

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1349 of 2008
& M.P.No.1 of 2008

Vridhambal

.. Petitioner

Vs.

1.Kuppusamy
2.Deivanaiammal
3.Dhanabalammal
4.Vadivelu
5.Ramu
6.Pancharammal
7.Ramachandran
8.Seenu
9.Subramanian
10.Sukkiri Padayachi
11.Sivagangai
12.Easuvo
13.Subramaniam

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 04.10.2007 passed in I.A.No.1361 of 2006 in I.A.No.806 of 2001 in O.S.No.225 of 1998 on the file of the District Munsif Court, Panruti.

For Petitioner : Mr.S.Kingston Jerold

For R1 : Mr.R.Muralidharan

For R2, 5 to 9,12 : No Appearance

For R3,4,10 & 11 : Given up

For R13 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and final order dated 04.10.2007 passed in I.A.No.1361 of 2006 in I.A.No.806 of 2001 in O.S.No.225 of 1998 on the file of the District Munsif Court, Panruti.

2. The petitioner is the second plaintiff, first respondent is the third party, second respondent is the first plaintiff and respondents 3 to 13 are the defendants 1 to 11 in O.S.No.225 of 1998 on the file of the learned District Munsif, Panruti. The second respondent and petitioner filed above suit against the respondents 3 to 13 for partition. A preliminary decree was passed on 16.11.2000. The petitioner and second respondent filed I.A.No.806 of 2001 for passing of final decree. The first respondent filed I.A.No.1361 of 2006 for impleading him as 12th respondent in I.A.No.806 of 2001.

3. According to the first respondent, he purchased 21st item in the suit property from Pichaikannu Padayatchi by the registered sale deed dated 25.06.1964 and from that date, he is in possession and enjoyment of the suit property. He came to know about the suit and preliminary decree, when the Advocate Commissioner came to the suit property and marked his property. The second respondent and petitioner have no right over the Item No.21 in the suit property and only the first respondent is owner of the property and therefore he is necessary and proper party to the suit.

4. The petitioner and second respondent filed separate counter affidavit and contended that the property in question did not belong to the first respondent and he is not necessary and proper party to the suit. Only to drag on the proceedings at the instigation of respondents 3 to 13, the first respondent filed the present application for impleading him in the suit. The respondents 5 to 9 and 12 filed separate counter affidavit and submitted that the first respondent is owner of the Item No.21 in the suit property and therefore he is necessary and proper party to the suit. The petitioner and second respondent do not have right over the said

property and it is not correct to state that the first respondent filed the present application only at the instigation of the respondents 3 to 13.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit, materials available on record and judgments relied on by the petitioner and first respondent, allowed the application holding that the first respondent has purchased the said property by the registered sale deed dated 25.06.1964 and in order to avoid multiplicity of proceedings, he is necessary party.

6. Against the said order dated 04.10.2007 passed in I.A.No.1361 of 2006 in I.A.No.806 of 2001 in O.S.No.225 of 1998, the present Civil Revision Petition is filed by the petitioner/second plaintiff.

7. The learned counsel for the petitioner reiterated the averments in the counter affidavit and contentions raised in grounds of revision. The learned counsel appearing for the petitioner relied on the judgments reported in "**2003-1-L.W.416**" in the case of ***R.Anitha & 2 others Vs. Ramakrishnan & 6 others***" and "**in**

C.R.P.No.1724 of 1968 in the case of **Swayamprakasam alias Chidambaranathan Vs. R.Vijayarangam**” and submitted that in a partition, suit proceedings cannot come to an end till the final decree is passed.

8. The learned counsel for the first respondent contended that he is the owner of the property and therefore he is necessary and proper party in the final decree application.

9. Heard the learned counsel for the petitioner as well as first respondent and perused the materials available on record and considered the judgments relied on by the learned counsel for the petitioner.

