

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.Nos.378 and 379 of 2012

Vijayalakshmi ... Appellant
in both appeals

Vs.

1. M.Maheswaran
2. Jayalakshmi
3. Shenbagavalli
4. Nalini ... Respondents
in both appeals

PRAYER: Appeals against the common order dated 9.11.2011 made in O.A.Nos.506 and 540 of 2011 in C.S.No.291 of 2008.

For Appellant : Mr.N.L.Rajah
Senior Counsel for
R.Kumar

For Respondents : No appearance

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

In the suit for partition, the appellant/plaintiff claims 1/5th share devolving in pursuance of a Will dated 13.5.1998 of her father. It may be stated that as per the Will, the wife of the testator was given life interest and the property was thereafter to devolve on the Ramakrishna Mutt with life estate to the second wife for her maintenance. The plea of the wife was that this right matured into an absolute right on account of codification of the Hindu Law.

2. The suit filed by the Ramakrishna Mutt claiming right in the property was dismissed by the City Civil

Court, Chennai and decree was confirmed in appeal in S.A.No.962 of 2004, whereafter the Special Leave Petition was filed, which was still pending when the suit for partition was filed along with applications praying for interim relief. The interim applications filed with the suit, i.e., O.A.Nos.884 and 885 of 2008, were however dismissed on 15.6.2009. One of the factors taken into account in those proceedings was the pendency of the Special Leave Petition, as if the Ramakrishna Mutt had succeeded in the appeal there would be no property for division.

3. We are now concerned with the second set of applications being O.A.Nos.506 and 540 of 2011 filed by the appellant/plaintiff once again claiming similar interim relief post the dismissal of the Civil Appeal and claiming subsequent cause of action. These applications have been dismissed vide the impugned order dated 9.11.2011 without consideration on merits, on the plea that the second set of applications would not be maintainable.

4. We are unable to agree with the conclusion of the learned Single Judge as there were subsequent developments and subsequent causes of action which necessitated the filing of the applications. The subsequent development was the dismissal of the Civil Appeal and the subsequent cause of action was an endeavour to alter the suit property and the revenue records.

5. We are, thus, of the view that the impugned order is liable to be set aside and we hold the applications are maintainable, which would be decided in accordance with law on merits by the learned Single Judge.

6. The appeals are, accordingly, allowed leaving the parties to bear their own costs. Consequently, M.P.No.1 of 2012 in O.S.A.No.378 of 2012 and M.P.No.2 of 2012 in O.S.A.No.379 of 2012 are closed.

List O.A.Nos.506 and 540 of 2011 before the learned Single Judge on 19.10.2016, when the suit shall also be listed for directions so that the same can be set down for trial.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

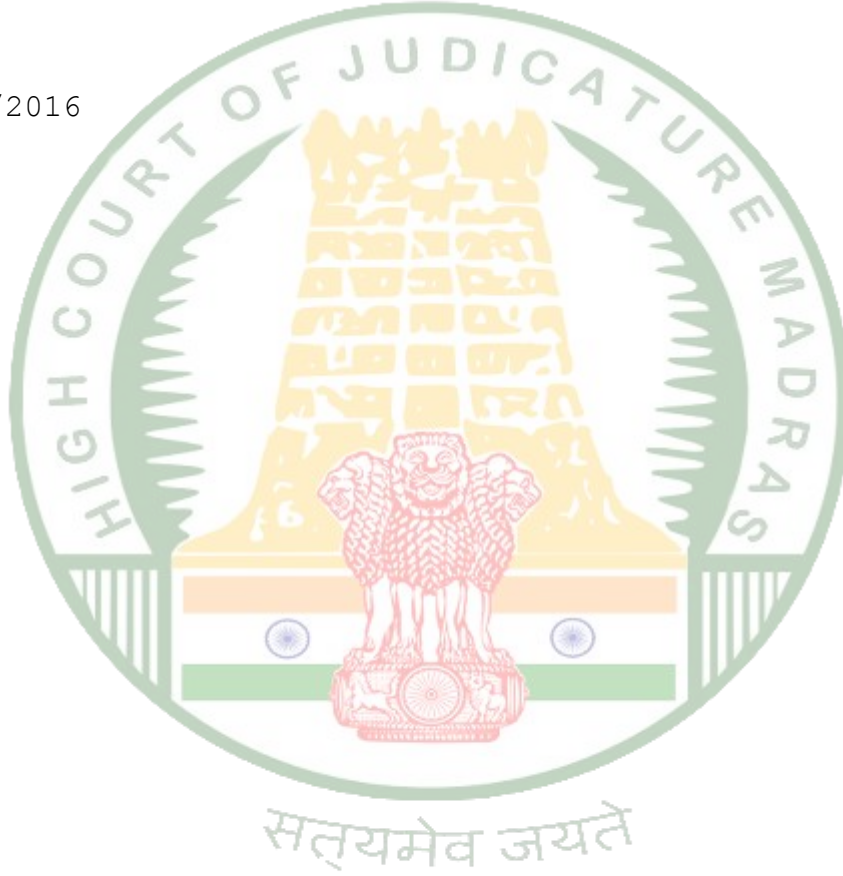
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Kumar, Advocate Sr.52390

O.S.A.Nos.378 and 379 of 2012

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srg 22/09/2016



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