

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4643 of 2012
& M.P.No.1 of 2012

1.Kolandasamy Gounder
2.Chandrasekaran

.. Petitioners

Vs.

1.Vembana Gounder
Nachayammal (Died)
2.K.Viswanathan
Subbanna Gounder (Died)
3.Kannammal
4.Sivakami
5.Bakkialakshmi

.. Respondents

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India, against the fair and decretal order dated 03.10.2012 made in I.A.No.168 of 2012 in O.S.No.226 of 1983 on the file of the District Munsif Court-cum-Judicial Magistrate, Kodumudi.

For Petitioners : Mr.A.Sundaravadhanan

For R1 & R2 : Mr.S.Kaithamalai Kumaran

For R3 to R5 : No appearance

ORDER

This civil revision petition is filed against the the fair and decretal order dated 03.10.2012 made in I.A.No.168 of 2012 in O.S.No.226 of 1983 on the file of the District Munsif Court-cum-Judicial Magistrate, Kodumudi.

2. The petitioners are the defendants 2 & 3, first respondent and one Deceased Nachayammal are the plaintiffs and respondents 3 to 5 are the defendants 4 to 6 in O.S.No.226 of 1983, on the file of the District Munsif Court-cum-Judicial Magistrate, Kodumudi. The first respondent and deceased Nachayammal filed the said suit against the petitioners and respondents 3 to 5 for partition. A preliminary decree was passed on 27.07.1994. The second petitioner filed an appeal in A.S.No.467 of 1998 on the file of this Court. This Court, by the order dated 28.01.2009, modified the preliminary decree dated 27.07.1994. The respondents 1 and 2 along with the deceased Nachayammal filed an application in I.A.No.168 of 2012 for appointment of an Advocate Commissioner for effecting division of the suit properties as per the preliminary

decree passed in A.S.No.467 of 1998 and to pass final decree in terms of the preliminary decree.

3. The second petitioner filed counter affidavit on 27.07.2012 and submitted that the petitioners are entitled to 5/12 shares and further submitted that he made several improvements by spending several lakhs of rupees to the knowledge of the respondents 1 and 2 and gave details of the improvements he made in the counter affidavit and prayed for allotting the said property to the petitioners.

4. The respondents 1 and 2 filed reply statement on 04.08.2012 and denied that the second petitioner has made several improvements as alleged in the counter affidavit and further submitted that they have not obtained any permission from this Court for making such improvements.

5. The learned Judge, considering all the materials on record, rejected the contentions of the petitioners that they have not substantiated their claim of improvements in the suit property and appointed an Advocate Commissioner as prayed for in the

I.A.No.168 of 2012.

6. Against the said order dated 03.10.2012 made in I.A.No.168 of 2012 in O.S.No.226 of 1983, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners and respondents 1 & 2 and perused the materials available on record.

8. The contention of the learned counsel appearing for the petitioners is that the learned Judge did not have power to decide the issue whether the petitioners have made improvements or not in the suit property and the same can be decided only by the report filed by the Advocate Commissioner, to be held by him to suggest the ways of division of the properties as per the preliminary decree. The petitioners have come out with the specific case in the counter affidavit that the second petitioner has made several improvements in the suit property to the knowledge of the respondents. Having taken such a stand even before the appointment of the Advocate Commissioner and Commissioner suggesting the division of the

properties, the petitioners ought to have let in evidence before the learned Judge to substantiate their claim. The petitioners now cannot question the power of the learned Judge to give a finding on the contention raised by them in the counter affidavit and prayed for allotment of specific properties to them and they are entitled to 5/12 shares as per the preliminary decree passed by this Court. For the above reason, the civil revision petition is devoid of merits and is liable to be dismissed.

9. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since, the application is of the year 2012, the learned District Munsif -cum-Judicial Magistrate, Kodumudi is directed to dispose the I.A, as expeditiously as possible in any event, not later than six months from the date of receipt of a copy of this order.

