



C.R.P(MD)Nos.296 and 297 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.296 and 297 of 2019

and

C.M.P(MD)No.1452 of 2019

C.R.P(MD)No.296 of 2019

Namazhwar

...Revision Petitioner/Petitioner/
Plaintiff

Vs.

1.Venkittammal

2.Dhavamani

3.Chandra

4.Balaguru

5.Rajangam

6.S.Anjala

7.S.Seenivasagan

...Respondents/Respondents/
Defendants

*(Respondents 2 to 6 remained ex parte
in the main suit and hence notice to
them and the same may be dispensed
with)*

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, to set aside the fair and decreetal order of the



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learned Subordinate Judge, Aruppukkottai, passed in I.A.NO.403 of 2018 in O.S.No.156 of 2015 on his file, dated 14.12.2018.

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For Petitioner : Mr.S.Parthasarathy

For R1 & R7 : Mr.S.Senthil

For R2 to R6 : Exparte

C.R.P(MD)No.297 of 2019

Namazhwar

...Revision Petitioner/Petitioner/
Plaintiff

Vs.

1.Venkittammal

2.Dhavamani

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...Respondents/Respondents/
Defendants

(Respondents 2 to 6 remained ex parte in the main suit and hence notice to them and the same may be dispensed with)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the learned Subordinate Judge, Aruppukkottai, passed in I.A.No.404 of 2018 in O.S.No.156 of 2015 on his file, dated 14.12.2018.



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For Petitioner : Mr.S.Parthasarathy

For R1 & R7 : Mr.S.Senthil

For R2 to R6 : Exparte

COMMON ORDER

C.R.P(MD)No.296 of 2019 arising out of the order passed by the Court below in I.A.No.403 of 2018 filed for the relief of appointment of Advocate Commissioner to do the ministerial Act.

2. C.R.P(MD)No.297 of 2019 has been filed against the order passed by the Court below in I.A.No.404 of 2018 seeking to produce the documents listed out in the petition.

C.R.P(MD)No.296 of 2019

3. The petitioner herein is the petitioner/plaintiff and the respondents herein are the respondents/defendants before the Court below.

4. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.



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5. The learned counsel for the petitioner herein vehemently submits that, the plaintiff has filed a suit for partition, wherein, defendants 1 and 7 alone are the contesting defendants and they disputed the thumb impression of their mother, namely, Nacharammal, in the family arrangement and other mortgage deeds. Therefore, in order to prove the existence of their mother's thumb impression in those documents, they wanted to compare the disputed documents of the family arrangement with that of the admitted document, dated 16.02.2015 wherein, defendants 1 and 7 admits the existence of their mother's thumb impression found.

6. Per contra, the learned counsel for the respondents submits that before the commencement of trial, and not even before confronting the witnesses by showing the documents, the very application has been filed prematurely and such applications have been filed only to delay the proceedings.

7. I have given my anxious consideration to either side submissions.



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8. It is an admitted fact that the suit was posted for trial on 14.08.2012. And only at that stage, this application has been filed. It is further admitted that all these documents have not been marked before this Court, and more pertinently those documents were not shown to the defendants 1 and 7, who according to the plaintiff, disputing those documents. Therefore, when the documents are not even received by the court and not even shown before the witnesses, those who are allegedly disputing the documents, this Court is of the firm view that, sending those documents to expert opinion is too premature. Therefore, this Court could not find any infirmity in the order passed by the Court below. At the same time, the petitioner is given liberty to file the similar application, if the defendants 1 and 7 are disputing the signature found in those documents, which relied upon by the petitioner.

C.R.P(MD)No.297 of 2019

9. In respect of C.R.P(MD)No.297 of 2019, the learned counsel for the petitioner submits that only to comply the provisions under Section 65 of the Evidence Act, they wanted the documents from the fifth defendant, who is now in possession of the originals. Further, the very document was required by the petitioner only for the comparison of the



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Nacharammal's thumb impression, which is found in those documents.

Now that this Court is arrived at a conclusion that the very prayer sought for comparison of thumb impression is premature. Therefore, the prayer for summoning those documents from the fifth defendant does not arise and cannot be entertained at this stage.

10. In the result, both the civil revision petitions stand **disposed of**.

No costs. Consequently, connected miscellaneous petition is closed.

11.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Subordinate Judge,
Aruppukkottai.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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