

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.3739 of 2011
and
M.P.No.1 of 2011

R.Selvi

... Petitioner

Vs

M.Kaliappan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 15.07.2011 passed in Memo filed in I.A.No.765 of 2009 in O.S.No.624 of 2004 on the file of the District Munsif Court, Thiruchengode.

For Petitioners : Mr.P.Jagadeesan

For Respondents : Mr.N.Manokaran

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ORDER

The facts relevant for disposing of this revision petition may be stated as follows:

- The respondent Kaliappan had filed a suit for partition of three items of properties against his father Marappa Gounder and his sister R.Selvi, the 2nd defendant / the Revision Petitioner herein. In the suit, the respondent contended that the suit properties are ancestral in character and accordingly, seeks partition of his half share in the properties. The suit was decreed exparte on 12.12.2005.
- Subsequently, the respondent has taken out an application for passing a final decree in I.A.No.765 of 2009. In this interlocutory application, the revision petitioner had filed a memo along with requisite court fee alleging that the 1st defendant, the father of the revision petitioner and the plaintiff had executed a settlement deed in favour of the petitioner as regards 1/4 shares in the suit properties and sought allotment of her share. This memo was rejected on the ground that there was no allotment of any share to the petitioner in the preliminary decree.
- The order of the Court below in the memo filed by the 2nd respondent/2nd defendant is now under challenge.

2. The learned counsel for the revision petitioner has pointedly submitted that the Court below should have treated the memo accompanied with requisite court fee of Rs.250/- as a petition for passing supplementary decree for declaring the petitioner's share in the property, or at least, it should have returned the memo and instructed the revision petitioner to come out with a proper application, if at all, it was felt that filing a memo was defective.

3. Since the filing of the revision petition, the revision petitioner/2nd defendant in O.S.No.624 of 2004 herself has filed O.S.No.296 of 2014 before the Additional District Munsif Court, Tiruchengode, for partition of the suit properties and other properties in the said suit, where she makes a larger claim of 4/12 shares than what she had sought before the Sub-Court in O.S.No.624 of 2004. This she claims was based on the amendment to the Hindu Succession Act in 2005.

4. The learned counsel for the petitioner submits that inasmuch as the petitioner's share has not been declared in O.S.No.624 of 2004, and inasmuch as she has now filed O.S.No.296 of 2004 for partition, the petitioner may be permitted to have a share declared now by the Additional District Munsif, Tiruchengode in the said suit.

5. Resisting the said argument, the learned counsel for the petitioner submitted that the revision petitioner was a party defendant in O.S.No.624 of 2004, wherein the respondent's/plaintiff's half share has already been declared in the preliminary decree passed in that suit, the said preliminary decree bind with the petitioner and consequently, the petitioner cannot claim any share that will interfere with the preliminary decree passed in O.S.No.624 of 2004. He also added that when once the shares are crystalised in a decree, the same cannot be reopened in another suit for partition based on any change of law. If at all the petitioner is aggrieved by the shares declared, she ought to move the same court, based on the decree in O.S.No.624 of 2004 or at least ought to have preferred an appeal.

6. One aspect that stands out in favour of the revision petitioner is that her share in the suit properties is yet to be declared. Since it has not been done, she has chosen to file a fresh suit now, based on the amendment to the Hindu Succession Act, Vide Central Act, 39 of 2005. However, as to the exact share to which the petitioner may be entitled to, it is open to the respondent herein to agitate the same or put forth his defence on it before the Additional District Munsif Court,

Tiruchengode in O.S.No.296 of 2004.

7. The conduct of the petitioner in instituting a fresh suit for partition has rendered the present petition meaningless. Hence, nothing survives in the revision petition and the same is closed. Since the parties are at loggerhead in sharing their properties since 2004, the I Additional District Munsif Court, Tiruchengode, is required to spare earnest efforts to resolve the dispute amicably through the ADR mechanism, and in the eventuality of his efforts failing to bring encouraging results, he may proceed to conduct the trial and dispose of the suit on or before 31.08.2018. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2018

Index:Yes/No
ssn

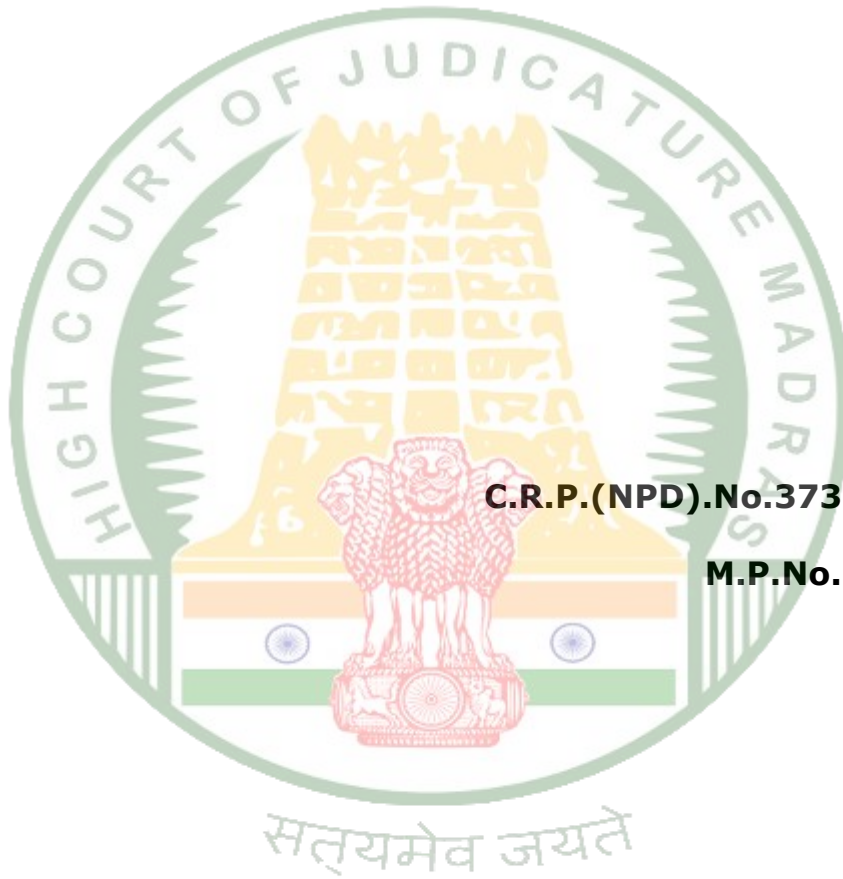
To

The District Munsif Court,
Thiruchengode.

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N.SESHASAYEE, J.,

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