

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 01.11.2017**

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

**C.R.P.(PD) No.1042 of 2013**  
**and M.P.No.1 of 2013**

1.Muniganatham  
2.Anbarasi  
3.Ramadevi  
4.Gomathi  
5.Udayakumar

.. Petitioners

Vs

Sathiyavani  
Respondent

..

**Prayer:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 13.12.2012 made in I.A.No.132 of 2012 in O.S.No.69 of 2010 on the file of Subordinate Court, Gingee.

For Petitioners : Mr.D.Ravichander

For Respondent : No Appearance

**ORDER**

This Civil Revision Petition has been filed to set aside the Fair and Decreetal Order dated 13.12.2012 made in I.A.No.132 of 2012 in O.S.No.69 of 2010 on the file of Subordinate Court, Gingee.

2. The petitioners are the defendants, the respondent is plaintiff in O.S.No.69 of 2010 on the file of the Subordinate Court, Gingee. The respondent filed suit against the petitioners and others for partition of the suit properties. According to the respondent, the properties are self acquired properties of one Chinnasamy Gounder and as a legal heir of Chinnasamy Gounder, she is entitled to share in the suit properties. The petitioners filed an application in I.A.No.132 of 2012 under Section 10 of CPC for stay of the present suit till the disposal of the S.A.No.643 of 2010, which is pending before this Court.

3. According to the petitioners, they have filed O.S.No.382 of 1996 for declaration that they are the legal heirs of one Arasu, injunction and for a direction to the defendants 5 and 6 therein to pay the death benefits. The said suit was decreed. The defendants therein filed the first appeal in A.S.No.24 of 2006 on the file of Sub Court, Gingee. The said appeal was allowed and challenging the same, the petitioners have filed S.A.No.643 of 2010 and the same is pending before this Court. According to the petitioners, parties and the issues involved in both the suits are one and the same and therefore, the present suit is to be stayed till the disposal of the Second Appeal.

4. The respondent filed counter affidavit and submitted that the parties, subject matter, cause of action and reliefs in both the suits are different. The earlier suit filed by the petitioners is that they are the legal heirs of one Arasu, who is the son of Chinnasamy Gounder and they sought for injunction with regard to certain properties. The present suit is for partition of all the properties, which belonged to Chinnasamy Gounder and all the legal heirs of Chinnasamy Gounder are parties to the present suit.

5. The learned Judge considering the averments in the affidavit, counter affidavit and materials on record and the facts that the petitioners have not filed the plaint in the earlier suit in O.S.No.382 of 1996 and the fact that this Court did not grant any stay of the present suit in S.A.No.643 of 2010, dismissed the application.

6. Against the said order of dismissal dated 13.12.2012 made in I.A.No.132 of 2012 in O.S.No.69 of 2010, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners and perused the materials available on record. Though notice was served

on the respondent and her name is printed in the cause list, there is no representation on behalf of the respondent either in person or through any counsel.

8. In the Civil Revision Petition, the petitioners have filed the plaint in O.S.No.386 of 1996 and the plaint in present suit in O.S.No.69 of 2010. A reading of averments in both the plaints reveal that the parties, reliefs, properties are not one and the same. The petitioners have filed the earlier suit in O.S.No.382 of 1996 against the defendants 7, 8, 9 and Tahsildar, Gingee and District Educational Officer, Tindivanam. In the said suit, the petitioners have claimed declaration against the defendants 7, 8, 9 and for declaration that they are the legal heirs of deceased Arasu, son of Chinnasamy Gounder. The present suit is for partition of all the properties of Chinnasamy Gounder including the properties in the earlier suit. The dispute in the earlier suit is only between the petitioners and defendants 7, 8, 9 in the present suit. The parties, the relief and cause of action are entirely different in both the suits. The petitioners have not obtained any stay of the present suit from this Court in the Second Appeal. The learned Judge, considering all the above facts in proper perspective and rightly dismissed the application.

