

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4660 of 2011
& M.P.No.1 of 2011

A.Velusamy

.. Petitioner

Vs.

1.Minor V.Prakash
S/o.Velusamy

2.Minor V.Kasthuri
S/o.Velusamy

.. Respondents

(Both minor respondents are represented by their guardian mother Mrs.Mylathal, W/o.Velusamy No.49/5, Rangasamudatam, Pichanoor Village, Madukarai, Coimbatore Taluk & District)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 28.07.2011 made in I.A.No.520 of 2010 in O.S.No.596 of 2007 on the file of the learned II Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.R.Syed Mustafa

For R1 & R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 28.07.2011 made in I.A.No.520 of 2010 in O.S.No.596 of 2007 on the file of the learned II Additional Subordinate Court, Coimbatore.

2. The petitioner is the first defendant and respondents 1 and 2 are the plaintiffs in O.S.No.596 of 2007. The respondents 1 and 2 are the minors represented by their mother. They have filed the said suit by their mother as guardian and next friend for partition, permanent injunction not to encumber and alienate the suit property against the petitioner, who is the father of the minors and one K.Devadasan, who is the second defendant in the suit. The petitioner has executed a biname transaction and nominal sale deed of the property described in Schedule 1 in favour of the second defendant. The property is worth more than Rs.10 lakhs, but only Rs.1,50,000/- has been mentioned in the sale deed. The petitioner, as a first defendant is contesting the suit. The trial has been commenced. Respondents 1 & 2 have let in their evidence and closed their side of evidence.

3. At that stage, the petitioner filed I.A.No.520 of 2010 to transpose the first respondent as the third defendant in the above suit to be represented by petitioner. According to the petitioner, the minor first respondent is in his custody right from his birth and he is pursuing studies.

4. The respondents 1 & 2 filed counter affidavit on 24.03.2011 and opposed the said contention.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the grounds that:

(i) the mother has been appointed as guardian of respondents 1 & 2 by the Court and no allegation is made against the respondents' mother, the guardian appointed by the Court;

(ii) the only reason stated by the petitioner for transposing the first respondent minor as third defendant is that minor is in the custody of the petitioner.

Whether the petitioner or mother of the minor representing respondents 1 & 2 is not relevant but paramount interest of the

minors is the only criteria. The mother of the minor respondents 1 & 2 is conducting the case and has let in evidence on behalf of the minor respondents 1 & 2. The petitioner is defending the suit and denying the share of the minor respondents 1 & 2 and in view of the same, he is not a proper person to represent the first respondent minor.

7. The reasons given by the learned Judge are valid and legal, especially the reason given by the learned Judge that the mother was appointed as guardian of the minor respondents 1 & 2 by the Court. She has claimed share on behalf of the minor, whereas the petitioner is contesting the suit denying the share of the minor defendants. In view of the above facts, the civil revision petition is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
dm/gsa

28.08.2017

To

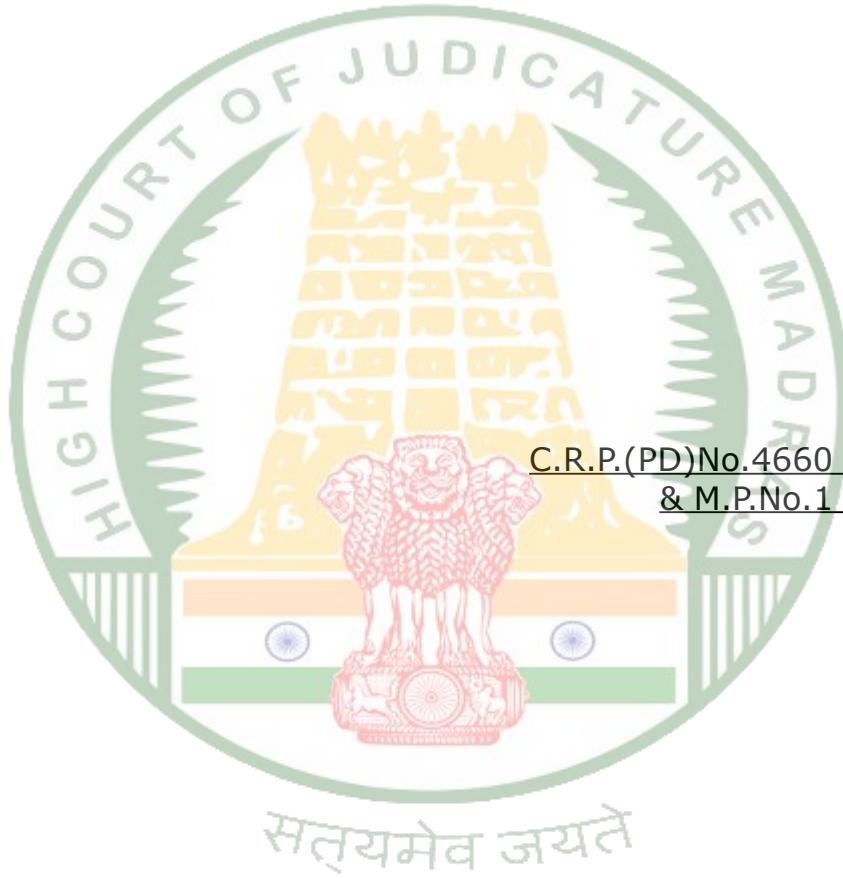
The II Additional Subordinate Judge,
Coimbatore.



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V.M.VELUMANI, J.

dm



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