

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.10.2018

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) No.1460 of 2011
and M.P.No.1 of 2011

S.Ponnusamy ... Petitioner/Petitioner/Plaintiff

versus

1.Krishnaveni Ammal

2.Maheswari

3.Sumathi

4.Gomathi ... Respondents/Respondents/Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order of the learned II Additional Subordinate Judge, Salem, dated 30.10.2010 made in I.A.No.369 of 2010 in O.S.No.80 of 2010.

For petitioner : Mr.S.Gowrishankar for Mr.G. Jeremiah

For respondents: Mr.R.Marudhachalamurthy

ORDER

The above Civil Revision Petition has been filed challenging the order passed by the learned II Additional Subordinate Judge, Salem, dated 30.10.2010 made in I.A.No.369 of 2010 in O.S.No.80 of 2010, in and by which the learned Subordinate Judge has partly allowed the amendment application filed by the revision petitioner/plaintiff.

2. The revision petitioner has filed a Suit in O.S.No.80 of 2010 on the file of the learned II Additional Subordinate Court, Salem for partition and separate possession of his 1/4th share in the Suit Schedule properties. He had claimed a right to the Suit properties on the strength of being the son of one, Mr.S.P.Sahadevam Pillai, and the first defendant, his wife. The respondents 3 and 4 are the children of his sister.

3. In the written statement filed by the first respondent/first defendant, which was also adopted by the other respondents, they had contended that the plaintiff was the son born to the concubine of the said S.P.Sahadevam Pillai and not through the first respondent/first defendant and they had also put forward a Will executed by Mr.S.P.Sahadevam Pillai and they submitted that the revision petitioner had no right over the Suit property.

4. During the pendency of the suit, the revision petitioner had come forward with an amendment application in I.A.No.369 of 2010, in which he had sought for the following amendment:

'With reference to the pleadings regarding his status as the son of Mr.S.P.Sahadevam Pillai; the Will which is said to be executed by Mr.S.P.Sahadevam Pillai and the right of the respondents 2 to 4 herein, he sought to enhance the value of the Suit and claimed an enhanced 1/2 share in the suit property as against the 1/4 share in the suit property as claimed originally.'

5. The learned II Additional Subordinate Judge, Salem has allowed the petition only with reference to enhancement of the Suit value and the Court fees and dismissed the amendments in so far as related to the enhancement of share by stating that in the event of the revision petitioner/plaintiff proving that he is entitled to higher share in the suit properties, the Court is well within it's right to order a higher share and mould the relief granted. On account of the enhancement of the suit value, the suit has been transferred to the Fast Track Court, No.2, Salem and re-numbered as O.S.No.47 of 2011. Challenging this order the revision petitioner has filed this Civil Revision Petition.

6. Heard, Mr.S.Gowrishankar, learned counsel for the petitioner and Mr.R.Marudhachalamurthy, learned counsel for the respondents.

7. As rightly pointed out by the learned counsel for the respondents, the revision petitioner/plaintiff, in the event of his proving his right to 1/2 share in the suit property can definitely mould the relief at the time of passing of the preliminary decree and the trial Court has already granted this relief in that form to the revision petitioner.

8. Therefore, I don't find any infirmity in the order passed by the learned II Additional Subordinate Judge, Salem.

9. In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsg/jen
To

1. The II Additional Subordinate Judge
Salem.

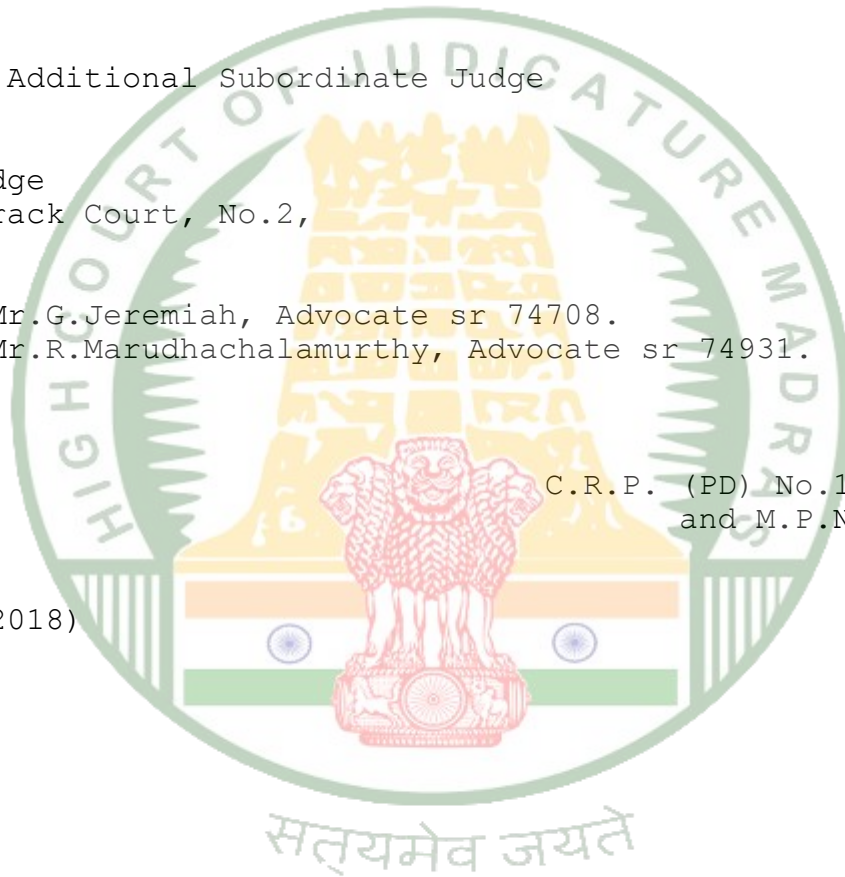
2. The Judge
Fast Track Court, No.2,
Salem.

+1 CC to Mr.G.Jeremiah, Advocate sr 74708.

+1 CC to Mr.R.Marudhachalamurthy, Advocate sr 74931.

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VGI (CO)
SP(07/12/2018)



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