

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

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

C.R.P.(PD) No.51 of 2017

and

C.M.P.No.318 of 2017

Ekambaram

...

Petitioner

Vs

1.Annamalai

2.Thilagavathi

3.Thirunavukarasar

...

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair order and decreetal order dated 14.07.2016 passed in I.A.No.62 of 2015 in O.S.No.96 of 2009 on the file of the Principal Subordinate Judge, Tindivanam.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 14.07.2016 passed in I.A.No.62 of 2015 in O.S.No.96 of 2009 on the file of the Principal Subordinate Judge, Tindivanam, thereby

dismissing the petition seeking permission to mark the partition deed dated 02.06.1979 as secondary evidence (Ex.P2) in the suit.

2. The petitioner is the second defendant in the suit filed by the first respondent herein for partition. Pending suit, the petitioner filed a petition in I.A.No.112 of 2013 under Order 12 Rule 18 of Civil Procedure Code directing the first respondent to produce the partition deed dated 02.06.1979 along with memo. The first respondent endorsed that he is not in possession of the partition deed dated 02.06.1979. Therefore, the petitioner filed an application under Section 65A of the Indian Evidence Act to permit him to mark partition deed dated 02.06.1979 as secondary evidence in the suit. In this regard, the learned counsel for the petitioner relied upon a Judgment reported in *2013 (3) CTC 405*.

3. The Court below dismissed the petition only for the reason that the xerox copy of the document cannot be marked as secondary evidence and dismissed the same. As rightly pointed out by the learned counsel for the petitioner that already the petitioner filed a petition under

Order 12 Rule 18 of Civil Procedure Code in I.A.No. 112 of 2013 calling upon the first respondent to produce the original partition deed dated 02.06.1979 and the same was closed and the endorsement made by the first respondent herein as he has not in possession of the original document. In this regard the learned counsel for the petitioner relied upon a Judgment reported in **2013 (3) CTC 405**

“Evidence Act, 1982, Sections 65 and 66 -- Secondary Evidence -- When admissible – Document sought to be produced by plaintiff, allegedly in possession of Defendant-- Defendant served with notice to produce document -- Defendant denying existence of document – In such circumstances, marking of secondary evidence of said document by plaintiff permissible and within contours of law.”

4. When the document sought to be produced by the plaintiff is allegedly in possession of the opposite party and he served notice to produce the documents for which it was denied existence of the said documents, the secondary evidence of the document is permissible in law and the same can be marked.

5. In the case on hand, as stated supra, the original partition deed dated 02.06.1971 is not in possession of the first respondent and as such, the petitioner filed a petition under Section 65A of the Indian Evidence Act seeking permission to produce a xerox copy of the partition deed.

6. In view of the above, the order passed by the trial Court in I.A.No.62 of 2015 in O.S.No.96 of 2009 dated 14.07.2016 on the file of the Principal Sub Court, Tindivanam, is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

1. The Principal Subordinate Judge,
Tindivanam.

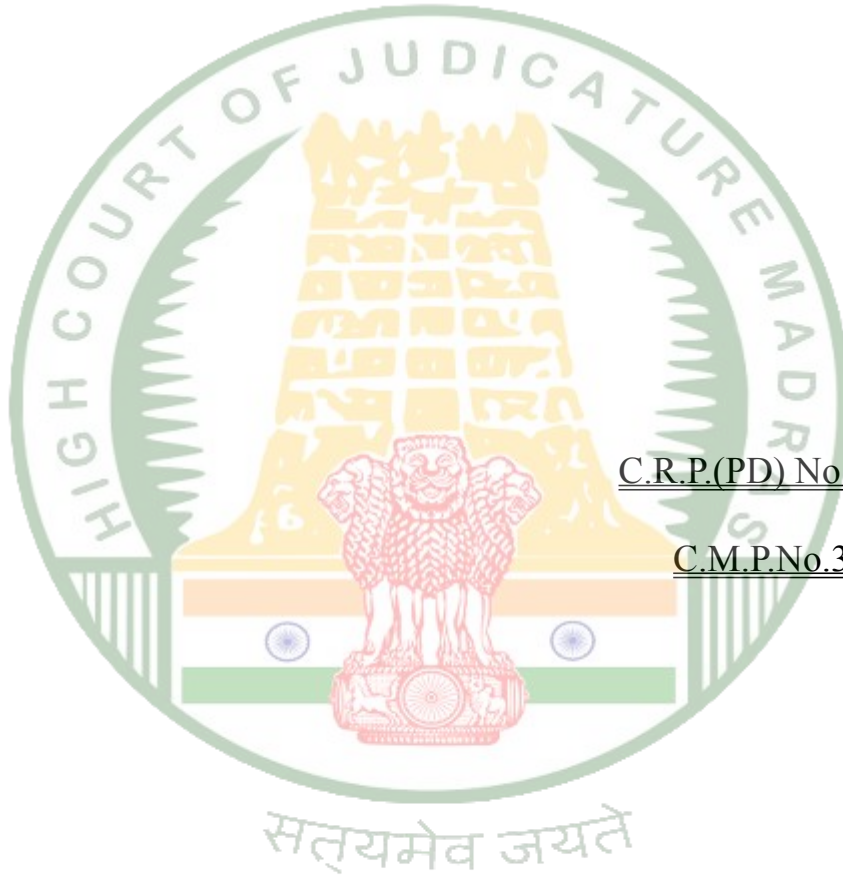
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai.

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