

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CRP (PD) No.1395 of 2018
and CMP.No.7449 of 2018

1.Saraswathi
2.Malarkodi

... Petitioners

-Vs-

1.Dakshinamoorthy
2.Vasugi
3.Subramani
4.Balakrishnan
5.Kamalakaran

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 18.01.2017 passed in I.A.No.347 of 2011 in O.S.No.128 of 2008 pending on the file of the Additional District Munsif Court, Chengam, Tiruvannamalai District.

ORDER

1.1.The revision petitioners as plaintiffs have laid a suit in O.S.No.528 of 2004 before the Additional District Munsif Court, Chengam, for partition, against five defendants of whom defendants 1 to 4 are the respondents 2 to 4 herein and the fifth defendant is one Pannerselvam. The core of plaintiff's pleadings is along standard lines when the plaintiffs plead that they and defendants are members of undivided Hindu Joint Family and that they are in joint enjoyment of the suit property. It is further

contended in the plaint that defendants 1 to 3 had executed a sale deed in favour of the fifth defendant without the knowledge of the plaintiffs, and this has necessitated filing a suit for partition.

1.2. Be that as it may, the said Pannerselvam (5th defendant in O.S.No.528 of 2004) had sold the property to certain Manavalan vide registered sale deed dated 22.11.2007 and the said Manavalan is in possession and enjoyment of the suit property as its absolute owner. In due course, the revision petitioners and the respondents 2 to 4 herein have attempted to disturb his possession and enjoyment and hence, on the strength of the said sale deed, Manavalan has filed a suit in O.S.128 of 2008 before the District Munsif Court, Chengam, against the revision petitioners and other defendants, for declaration of his title and permanent injunction.

1.3. During the pendency of the suit in O.S.No.128 of 2008, Manavalan sold the property to a certain Dakshinamoorthy, who is now arrayed as the first respondent herein. Dakshinamoorthy would now file I.A.No.347 of 2011 on the file of I Additional District Munsif, Chengam, to implead himself as the second plaintiff in O.S.No.128 of 2008. This was opposed by the revision petitioners. But rejecting the same, the trial Court has allowed the said application and permitted Dakshinamoorthy to be impleaded as second plaintiff in O.S.No.128 of 2008 Vide its order dated 18.01.2017. This order is now under challenge.

2. The learned counsel for the petitioners would argue that allowing the impleading

application without serving notice on Manavalan who was the original plaintiff in O.S.No.128 of 2008, is contrary to the procedure and this amounts to an illegality which this Court needs to correct.

3. This Court is not impressed, even though it cannot ignore the fact that Manavalan is not arrayed as a party to I.A.No.347 of 2011. In fitness of things, he could have been impleaded, but his absence in the party array in I.A.No.347 of 2011 is of no consequence. After all Dakshinamoorthy claims that he had purchased the property from Manavalan and necessarily he has to be in the party array to prosecute the suit from where his predecessors in title has left it.

4. In conclusion this Revision petition is dismissed. It is also seen from the typed set of papers that plaintiffs/ revision petitioners had laid the suit for partition in O.S.No.528 of 2004, some 14 years from now and this case is well preserved for fixing an auspicious date for commencing the trial. This Court, therefore, directs the Principal District Judge, Tiruvannamalai District to look into the pendency of O.S.No.528 of 2004 pending on the file of District Munsif cum Judicial Magistrate Court, Chengam and monitor its expeditious disposal. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2018

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Index : Yes / No

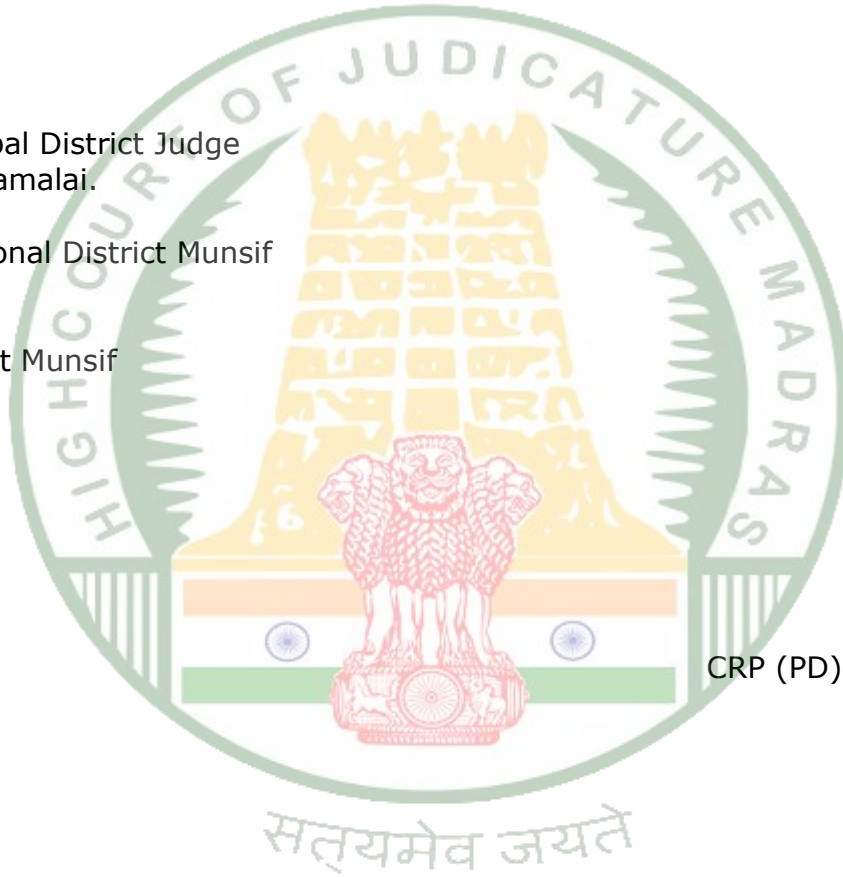
Speaking Order / Non-speaking Order

N.SESHASAYEE,J.,

ds

To:

- 1.The Principal District Judge
Thiruvannamalai.
- 2.The Additional District Munsif
Chengam.
- 3.The District Munsif
Chengam.



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