

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1691 of 2014
& M.P.No.1 of 2014

Krishnan (died)
1.Chennaiyan
2.Murugan
3.Ponni
4.Muniyammal
5.Rasathi

.. Petitioners

Vs.

Ponni (died)
Nagammal (died)
Chinnathai (died)
1.Periyapappa @ Kuttiyammal
2.Chinnapappa
3.Krishnan @ Venkatesan
4.Madhaiyan
5.Dhanapal
6.Gandhi
7.Chinnakannu
8.Ramasamy
9.Vasantha

.. Respondents

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PRAYER: Civil Revision Petition filed under Section 115 of the C.P.C to set aside the fair and decretal order dated 17.12.2013 made in I.A.No.212 of 2013 in O.S.No.49 of 1979 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

For P1 : M/s.Kingston Jerold

For P2 to P5 : No appearance

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 17.12.2013 made in I.A.No.212 of 2013 in O.S.No.49 of 1979 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

2.The petitioners and 9th respondent are the legal heirs of the defendant Krishnan and respondents 1 to 8 are the legal heirs of the plaintiffs in O.S.No.49 of 1979 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai. Originally, the deceased respondents Ponni @ Periappa, Nagammal, Chinna Thai, Balaiyan and the 8th respondent filed the said suit for partition and separate possession. In the said suit a preliminary decree was passed by the judgment and decree dated 05.03.1981, granting 3/8 share in the suit schedule property to the plaintiffs. The First Appeal A.S.No.28 of 1982 and S.A.No.1114 of 1983 filed by the deceased defendant Krishnan were also dismissed. This Court dismissed the second

appeal on 20.02.1998. The respondents 1 to 8 along with others filed the present application I.A.No.212 of 2013 in the year 2012 for appointment of an Advocate Commissioner to divide the properties into 8 equal shares and allot 3/8 share to them.

3.The petitioners who are the legal heirs of the deceased defendant Krishnan filed counter affidavit on 12.08.2013 and contended that the application for final decree filed by the respondents 1 to 8 is barred by limitation as per Section 14 and Article 136 of Limitation Act. According to the petitioners, the preliminary decree was passed in the suit on 05.03.1981 and S.A.No.1114 of 1983 was dismissed by this Court on 20.02.1998 and there was no stay of the decree pending in A.S.No.28 of 1982 and S.A.No.1114 of 1983. In view of the same, the application for final decree is barred by limitation.

4.The learned Judge considering the averments in the affidavit, counter affidavit, materials on record and judgments relied on by the counsel for the petitioners, allowed the application and appointed the Advocate Commissioner to divide the suit properties as per the preliminary decree.

5. Against the said order dated 17.12.2013 made in I.A.No.212 of 2013 in O.S.No.49 of 1979, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the first petitioner and perused the materials available on record. Petitioners 2 to 5 entered appearance through Mr.K.Chozhan and subsequently, today there was no representation for them. Though notices were served on the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

7. The only objection of the learned counsel for the petitioners is that final decree application is barred by limitation as the same is not filed within twelve (12) years from the date of the preliminary decree or within twelve (12) years from the date of dismissal of the S.A.No.1114 of 1983 by this Court. The said contention is without merits. The application for final decree is continuation of the suit and the suit is deemed to be pending till the final decree is passed. Article 136 and Section 14 of Limitation Act is applicable only in the execution proceedings and not to the application for final decree.

The learned Judge has considered all the above facts and allowed the application. I find no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 17.12.2013 made in I.A.No.212 of 2013 in O.S.No.49 of 1979.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2018

Index :: Yes

Internet :: Yes

Speaking order/Non-speaking order

gsa

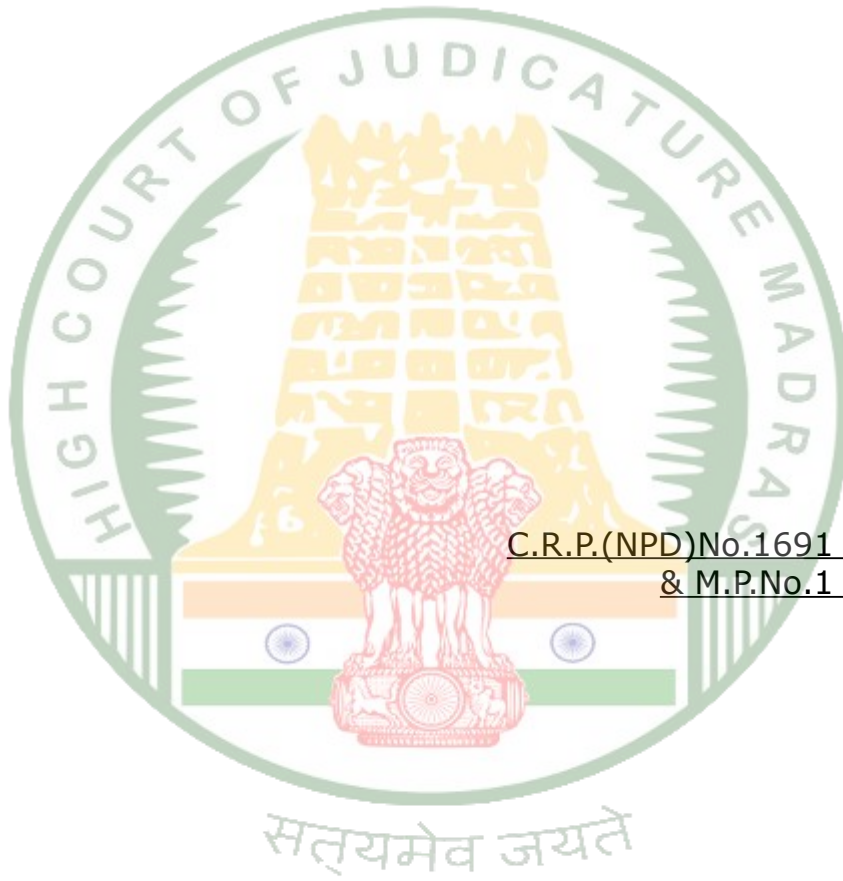
To

The District Munsif cum Judicial Magistrate,
Uthangarai.

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V.M.VELUMANI,J.

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