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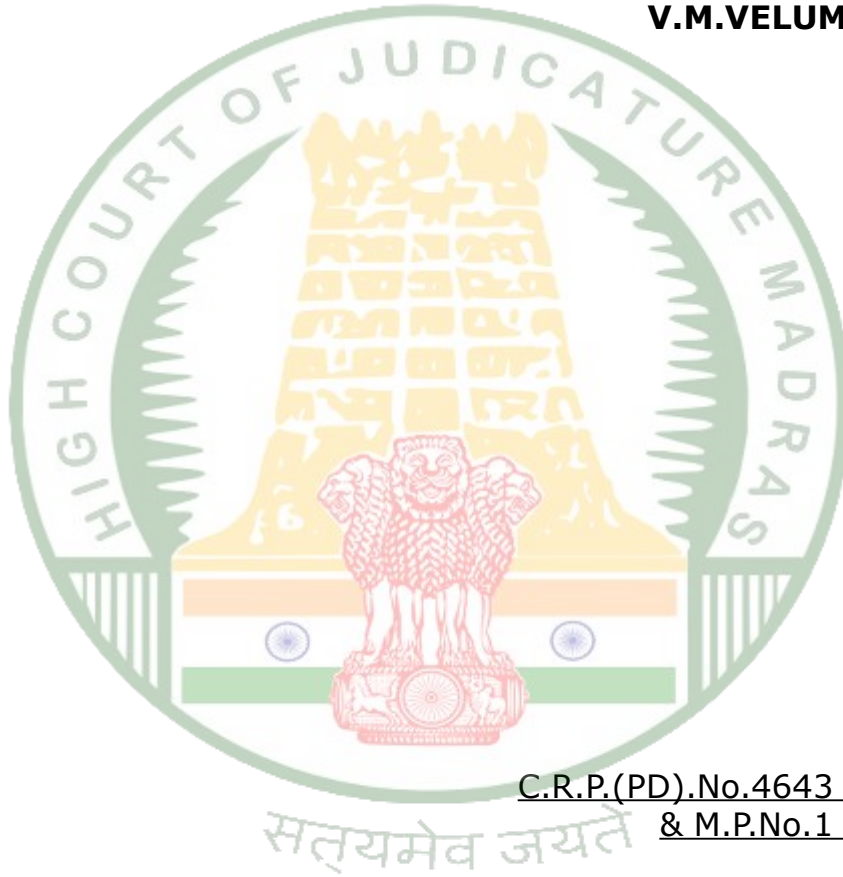
Index: Yes/No
gsa

To

The District Munsif -cum-Judicial Magistrate,
Kodumudi.

V.M.VELUMANI, J.

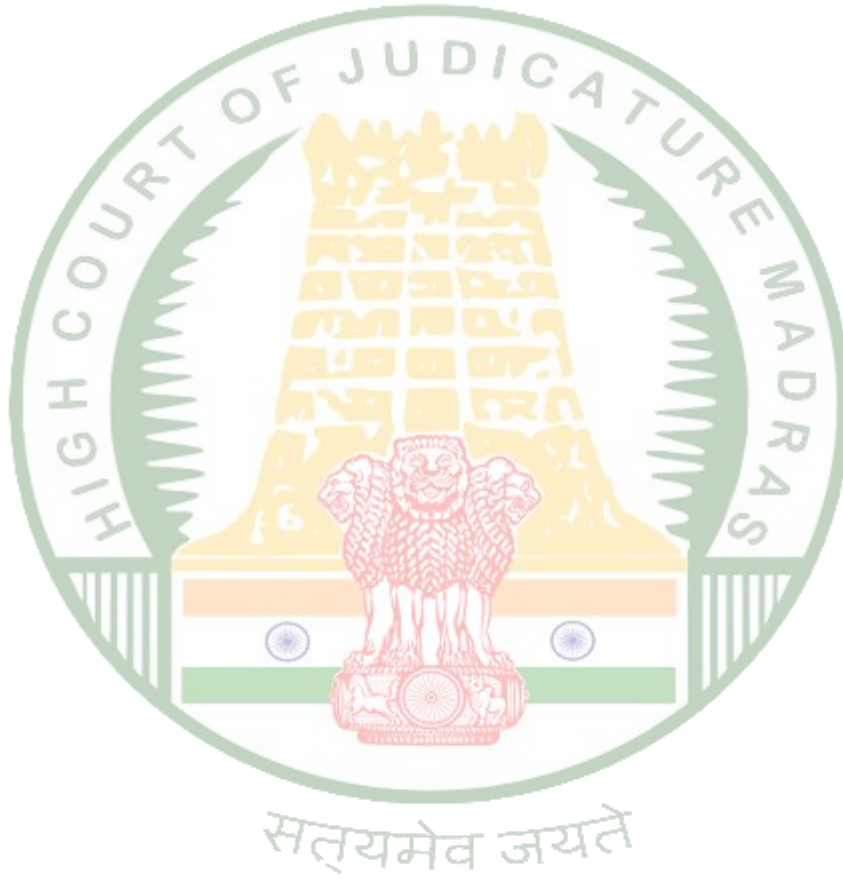
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