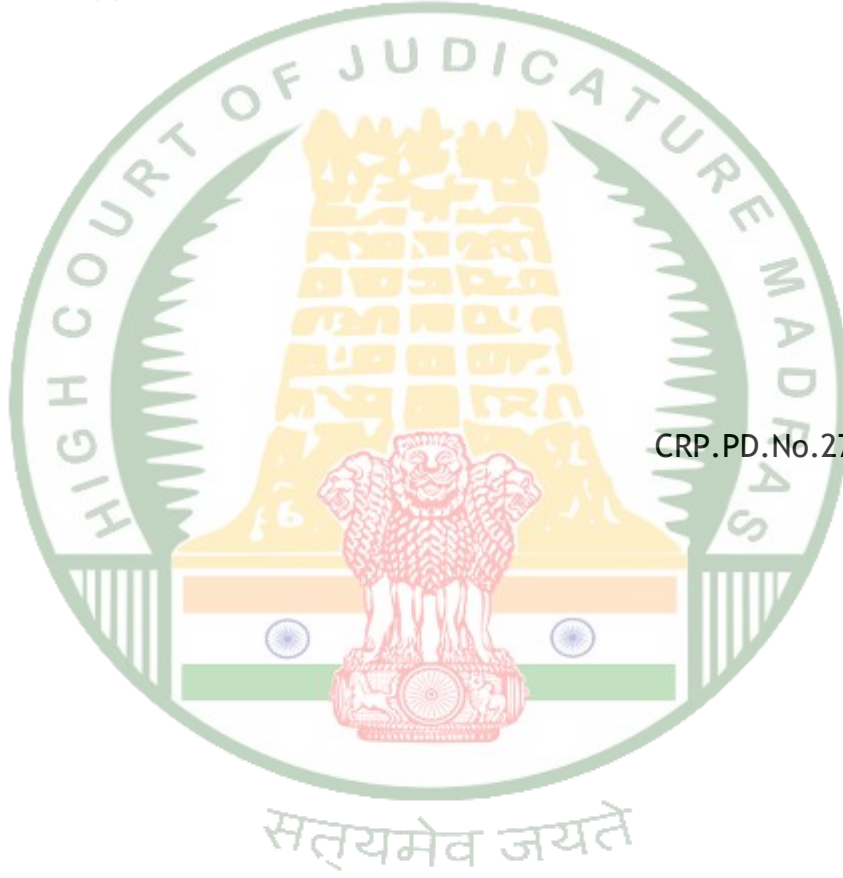
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif Court,
Kangayam, Tiruppur District.



CRP.PD.No.2763 of 2017

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