

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.1456 of 2013
and M.P.No.1 of 2013

Kannappan

.. Petitioner

Vs

1.Ganesan

2.Chinnaponnu

3.Pappa

4.Chinnamma

5.Kamala

6.Bothammal

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 02.03.2013 in I.A.No.60 of 2013 in O.S.No.157 of 2007 on the file of the II Additional District Judge at Salem.

For Petitioner : Mr.D.Shivakumaran

For R1 : Mr.C.A.Diwakar

For R2 to R6 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decreetal Order dated 02.03.2013 in I.A.No.60 of 2013 in O.S.No.157 of 2007 on the file of the II Additional District Judge at Salem.

2. The petitioner is the first defendant, first respondent is the plaintiff and the respondents 2 to 6 are the defendants 2 to 6 in O.S.No.157 of 2007 on the file of II Additional District Judge, Salem. Originally, the first respondent filed the said suit against the petitioner, for partition. The first respondent filed an application in I.A.No.16 of 2013, for impleading the respondents 2 to 6 as defendants 2 to 6. The said petition was allowed on 25.02.2013. The respondents 2 to 6 were impleaded as defendants in I.A.No.16 of 2013. The petitioner filed written statement on 25.02.2008, Additional Written Statement in the month of December 2008 and is contesting the suit. The first respondent filed an application on 27.02.2013 in I.A.No.60 of 2013, for amendment of the plaint.

3. According to the first respondent, earlier in I.A.No.16 of 2013 filed by him, the respondents 2 to 6 were impleaded as defendants 2 to 6, the present I.A.No.60 of 2013 is for consequential amendment. The petitioner also sought for amendment to include the property in Survey No.288/2AB and include para 4A that already the first respondent has stated in the written statement that the respondents 2 to 6 are not entitled to any share in the suit property.

4. The petitioner filed counter affidavit and opposed the said application on the ground that the first respondent is introducing a new cause of action and the first respondent has not stated as to why the property in Survey No.288/2AB is to be included in the suit schedule for partition.

5. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials on record, allowed the application.

6. Against the said order dated 02.03.2013 made in I.A.No.60 of 2013 in O.S.No.157 of 2007 allowing the application, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel appearing for the petitioner as well as first respondent and perused the materials available on record. Though notice was served on the respondents 2 to 6 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. The contention of the learned counsel for the petitioner is that

the first respondent has not given any reason for inclusion of property in Survey No.288/2AB for partition and by amendment, the first respondent is trying to introduce a new case.

9. The learned counsel appearing for the first respondent submitted that in para 8 of the written statement, the petitioner himself has stated that the property in Survey No.288/2AB1 measuring 0.04.5 Hectares is ancestral property and that property also is liable to be partitioned.

10. The contention of learned counsel for petitioner is without merit. In a suit for partition, all the properties are to be included in the Schedule. The properties left can be included in the schedule at any stage of the suit. Both the plaintiff as well as defendant are entitled to bring to the notice of the Court the property left out and take steps to include the same in the suit for partition. In the present case, the petitioner himself has stated that property in question is ancestral property. By inclusion of suit property, it will not amount to introducing a new case and new cause of action. It is always open to the opposite party to put forth their objection that the properties are not liable for partition.

11. The learned Judge has considered the above facts and allowed the application by giving valid and cogent reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge dated 02.03.2013.

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

01.11.2017

Index: Yes/No
Speaking/Non - Speaking
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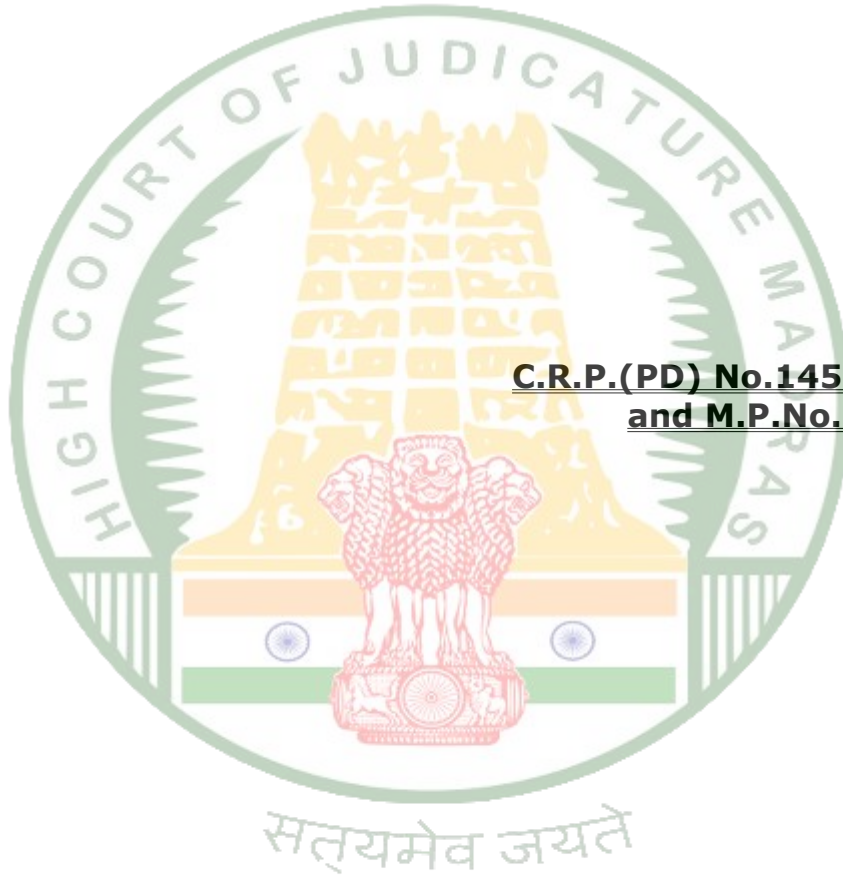
The II Additional District Court,
Salem.

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V.M.VELUMANI,J

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