

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.105 of 2016

1.K.Janaki
2.D.Hemavathy ... Appellants/Plaintiffs 2 and 3

versus

Mrs.K.Rajammal (deceased)
Mr.K.Kamalakannan (deceased)

1.Ushadevi
2.Gayathri
3.Padmini
4.K.Padmavathi ... Respondents 1 to 4/Defendants 3 to 6
5.Sankari
6.M.Vatchala ... Respondents 7 & 8/Plaintiffs 1 and 4

Appeal filed under Order 36 Rule II of Original Side Rules
r/w Clause 15 of Letters Patent, against the Fair and Decretal
Order dated 26.11.2015 made in A.No.798 of 2015 in C.S.No.174
of 2005, on the file of this Court.

For Appellant : Mr.N.Suresh

For Respondent : Mr.J.R.K.Bhavanantham

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

Admit. Learned counsel for the original defendants and respondents herein accepts notice.

2. At request of the learned counsel for the parties, the appeal is taken up for final disposal.

3. The set of four plaintiffs filed a suit for partition against the defendants. Evidence was led on behalf of the plaintiffs and the defendants' evidence has also been recorded, except one witness as stated by the learned counsel.

4. It is at the aforesaid stage, the two applications came to be filed - one by plaintiffs 2 and 3 and another by plaintiffs 1 and 4, both seeking similar prayer for transposition of plaintiffs 2 and 3 as defendants in the suit. These applications have been dismissed by the learned single Judge by the impugned order dated 26.11.2015.

5. The submission of the learned counsel for the appellants is that he cannot get along with the other plaintiffs and he cannot be compelled to prosecute the suit. He further submits that being a partition suit, he cannot walk away from the suit and there was no other option but to seek transposition as defendants, something which the other plaintiffs also proposed.

6. Learned counsel for the appellants submits that in the said endeavour, there is no undisclosed reason and the evidence already led, as also the pleadings filed, would be the same and no further pleadings or evidence would be led in the capacity as defendants, once transposed. The reliance would be only on the same.

7. The only objection learned counsel for the original defendants raised is that there are different pleadings sought to be made in the application for transposition. However, in our view, that would not make a difference as the pleadings to be relied upon are in the suit, a position not disputed by the learned counsel for the appellant.

8. We thus allow the appeal and set aside the impugned order with the following agreed directions:

(i) The Original Plaintiffs 2 and 3 and now appellants before us will be transposed as defendants in the suit.

(ii) No further pleadings would be made nor any evidence led by the appellants as a consequence of the aforesaid.

9. The matter can now be proceeded for examination of the sole remaining witness of the defendants, whereafter it would be set down for arguments.

10. The appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs. Consequently, C.M.P.No.6757 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ksr

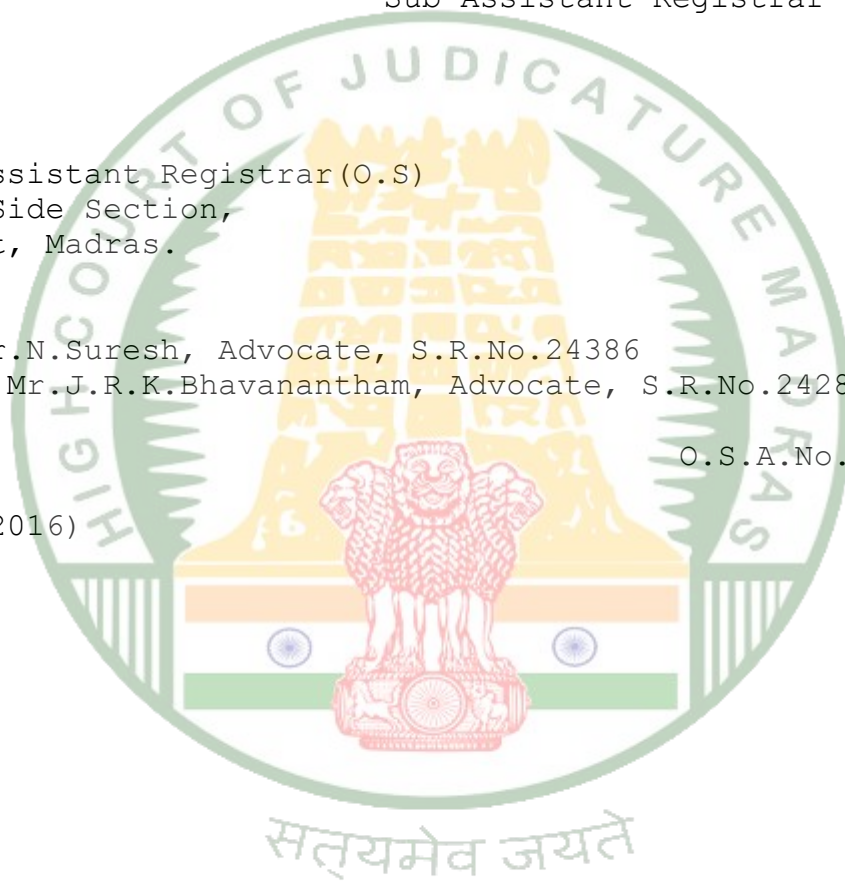
To

The Sub Assistant Registrar(O.S)
Original Side Section,
High Court, Madras.

+1cc to Mr.N.Suresh, Advocate, S.R.No.24386
+3cc's to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.24281

O.S.A.No.105 of 2016

AK(CO)
CA(05/05/2016)



WEB COPY