

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.11.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP.No.1673 of 2007

and

M.P.Nos.1 to 3 of 2008

1.Srinivasalu Naidu

2.Margabandhu Chowdri

... Petitioners

Vs.

1.Chinnappa Naidu

2.Chandran Naidu

3.Dhanapal Naidu (Deceased)

4.Jothiammal

5.Prabavathi

6.Boopalan

7.Kamala

8.Kasthuri

9.Lakshmi

10.Vijaya

11.Lakshmiammal

12.Revathi

13.Sathyanatham

14.Ganeshan

15.Gnanambal

16.Sujatha

17.Sumathi

18.Naveenkumar

19.Subhasree

20.Vikram

(RR15 to 20 are brought on record as legal representatives of deceased 3rd respondent vide order of the Court dated 02.11.11 made in MPs 1 to 3 of 2008 in CRP.No.1673/07)

... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, against the order dated 09.11.2006 made in I.A.No.70 of 1993 (in O.S.No.861 of 1979) Sub Court, Vellore, transferred as I.A.No.70 of 1999 on the file of Sub Court, Gudiyatham.

For Petitioners

:M/s.J.Shanmuga Sundara Babu

For Respondents

:Mr.V.Iyyadurai

Senior Counsel

for M/s.V.B.Perumal Raj for R2

Mr.P.Muthukumarasamy

for R16, 17 and 19

R3-died

No Appearance for R1, R4 to R15, 18, 20

O R D E R

This petition has been filed challenging the order dated 09.11.2006, appointing the Advocate Commissioner for conducting auction for sale of the property items Nos.7,13,15 contending that as per the order of this Court in CRP.No.1224 of 2004, the application in I.A.No.63 of 2007 for amendment of preliminary decree is pending. Unless I.A.No.63 of 2007 is disposed of, the Court below has no right for appointment of Advocate Commissioner to conduct the auction.

2. It is made clear that the order dated 09.11.2006 is only to conduct the auction for selling items Nos.7,13,15 and it was no way connected with the amendment of preliminary decree. After passing orders in the interlocutory application for amendment of preliminary decree, the sale proceeds can be divided between the two persons and the shares will be allotted by the Court below. This Civil Revision Petition is unnecessarily pending from the year 2007 onwards.

3. When the matter is taken up for hearing, the learned counsel appearing for the petitioner argued that the legal heirs of the first petitioner are residing in Item No.13. Therefore, if he may be allotted in item No.13 of the property, he is ready to pay the cost of the property.

4. In such circumstances, this Court cannot be considered the above aspect in this Civil Revision Petition. Therefore, this court is inclined to dismiss by giving liberty to the petitioner to file appropriate application before the trial court for getting item No.13 of the suit scheduled property. On such application being filed, the learned Judge is directed to consider the same in accordance with law.

5. Accordingly, this Civil Revision Petition is dismissed. The learned Trial Judge is directed to pass appropriate orders in I.A.No.63 of 2007 pending for amending the preliminary decree as per the direction of this Court within a period of three weeks from the date of receipt of a copy of this order. Further the trial Judge is directed to pass appropriate orders on the final decree applications within a period of three months, after passing of the order in I.A.No.63 of 2007. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Sub Court,
Vellore.

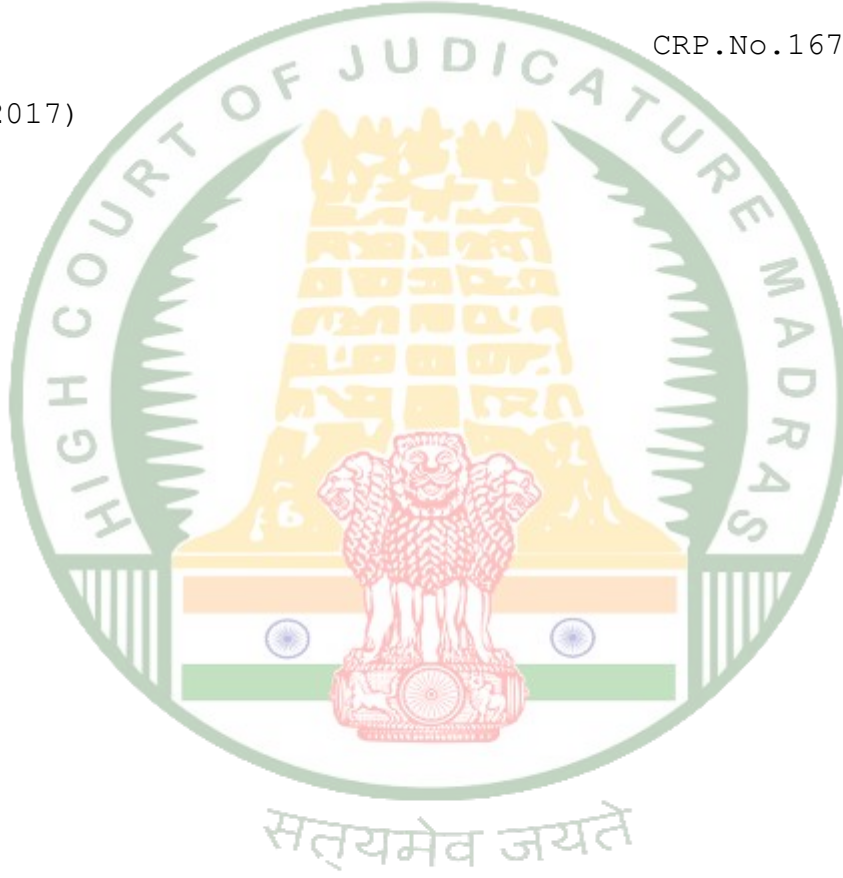
2.The Sub Court,
Gudiyatham.

+2cc to Mr.V.B.Perumal Raj, Advocate SR.No.81060

+1cc to Mr.J.Shanmuga Sundarbabu, Advocate SR.No.81067

CRP.No.1673 of 2007

GN(28/11/2017)



WEB COPY