

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)Nos.4139 & 4140 of 2018 &
C.M.P.Nos.22791 & 22794 of 2018

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Petitioner in both
C.R.Ps'

Vs.

1.Jothinathan
2.Kalvikkarasi
3.The Sub Registrar,
Office of the Sub Registrar,
Kumaratchi,
Kattumannarkoil Taluk,
Cuddalore District.

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Respondents in both
C.R.Ps'

PRAYER in both C.R.Ps': Civil Revision Petitions filed under Section 227 of Constitution of India, to set aside the fair and decreetal order made in I.A.No.530 of 2018 in O.S.No.70 of 2014, dated 05.10.2018 and I.A.No.528 of 2018 in O.S.No.70 of 2014, dated 18.09.2018, respectively, passed by the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

For Petitioner in
both C.R.Ps' : Mr.G.Pugazhenth

For Respondents in
both C.R.Ps' : Mr.B.Ramprab for R1 and R2

Dr.S.Suriya
Government Advocate (CS) for R3

COMMON ORDER

These Revisions are directed against the Fair and Decreetal orders passed in I.A.No.530 of 2018 in O.S.No.70 of 2014, dated 05.10.2018 and I.A.No.528 of 2018 in O.S.No.70 of 2014, dated 18.09.2018, wherein, the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil, Cuddalore District, rejected the petitions filed to examine the Village Administrative Officer, Revenue Inspector and Tahsilder as witnesses on behalf of the plaintiff.

2. The petitioner instituted the suit in O.S.No.70 of 2014 to declare that she is the absolute owner of the suit property; to declare that the sale deed executed by the first respondent/first defendant dated 24.06.2013 in favour of the second respondent/second defendant as null and

void; and for permanent injunction restraining the third defendant from registering any deeds in respect of the suit property.

3. It is the case of the plaintiff that the suit schedule property admeasuring an extent of 0.36 cents originally belonged to Ulaganathan and he died intestate. He had three sons viz., the first defendant-Jothinathan, Thanganathan and Thivyanathan. The said Thivyanathan died unmarried at his tender age. Thereafter, by an oral partition, the first defendant-Jothinathan and Thanganathan inherited the properties, including the suit property equally. Subsequently, the said Thanganathan died on 25.05.1995, leaving behind his wife Saroja, daughters, Sarala, Sangeetha, Sathia and sons Sankaranath, Sathiyaseelan as his legal heirs. Subsequent to the death of Thanganathan, his wife Saroja made a request to the Revenue Authorities to make correction in the computer patta, by including her name and delete the name of the first defendant in the computer patta. After mutation of revenue records, the legal heirs of Thanganathan sold the property to the petitioner on 10.01.2013. According to the plaintiff, the first defendant had been attempting to disturb the possession and enjoyment of the petitioner.

4. The suit was contested by the defendants 1 and 2 disputing the

averments made in the plaint. It is their case that the said Ulaganathan had settled the property in favour of the first respondent/first defendant and Thivyanathan alone and therefore, the patta stood in the name of the first respondent and Thivyanathan. The father of the first defendant had not settled any property in favour of Thanganathan. By an oral sale, the first respondent/first defendant got property from Thivyanathan and therefore, the settlement deed executed by the first respondent/first defendant in favour of the second respondent is valid.

5. It seems that the petitioner made an application to the Revenue Authorities to issue separate patta for the suit property in favour of her and the enquiry report of the Revenue Authority reveals that except Thanganathan and Jothinathan, there were no other legal heirs to the deceased Ulaganathan. Therefore, during the pendency of the suit, the present Interim Applications were filed to permit the petitioner to examine the Tahsildar; Revenue Inspector of T.Puthur firka and the Village Administrative Officer of Vanathirayanpettai, respectively to prove her case to the effect that the oral purchase made by the first defendant from Thivyanathan is not at all true and false one, by marking the enquiry reports submitted by the said Officers. The learned District Munsif cum Judicial

Magistrate, Kattumannarkoil, Cuddalore District, after enquiry dismissed the petitions. Aggrieved over the same, the present Revisions have been filed.

6. It is the submission of Mr.G.Pugazhenth, learned counsel for the petitioner that the reasons assigned by the trial Court for rejecting the petition is factually incorrect. It is contended that the plaintiff should be given sufficient opportunity to prove her case to examine witnesses and by marking documents, however the trial Court, erroneously dismissed the petitions.

7. *Per contra* Mr.B.Ramprab, learned counsel appearing for the respondents 1 and 2/defendants argued in support of the impugned order. It is stated that the suit property was settled by Ulagnathan during his life time in favour Thivyanathan and Jothinathan, and no property was allotted to Thanganathan. Therefore, the settlement deed executed by the first respondent in favour of the second respondent is valid and the learned trial Judge, rightly dismissed the petitions, which warrant no interference.

