

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3035 of 2009
& M.P.No.1 of 2009

1.T.Dhandapani
2.S.Dakshinamurthy

.. Petitioners

Vs.

1.E.Kesavan
2.Dilli
3.Latha
4.Rosammal
(brought on record as the
LR of Deceased S.V.Ethiraja
Mudaliar)

5.Suseela
6.P.Wilson
Advocate Commissioner

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 13.04.2006 made in
I.A.No.20121 of 2005 in O.S.No.4060 of 1981 on the file of the XI
Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.B.Thanikachalam

For R1	: Mr.G.R.S.Chander Rao
For R2 & R3	: Not ready in notice
For R4 & R5	: S.Poongudi
For R6	: Given up

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.04.2006 made in I.A.No.20121 of 2005 in O.S.No.4060 of 1981 on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. The learned counsel for the petitioners submitted that during pendency of the revision petition, fourth respondent died. M.P.No.1 of 2011 is filed to recognise the respondents 1 to 3 and 5 as the legal representatives of the deceased fourth respondent in C.R.P.No.3035 of 2009. The said petition is ordered vide order of this Court dated 21.08.2017.

3. The petitioners are the proposed parties, first respondent is the plaintiff and the respondents 2 to 6 are the defendants in O.S.No.4060 of 1981 on the file of the XI Assistant Judge, City Civil Court, Chennai. The first respondent filed the above suit for

partition against the respondents 2 to 6. A preliminary decree was passed on 19.03.1987. The petitioners filed I.A.No.20121 of 2005 to implead them as defendants 7 and 8 in the above suit.

4. According to the petitioners, they are purchasers of the suit property and therefore, they are necessary and proper parties to the suit.

5. The first respondent filed counter affidavit and denied the averments made in the said application and submitted that the preliminary decree was passed on 19.03.1987, but the sale deeds executed in favour of the petitioners by their vendors in respect of the suit property are on 30.09.1991 and 15.11.2000 and the same are hit by lis pendens.

6. The learned Judge, considering the averments made in the affidavit, counter affidavit and also taking note of the fact that the preliminary decree was passed on 19.03.1987, no appeal was filed by the petitioners against the preliminary decree, the petitioners and their vendors have purchased the properties after passing of preliminary decree, dismissed the application.

7. Against the order of dismissal dated 13.04.2006 made in I.A.No.20121 of 2005, the present civil revision petition is filed by the petitioners/proposed parties.

8. Heard the learned counsel appearing for the petitioners and respondents 1, 4 & 5 and perused the materials available on record.

9. From the materials available on record and impugned order of the learned Judge, it is seen that the petitioners and their vendors have purchased the properties after passing of preliminary decree. The petitioners and their vendors after passing of preliminary decree, can claim the right of their vendors, but they cannot claim more than the right of their vendors as per the preliminary decree. In view of the same, the petitioners are not necessary and proper parties.

10. The learned Judge considering all the above aspects dismissed the application on the ground that only the purchaser pending suit can be impleaded in the suit. The petitioners are the purchasers after passing of preliminary decree wherein the share of the first respondent had been determined and hence, they are not

necessary parties to the suit. In the circumstances, there is no irregularity or illegality warranting interference with the order of the learned trial Judge, dated 13.04.2006.

11. For the above reason, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2017

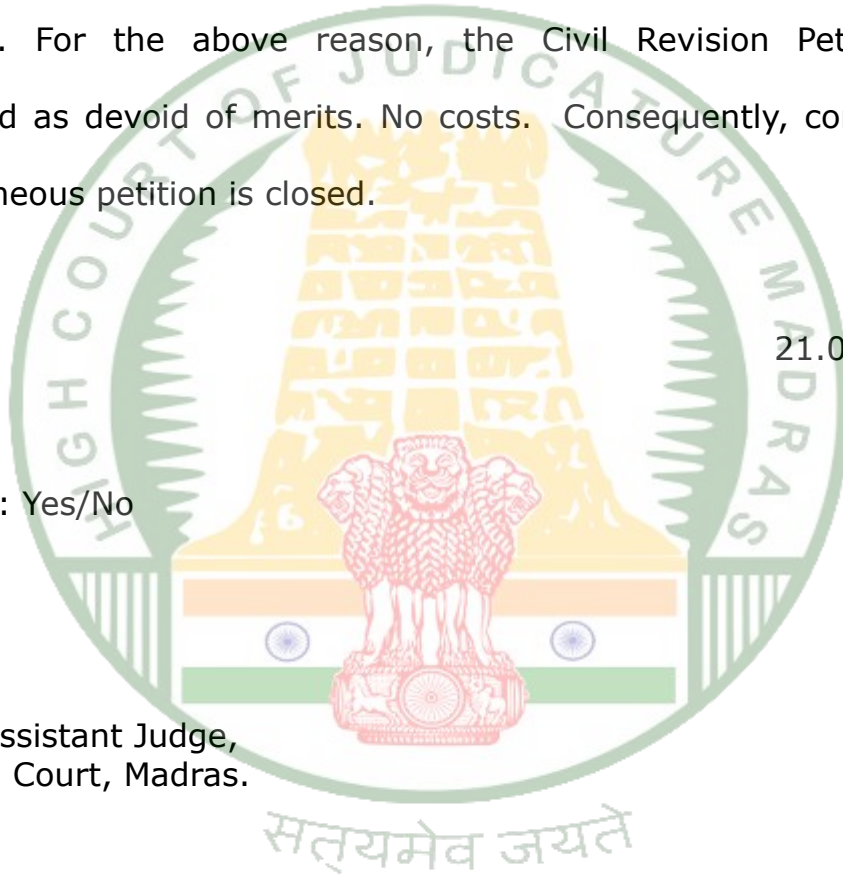
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Index : Yes/No

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To

The XI Assistant Judge,
City Civil Court, Madras.



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V.M.VELUMANI, J.

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& M.P.No.1 of 2011

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