

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.293 and 294 of 2008
& M.P.No.1 of 2008

- 1.Appavoo
- 2.Krishnan
- 3.Saravanan
- 4.Kodiyal
- 5.Saradha
- 6.Abimannan
- 7.Arivalagan
- 8.Paramasivam
- 9.Chinnathayee
- 10.Adhimoolam

.. Petitioners in
both C.R.Ps'

Vs.

- 1.Kandasamy Gounder
- 2.Siva Perumal
- 3.Manickam
- 4.Raju
- 5.Ayyandurai
- 6.Duraisamy
- 7.Sevathal

.. Respondents in
C.R.P.No.293/2008

- 1.Ayyam Perumal
- 2.Sevi Gounder
- 3.Siva Perumal
- 4.Manickam
- 5.Raju
- 6.Ayyandurai
- 7.Duraisamy
- 8.Sevathal

.. Respondents in
C.R.P.No.294/2008

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 11.04.2007 made in I.A.Nos.1726 & 1727 of 2005 in O.S.No.836 of 1997 on the file of the I Additional District Munsif Court, Salem.

(In C.R.P.No.293 of 2008)

For Petitioners : Mr.P.Jagadeesan
 For R1 : Mr.N.Manokaran
 For R2 to R6 : No appearance
 For R7 : Not ready in notice

(In C.R.P.No.294 of 2008)

For Petitioners : Mr.P.Jagadeesan
 For R1 & R2 : Mr.N.Manokaran
 For R3 to R7 : No appearance
 For R8 : Not ready in notice

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 11.04.2007 made in I.A.Nos.1726 & 1727 of 2005 in O.S.No.836 of 1997 on the file of the I Additional District Munsif Court, Salem.

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2. Petitioners in both the Civil Revision Petitions are plaintiffs 1 to 9 and 11 in O.S.No.836 of 1997 on the file of the I Additional District Munsif Court, Salem. They filed the suit for partition against

the respondents 2 to 6 in C.R.P.No.293/2008 and against the respondents 2 to 7 in C.R.P.No.294/2008. A preliminary decree was passed. They filed application for passing final decree. At that stage, the first respondent in C.R.P.No.293/2008 and respondents 1 and 2 in C.R.P.No.294/2008 filed two separate applications in I.A.No.1726/2005 in C.R.P.No.293/2008 and I.A.No.1727/2005 in C.R.P.No.294/2008 for impleading them in the suit as well as the application in passing of final decree. The first respondent in C.R.P.No.293/2008 filed I.A.No.1726/2005 to implead himself as 7th respondent and the respondents 1 and 2 in C.R.P.No.294/2008 filed I.A.No.1727/2005 to implead them as defendants in O.S.No.836/2005.

3. According to the first respondent in C.R.P.No.293/2005 and respondents 1 and 2 in C.R.P.No.294/2005, they are in possession and enjoyment of the property to the knowledge of all including plaintiff and defendants. Plaintiffs and defendants have colluded together and filed suit for partition. The defendants did not contest the suit and exparte preliminary decree was passed. They have also not objected for passing of final decree. In the circumstances, they are necessary and proper party to the suit.

4. The petitioners filed counter affidavit and denied various averments made by the proposed parties. The petitioners submitted that the applications filed by the proposed parties are belated one and proposed parties are not necessary and proper party to the suit and the learned Judge, allowed the applications viz., I.A.Nos.1726 and 1727/2005 along with other I.A.No.1728/2005, which is impugned in C.R.P.No.295/2008 on the ground to avoid multiplicity of proceedings. The proposed parties are necessary to decide the issue in the suit and no prejudice will be caused to the petitioners.

5. Against the said orders three Civil Revision Petitions are filed. In C.R.P.No.295/2008, the learned counsel appearing for the petitioners and respondents submitted that the proposed party/respondents 4, 6 and 7 in C.R.P.No.295/2008 died. The C.R.P.No.295/2008 is adjourned to 30.10.2017 to bring the legal heirs on record.

6. Heard the learned counsel appearing for the petitioners in both the Civil Revision Petitions and first respondent in C.R.P.No.293/2008 and respondents 1 and 2 in C.R.P.No.294/2008 and perused the materials available on record.

7. The C.R.P.Nos.293 and 294/2008 are disposed of by this common order.

8. The learned counsel appearing for the petitioners reiterated the averments in the counter affidavit filed in I.A.Nos.1726 and 1727/2005 and grounds and contentions raised in the grounds of revision. The learned counsel appearing for the proposed party reiterated the averments in the affidavit filed in support of the above two applications. In the affidavit filed in support of the above two applications for impleading, it is seen that the proposed parties are claiming to be necessary and proper party in the application for passing of final decree in the suit on the ground that they are the owners of the suit property and are in possession and enjoyment of the suit property. According to them, they purchased the suit property from the father of the first petitioner, by name Rajan and petitioners 4 to 7 in I.A.No.1728/2005. They have not stated that they have purchased the property from the defendants or the ancestors of the plaintiffs and defendants. The possession and enjoyment of the proposed parties will not be a ground for impleading them in the application for final decree. They have to establish their title in a competent Civil Court and then only they can make any claim against the plaintiffs and defendants in the

present suit and in the I.A for passing final decree. In an application for final decree, the suit property has to be divided by metes and bounds and shares are to be allotted to the parties as per their share declared in preliminary decree. If properties are indivisible, they have to be sold and sale proceeds to be divided among the parties. The title of third party to the suit cannot be decided in final decree proceedings. The learned Judge failed to consider these aspects and has not exercised the powers conferred on him properly and committed an irregularity in impleading proposed parties in the suit filed by the petitioners. In the circumstances, the impugned orders are liable to be set aside and are hereby set aside.

9. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently connected miscellaneous petition is closed.

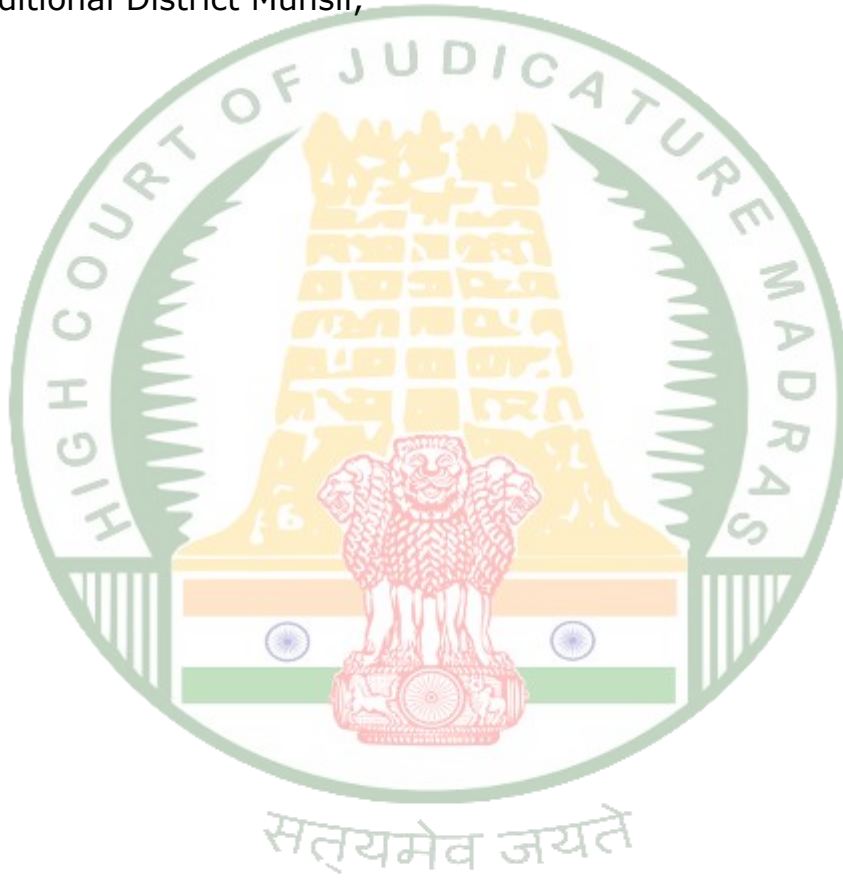
10. C.R.P.No.295/2008 is adjourned to 30.10.2017 for taking steps to bring on record the legal heirs of the deceased respondents.

Index: Yes/No
gsa

13.10.2017

To

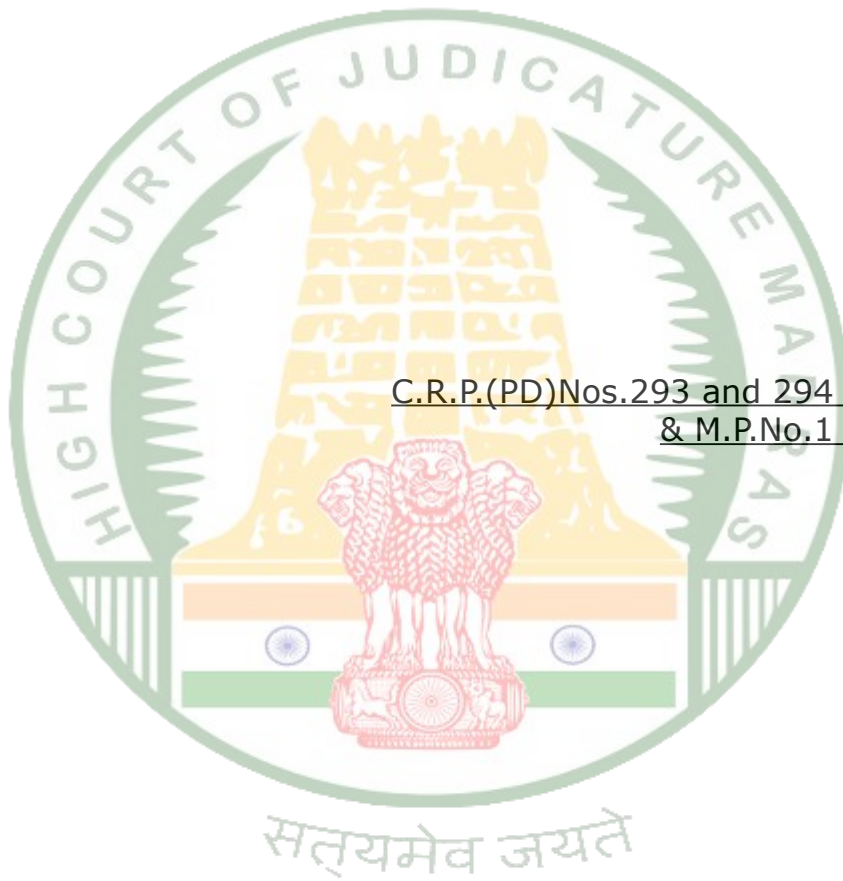
The I Additional District Munsif,
Salem.



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V.M.VELUMANI,J.

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