8. Heard the rival submissions on either side and perused the materials available on record.

9. In the instant case, it is an admitted fact that petitioner is the

plaintiff in the suit filed for declaration and other consequential reliefs and the onus is on the plaintiff to prove her case. According to the petitioner/plaintiff, the revenue officials had conducted enquiry based on the representation of the wife of the deceased Thanganathan for change of patta. Accordingly, the name of the first defendant-Jothinathan and Thivyanathan were deleted and a patta was issued in favour of the legal heirs of Thanganathan. The learned counsel for the petitioner has taken this Court to the report of the Revenue Inspector, which is enclosed in the typed set. He further added that when the burden of proof is on the plaintiff, she should be given opportunity to examine the witnesses and mark documents to establish her case.

10. I find force in the submission of the learned counsel appearing for the petitioner. In my considered view it would be premature to assess the evidentiary value of the witnesses to be examined on the side of the plaintiff, but the right of the plaintiff to prove her case cannot be shut observing that the evidence of the proposed witnesses will be of no use to the plaintiff. The trial Court dismissed the petitions, holding that the examination of the revenue officials would not advance the case of the petitioner/plaintiff. I am unable to countenance the view taken by the trial

Court.

11. For the forgoing reasons, the orders impugned in these revisions are set aside. Accordingly, these Civil Revisions Petitions are allowed. Even though the petitioner has sought to examine three witnesses, she can choose any one or two among the three and inform the same to the trial Court. Thereafter, a date shall be fixed convenient for both the counsels. Chief examination and cross examination of the official witnesses shall be concluded on the same date. Since the Suit is of the year 2014, the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.08.2021

Index : Yes / No

Internet : Yes

Speaking order / Non Speaking Order

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To

1. The District Munsif Cum Judicial Magistrate, Kattumannarkoil,
Cuddalore District.
2. The Sub Registrar,
Office of the Sub Registrar,
Kumaratchi,
Kattumannarkoil Taluk,
Cuddalore District.

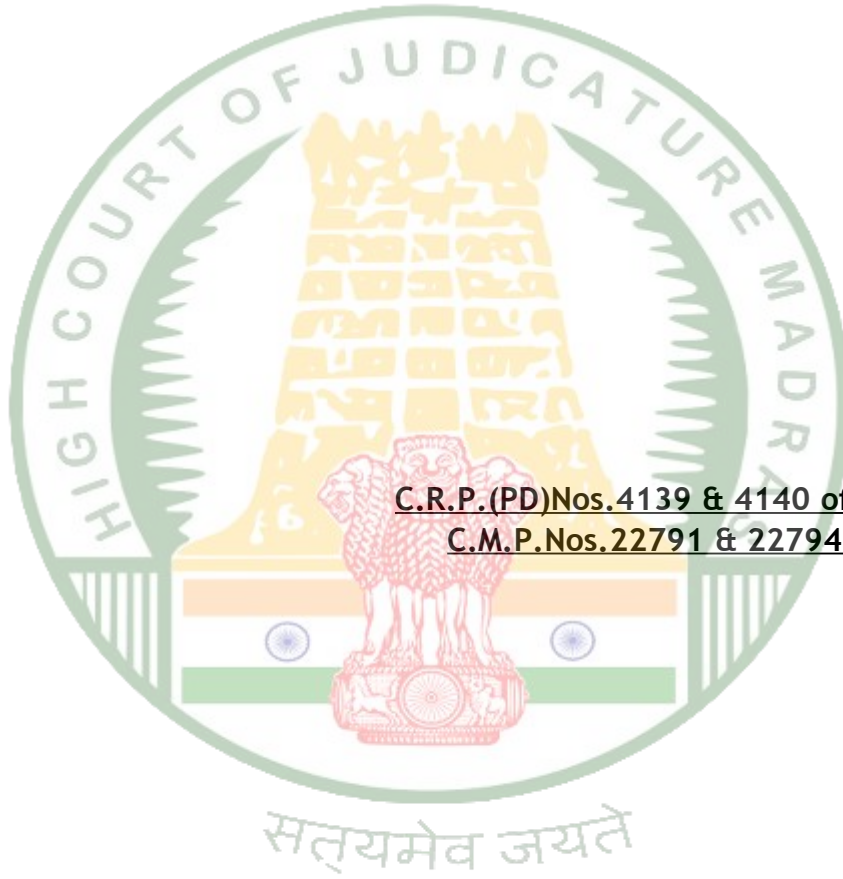


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K.KALYANASUNDARAM, J.

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