

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) Nos. 3391 & 3392 of 2017
and
CMP Nos. 15818 and 15819 of 2017

1. Miss. V.S. Rajarajeshwari
rep. By Power Agent
Miss. S. Jayamanju

2. Miss. S. Jayamanju

.. Petitioners
in both CRPs

Vs

1. Mrs. E. Paravatham

.. 1st respondent
in both CRPs

2. Mr. S.V. Easwaran

.. 2nd Respondent
in CRP No.3391 of 2017

PRAYER: These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.07.2017 passed in I.A. Nos. 633 & 634 of 2016 in O.S. No. 682 of 2012 by the IV Additional District and Sessions Judge, Coimbatore.

For Petitioners
in both CRPs

: M/s. A. Thiyagarajan

For Respondents : Mr. S. Mohan for R1/ Caveator
in both CRPs Mr. R. Vasudevan for R2

COMMON ORDER

These revision petitions are filed against the fair and decreetal orders dated 21.07.2017 passed in I.A. Nos. 633 & 634 of 2016 in O.S. No. 682 of 2012 by the IV Additional District and Sessions Judge, Coimbatore.

2. The learned counsel for the petitioners would submit that the 1st respondent filed a suit in O.S. No.682 of 2012, seeking for partition and separate possession. In the aforesaid suit, the defendants/ revision petitioners filed their written statement. At the stage of recording evidence of PW1, the revision petitioners filed I.A. No. 633/2016 for impleading and I.A. No. 634/2016 to include the said property as item No.3 in the plaint schedule property. The said applications were dismissed by the court below. Challenging the same, the present Civil Revision Petitions are filed.

3. The learned counsel for the petitioners would submit that the 1st respondent/ plaintiff has specifically avoided to include the land

in S.F. No.775/2A measuring an extent of 22 cents, for partition. Hence, the revision petitioners filed an Interlocutory Application to include the said property in the suit for partition. It is stated in the Application that the 1st respondent herein, alleging that the said property belongs to her husband, the same is not available for partition. The joint patta is also available in the name of the parties. Therefore, the said property should also be necessarily included in the said suit schedule. Hence, the order passed by the court below is liable to be set aside.

4. Per contra, the learned counsel for the 1st respondent would submit that the suit is filed during the year 2012 and the matter has been taken up for trial. During cross examination of PW1, the present applications have been filed by the revision petitioners/ defendants to include another item in the said suit. It is further submitted that the said property was purchased by the husband of the 1st respondent/ plaintiff and hence it is not necessary to included for partition.

5. Heard the rival submissions and perused the material available on record.

6. Firstly, the said application is not maintainable on the ground that the contention of the petitioners are to agitate in the separate suit. Even according to the revision petitioners, the aforesaid property has been purchased by the plaintiff's husband from a third party and therefore, the said property should also be included for partition. Without any specific pleadings, this aforesaid property cannot be included at the stage of trial. Secondly, the petitioners have filed the present applications after examination of PW-1 and the said application has been filed by them, belatedly. Further, the court below has considered, the contentions of the revision petitioners and held that the petitioners cannot seek for partition of the joint family property. Further, the petitioners are seeking partition on the basis of the sale deed in favour of the plaintiff husband. In the light of the findings of the court below, this Court is not inclined to interfere with the order passed by the Court below. Therefore, there is no error or illegality in the order passed by the court below. However, it is open to the revision

petitioners to agitate the aforesaid issues by filing appropriate suit, if so permissible under law.

7. In view of the above submission, both the Civil Revision Petition fails and the same are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

21.11.2017

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on 17.01.2018]
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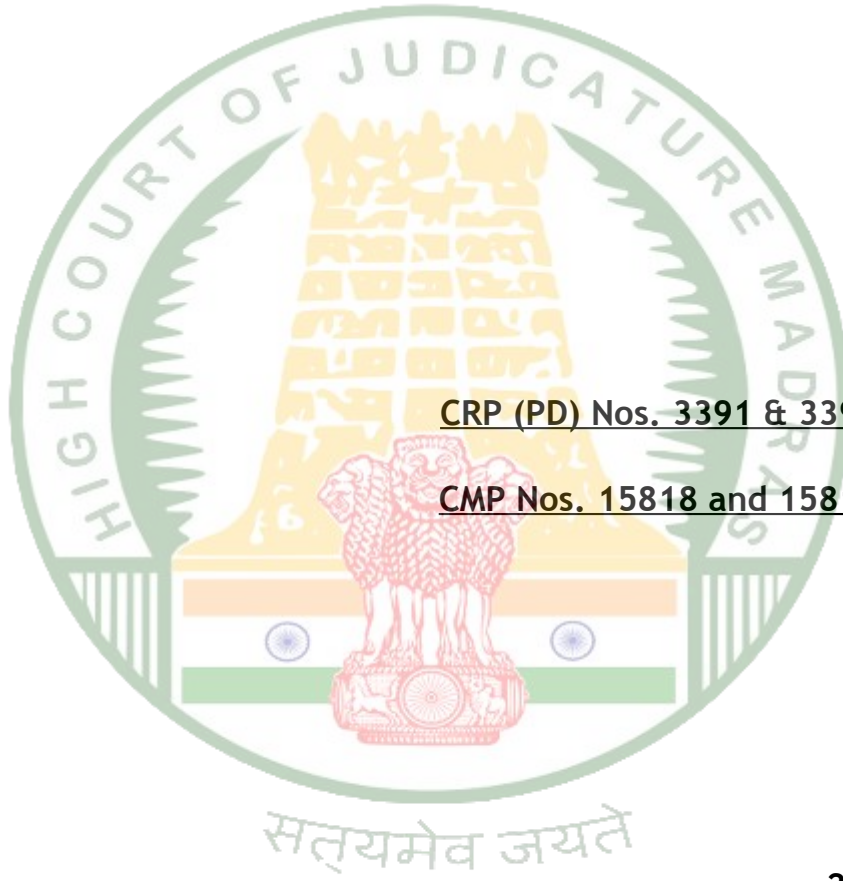
To

The IV Additional District and
Sessions Judge,
Coimbatore.

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D. KRISHNAKUMAR J.,

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