

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.1112 of 2017
& C.M.P.No.5388 of 2017

P.Devadas

... Petitioner/Petitioner/
2nd Defendant

vs.

1.R.Govindarajan

2.P.Rukmani

3.V.Amirtham

4.R.Neelaveni

... 1 to 4 Respondents/Respondents 1
to 4/Plaintiff & Defendants 1, 3 & 4

Prayer: Revision filed under Section 227 of the Constitution of India against the fair and decreetal order dated 17.03.2016 made in I.A.No.444 of 2012 in O.S.No.726 of 2011 on the file of the I Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.D.Kulasekaran for
M/s.Dr.R.Meenakshisundaram

ORDER

The petitioner is the second defendant, first respondent is the plaintiff, second respondent is the first defendant, third and fourth respondents are the third and fourth defendants in the suit.

2. The first respondent filed the suit in O.S.No.726 of 2011 on the file of the Ist Additional District and Sessions Court, Coimbatore, seeking for partition on the ground that the suit property was purchased by one Raju Naidu and after his death, the petitioner and the respondents 1 to 4 are necessary parties, who are entitled to get their shares in the suit property. The first respondent, who was the son of the second respondent, has claimed partition and allotment of 1/5th share to him.

3. The petitioner filed an application in I.A.No.444 of 2012 for rejection of the plaint. According to the petitioner and the respondents 2 to 4, after the death of their father

Raju Naidu, the partition was effected in the Panchayat and all the parties signed in the Panchayat Muchalika. All the parties including the first respondent took possession of their shares allotted to them in the year 2011 itself. The first respondent suppressing the partition already entered into, has come forward with the present suit. There is no cause of action for filing the present suit.

4. The first respondent filed counter affidavit and denied all the averments made in the application. He also denied that there was a family partition in panchayat muchalika and the suit properties were allotted to the petitioner and others and having signed in the panchayat muchalika.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and plaint, dismissed the application holding that the averments made in the application were denied by the first respondent and the disputed question of fact should be decided only by considering the evidence let in by the parties.

6. Against the order of dismissal dated 17.03.2016 made in I.A.No.444 of 2012 in O.S.No.726 of 2011 on the file of the I Additional District and Sessions Court, Coimbatore, the present Civil Revision Petition is filed.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. It is not in dispute that the petitioner and other respondents are legal heirs of the said Raju Naidu. Originally, the suit properties belonged to the said Raju Naidu. The first respondent filed the suit for partition of the properties left by the said Raju Naidu. The claim of the first respondent is denied by the petitioner on the ground that the properties of the said Raju Naidu were already partitioned and shares in the said properties were allotted to the petitioner and no cause of action has arisen in the present suit. These contentions are denied by the first respondent. These disputed question of facts cannot be decided in the application filed for rejection of the plaint under Order VII Rule 11 of C.P.C. while deciding the application to reject the plaint, only the averments made in the plaint are necessary. The contention of the first respondent is that the properties are not partitioned and the contention of the petitioner is that the properties are already partitioned and the same can be decided only after completing the evidence let in by both the parties.

9. In view of the above facts, the learned Trial Judge has dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order of the trial court warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

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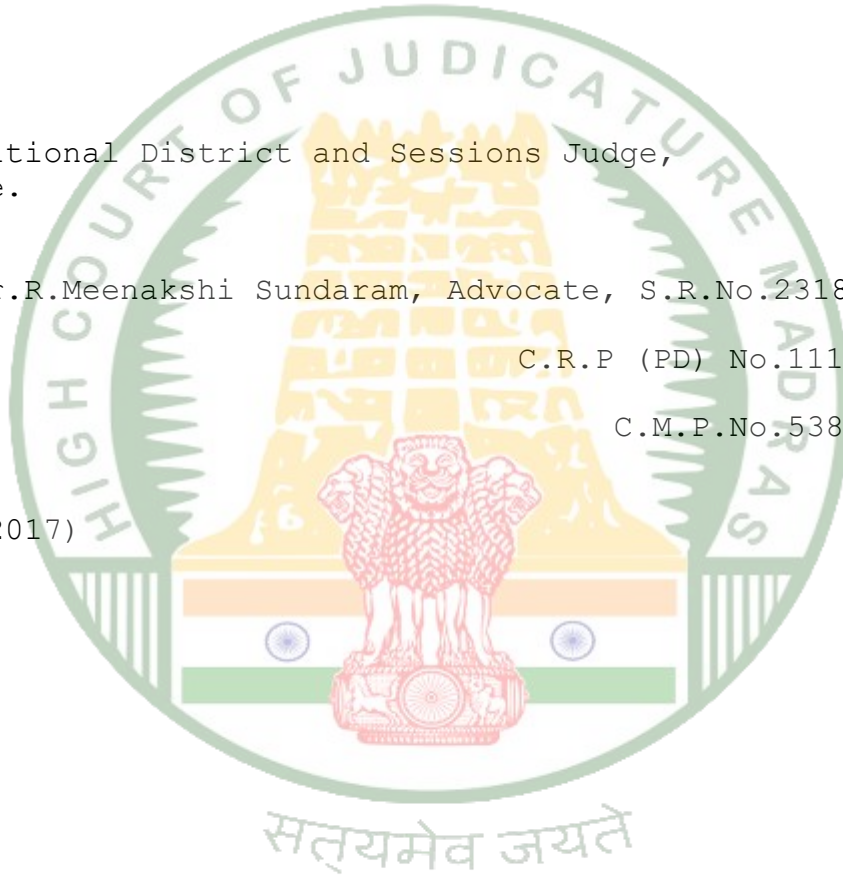
To

The I Additional District and Sessions Judge,
Coimbatore.

+1cc to Mr.R.Meenakshi Sundaram, Advocate, S.R.No.23183

C.R.P (PD) No.1112 of 2017
&
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PVS (CO)
CA(16/06/2017)



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