

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.NPD.No.1069 of 2017
and
CMP.No. 5135 of 2017

S.K. Kirubakaran

... Petitioner

Vs.

1. S. A. Vaiyapuri

2. S.K. Dinakaran

3. S.K. Karunakaran

4. Shanmugavadivu

5. Santhi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.02.2017 made in I.A No.1758 of 2016 in I.A. No.1215 of 2016 in O.S No.304 of 2005 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr. C. Munusamy

For Respondents : Mr. A. Ragupathy for R1

Mr. P. Jagadeesan for R4 & R5

No appearance for R2 & R3

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order dated 20.02.2017 made in I.A No.1758 of 2016 in I.A. No.1215 of 2016 in O.S No.304 of 2005 on the file of the District Munsif, Sankari.

2. Brief facts of the case is as follows :-

Originally, the father of the petitioner, deceased S.A. Kuppusamy, filed a suit in O.S. No.304 of 2005 before the District Munsif Court, Sankari for partition against the 1st respondent. A preliminary decree for partition was passed on 18.07.2003. The aforesaid Kuppusamy died on 22.05.2007. Thereafter, respondents 4 and 5/ the daughters of the deceased Kuppusamy, filed a suit in O.S. No.75 of 2010 for partition, against the petitioner and respondents 2 & 3, who are their brothers. Pending the said suit, the 1st respondent filed an application in I.A. No.1215 of 2016 for passing of final decree, against the legal heirs of the deceased Kuppusamy. Hence, the petitioner filed an application in I.a. No. 1758 of 2016 in I.A. No. 1215 of 2016, seeking to stay the final decree application, pending disposal of the suit in O.S.No.75 of 2010. The said application was dismissed by the Sub Court, Sankari on

20.02.2017. Aggrieved by the said order of dismissal, the present revision has been filed by the petitioner, before this Court.

3. Learned counsel for petitioner would submit that the scheduled property in I.A. No.1215 of 2016 in O.S. No. 304 of 2005 and in O.S. No. 75 of 2010, are one and the same. Therefore, if any final decree is passed in the said application, the applicant's right would be affected and therefore in the interest of justice, prays to stay the proceedings till the disposal of the suit in O.S.No.75 of 2010.

4. The learned counsel for the 1st respondent would submit that the contention of the petitioner is incorrect, that the properties are not one and the same and that the scheduled property in the suits are different. He further submitted that the petitioner has no right to stall the final hearing proceedings, while the preliminary decree was has been passed on 18.07.2003 and that the 1st respondent is unable to enjoy the fruits of the decree. Hence, the contention of the learned counsel for the petitioner is liable to be rejected and the Civil Revision Petition has to be dismissed.

5. Heard the learned counsel for the parties and perused the

material available on record.

6. In view of the above submission of the parties, originally suit has been filed by one S.A. Kuppusamy, wherein a preliminary decree has been passed on 18.07.2003 and that the 1st respondent filed an I.A. No.1215 of 2016 in O.S. No.304 of 2005 before the learned District Munsif Court, Sankari for passing a final decree. The present revision has been filed by the petitioner to stay the proceedings, pending disposal of the suit in O.S. No.75 of 2010. The contention of the petitioner that the subject matter of the schedule property in both the suits are one and the same, the 1st respondent denied the fact and contended that the properties are different. Further, it is seen that the suit in O.S. No.304 of 2005 has been filed by the deceased Kuppusamy against the 1st respondent, for partition. The petitioner and the respondents 2 to 5 are the legal heirs of the aforesaid deceased Kuppusamy. Therefore, the allotment of the property as per the partition deed is between the legal heirs of the deceased S.A. Kuppusamy and the 1st respondent. Even if the petitioner has right over the property, the petitioner has to claim his right only based on the share allotted to the legal heirs of the deceased Kuppusamy. Therefore, no prejudice would be caused to the petitioner, if any order is passed in the final decree proceedings. The petitioner can

agitate against the other legal heirs of the deceased Kuppusamy later, if any prima facie case is made out. Therefore, there is no error or illegality in the order passed by the court below.

7. Hence, the Civil Revision Petition fails and accordingly, the revision is dismissed. Consequently, the connected M.P is closed. No order as to costs.

16.06.2017

Index: Yes/No

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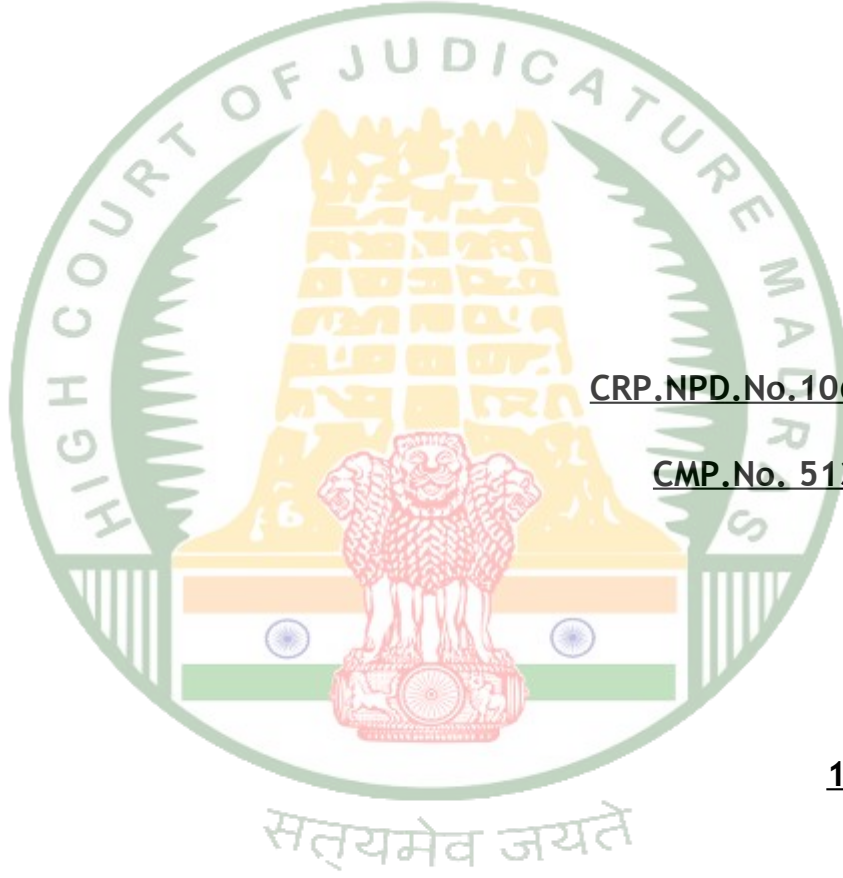
The District Munsif Court
Sankari.



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D. KRISHNAKUMAR J.

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