

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

C.R.P(PD)No.2684 of 2011

Smt. Ramathal

...Petitioner

Versus

1. Smt.Radhamani
2. Smt.Navamani
3. Sri.Senthilkumar
4. Smt.Kaliammal (a) Kalaimani
5. Smt.Saraswathy

...Respondents

This Civil Revision Petition is filed under Article 227 of the Civil Procedure Code against the order passed by the learned District Munsif, Palladam dated 25.08.2010 in I.A.No.1101 of 2010 in O.S.No.219 of 2007.

For Petitioner : Mr.R.Sankarappan

For Respondents 1 & 2 : No Appearance

Respondent 3 : Mr.C.R.Prasanan

Respondents 4 & 5 : Left

ORDER

1. This Revision is preferred by a third party to O.S.No.219 of 2007 on the file of District Munsif Court, Palladam, challenging the correctness of an order dismissing her petition to implead herself as an additional defendant in a suit.

2. The suit is laid for partition of the estate of certain Subbanna Gounder. Subbanna Gounder is alleged to have married the Revision Petitioner first and had begotten two children through her. Later, he took another woman as his second wife through whom three children were born to him, the defendants in the suit. On his death, his children through the first wife laid a suit for partition against children born to him through his second wife. In this suit, the first wife (the Revision Petitioner) wanted her to be impleaded as a party defendant and moved the Trial Court under Order I Rule 10 CPC. The plaintiff did not oppose it but the resistance came only from the defendants, who as already indicated are children through the second wife of Subbanna Gounder.

3. The Petition filed by the revision petitioner was dismissed by the Trial Court on the ground that some 29 years prior to the date of the impugned order Subbanna Gounder and the present revision petitioner had entered into a deed of dissolution of marriage and that the revision petitioner was estopped from claiming any status as wife of Subbanna Gounder, and that it was acted upon. It was also indicated in the order that the revision petitioner has suppressed the factum of the said deed of dissolution of marriage in her affidavit.

4. The learned counsel for the petitioner submitted that it is not in dispute that the Subbanna Gounder had not married the revision

petitioner, but if at all that marriage has to be dissolved, it can only be done as per the provisions of Hindu Marriage Act. It necessarily means that petitioner's legal status as Subbanna Gounder's wife was not dissolved by a Competent Court, even if the allegations of the defendants in the suit were to be presumed to be true. Consequently, the petitioner would be entitled to a share in the property of Subbanna Gounder as his widow.

5. The learned counsel for the respondents would argue that the deed of dissolution of marriage clearly indicates that the revision petitioner would not be entitled to any property of the Subbanna Gounder and hence, she is estopped from claiming any share:

6. On careful appreciation of rival submissions, this Court considers that this petition deserves to be allowed on following grounds:

a) In every suit, the plaintiff is its architect and it is for them to choose their defendants and when they have no resistance to their mother being impleaded as a party defendant, it is not given to other defendants to resist such impleadment.

b) Is it legally permissible to dissolve a marriage by a deed of dissolution with no need to resort to judicial process? The trial Court appeared to have given its final

opinion on the validity and legality of the deed of dissolution of marriage prematurely when the *prima facie* view is in favour of the petitioner.

7. It is submitted that the suit was instituted at Munsif Court, Palladam, from where it was transferred to Munsif Court, Coimbatore, and is now pending before the Munsif Court, Sulur. The Principal District Judge, Coimbatore is directed to issue necessary direction to track the suit, the current number assigned by the transferee Court, so as to enable the parties to appear before the Court. The Trial Court is also directed to expedite the trial of the matter and conclude the same.

8. This Civil Revision Petition shall stand allowed with the above direction. The I.A.No.1101 of 2010 in O.S.No.219 of 2007 is allowed. No costs.

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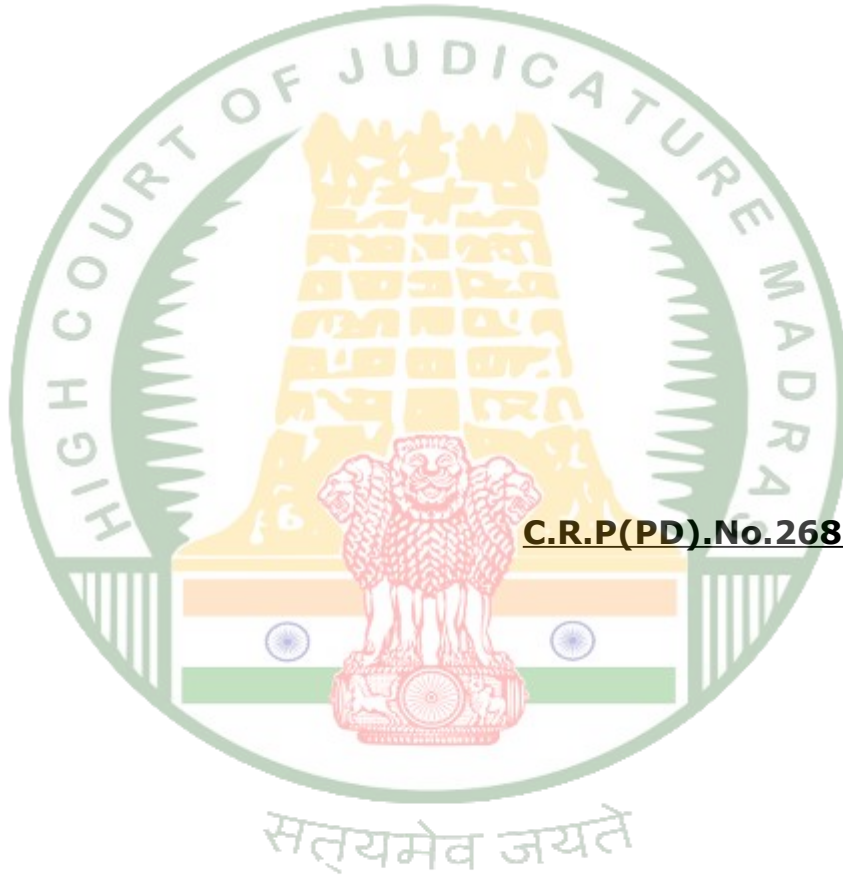
Index : Yes / No

To

The District Munsif,
District Munsif Court,
Palladam.

N. SESHASAYEE, J.,

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