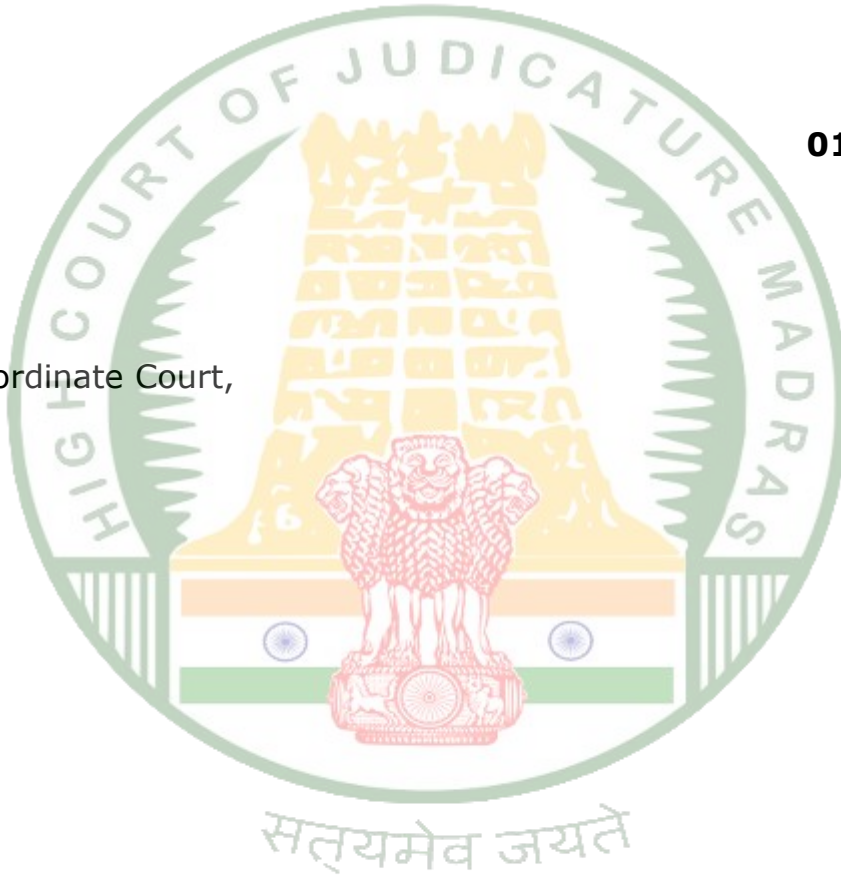
9. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

**01.11.2017**

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**To**

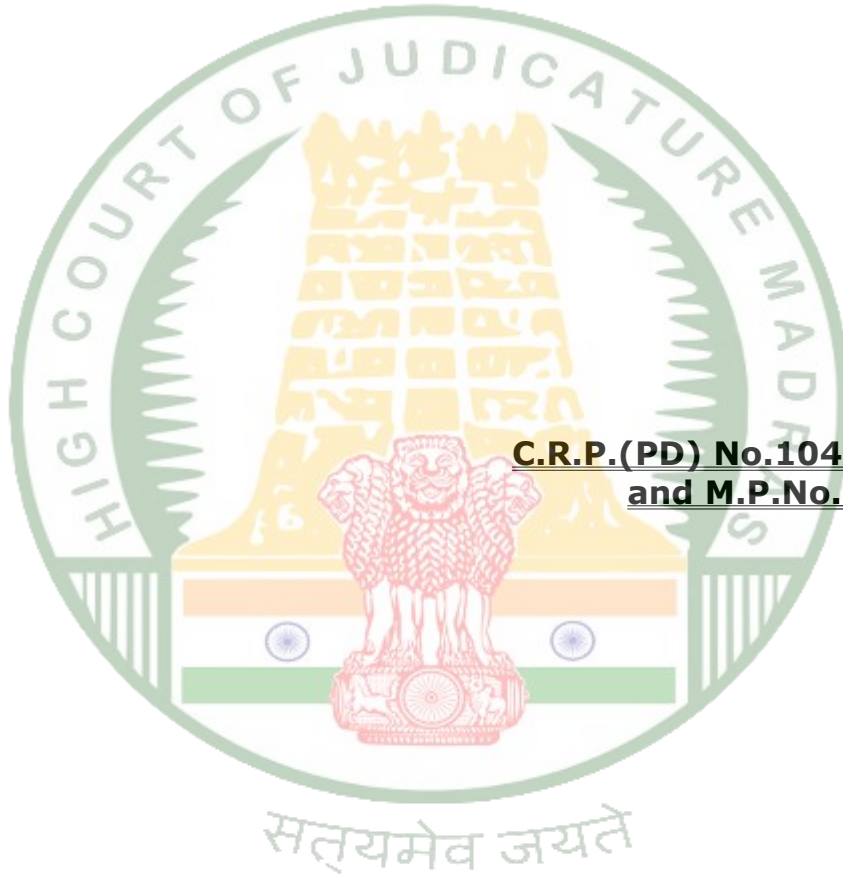
The Subordinate Court,  
Gingee.



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**V.M.VELUMANI,J**

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