10. The first respondent claims to be the owner of the Item No.21 in the suit property as he has purchased from Pichaikannu Padayatchi by the registered sale deed dated 25.06.1964 and he is in possession and enjoyment of the suit property. The respondents 5 to 9 and 12 filed counter in support of the claim of the first respondent. It is not the case of the first respondent that he has purchased the property from one of the party in the suit. The

respondents 5 to 9 and 12, who now has come out with the case that the petitioner and second respondent do not have any right over the said property and only the first respondent is the owner of the property, has not stated so before the preliminary decree was passed. Preliminary decree includes partition of Item No.21 also for which the first respondent claims to be the owner. No oral and documentary evidence was let in before the learned Judge and the first respondent has not produced and marked the sale deed by which he has purchased the property. The claim of the first respondent as owner is not based on the purchase from the parties in the suit and hence he is not necessary and proper party in the application for final decree. In the circumstances, the judgments relied on by the learned counsel appearing for the petitioner are applicable to the facts of the present case. The first respondent has to establish his right in a competent Civil Court and title of the third party like first respondent cannot be decided in the final decree application. The learned Judge, has failed to consider these averments and there by committed an irregularity in impleading the first respondent in the final decree application. For the reasons stated above, the impugned order dated 04.10.2004 passed in I.A.No. 1361 of 2006 is liable to be set aside and is hereby set

aside.

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

20.10.2017

Index : Yes/No

dm/gsa

To

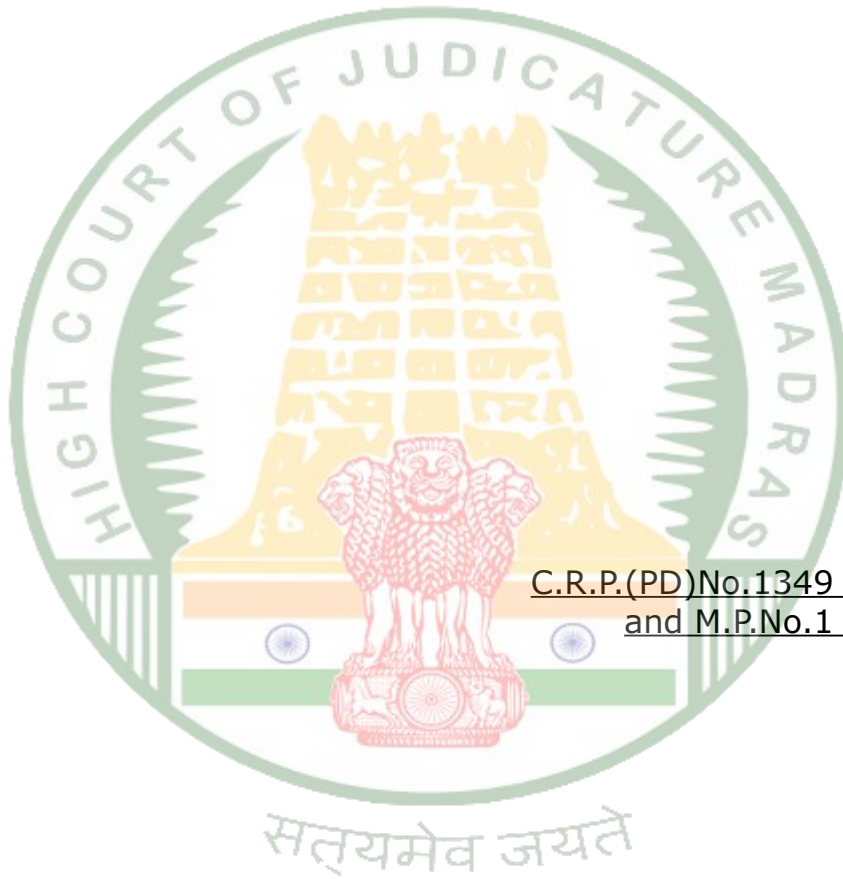
The District Munsif,
Panruti.



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V.M.VELUMANI, J.

dm



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