

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1907 of 2017
& C.M.P.No.9213 of 2017

1. Haseena
2. Ayisha
3. Mujibar Rahman
4. Mumtaz
5. Jamil
6. K.H.Amirjan

.. Petitioners

Vs.

Manimegalai(died)

1. K.Venkatesan
2. V.Kumar
3. Padmavathy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.01.2017 made in I.A.No.428 of 2016 in O.S.No.22 of 2014 on the file of the Sub-Court, Uthangarai.

For Petitioners	: Mr.N.Jayakumar
For R1	: Mr.E.Kannadasan
	caveator

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 09.01.2017 made in I.A.No.428 of 2016 in O.S.No.22 of 2014 on the file of the Sub-Court, Uthangarai.

2. Petitioners 1 to 3 are the plaintiffs, petitioners 4 to 6 are the defendants 1 to 3, respondents 1 to 3, who are the legal heirs of the deceased Manimegalai/fourth defendant, are the defendants 5 to 7 in O.S.No.22 of 2014 on the file of the Sub-Court, Uthangarai. The petitioners 1 to 3 filed the suit against the petitioners 4 to 6 and one Manimegalai/fourth defendant, for partition of the suit schedule property. The fourth defendant/deceased Manimegalai filed written statement and was contesting the suit.

3. According to the petitioners 1 to 3, the suit property was allotted jointly in the name of one late K.H.Gulabjan and the sixth petitioner. The petitioners 4 and 5 and the third petitioner, who was a minor at that time, represented by his guardian mother namely, fourth petitioner, in collusion with the sixth petitioner sold the property to the fourth defendant/deceased Manimegalai by the deed of sale dated 26.05.2003. The petitioners 1 to 3 have shares in the

suit property. Without their knowledge and consent, petitioners 4 to 6 sold the property. The third petitioner was minor at that time. The fourth petitioner was not being the guardian of the third petitioner as per Muslim law described her as guardian in the sale deed dated 26.05.2003 and sold the suit property to the said fourth defendant/deceased Manimegalai. The sale is not binding on the petitioners 1 to 3. The respondents 1 to 3 were impleaded as the defendants 5 to 7 as legal heirs of the fourth defendant/Manimegalai. Respondents 1 to 3 filed I.A.No.428 of 2016 under Order VIII Rule 9 and Section 151 of the CPC for permission to file additional written statement on the ground that the petitioners have owned vast extent of lands and other properties. Petitioners 1 to 3 filed the suit for partition only in respect of the suit property that the suit property is a small portion owned by the petitioners. Being the third parties to the sale, now only they came to know about the properties and if all the properties are included, the suit property can be allotted to their vendor.

4. The petitioners 1 to 3 filed counter affidavit and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the respondents 1 to 3, who are the legal heirs of the deceased fourth defendant, who is an innocent purchaser, are entitled to file additional written statement, allowed the application.

6. Against the order dated 09.01.2017 made in I.A.No.428 of 2016, the present Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. It is pertinent to note that both the plaintiffs and defendants 1 to 3 have jointly filed the present Civil Revision Petition. The respondents 1 to 3 filed the application for permission to file additional written statement on the ground that there are other properties also owned by the petitioners. The petitioners have not disputed the fact that they own other properties also, which can be partitioned. In view of the same, the contention of the respondents that the petitioners owned other properties, the issue whether the suit filed by the petitioners 1 to 3 amounts to partial

partition or not, has to be decided. Further, all the properties owned by the petitioners must be included in the partition. In view of the same, the respondents 1 to 3 are entitled to file additional written statement, which is necessary to decide the issue of partition.

9. Considering all the above facts, the learned Judge has exercised his power conferred on him properly and rightly allowed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge, dated 09.01.2017. It is open to the petitioners 4 to 6 to file additional written statement, if any.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

Index : Yes/No

dh/kj

To

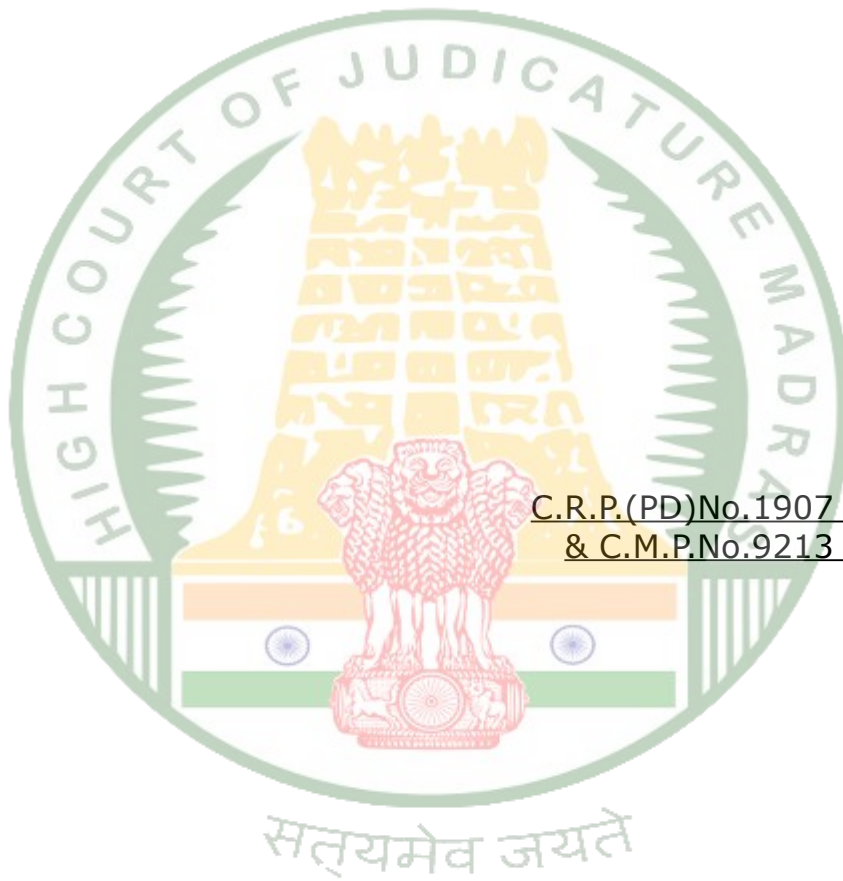
The Sub-Court

Uthangarai.

WEB COPY

V.M.VELUMANI, J.

dh/kj



C.R.P.(PD)No.1907 of 2017
& C.M.P.No.9213 of 2017

WEB COPY

19.06.2017