

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3026 of 2015
& M.P.No.1 of 2015

1.Kamala
2.Anandha Sundara Lakshmi
3.Anandha Siva Samba Sakthi .. Petitioners

Vs.

1.Anandhayee @ Rajam
2.Kasthuri
3.Premalatha
4.Ashoken @ Asokakumaran
5.Malliga
6.Parameswari @ Janaki
7.Amurthuvally @ Gnanam .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.03.2015 made in I.A.No.1388 of 2001 in O.S.No.243 of 1999 on the file of the Additional Sub Judge, Puducherry.

For Petitioners : Mr.T.S.Baskaran

For R1 : No appearance

For R3 : Mr.D.S.Thirumavalavan

For R2, R4 & R5 : M/s.Prakash Adiapadam

For R6 & R7 : Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.03.2015 made in I.A.No.1388 of 2001 in O.S.No.243 of 1999 on the file of the Additional Sub Judge, Puducherry.

2.The petitioners are plaintiffs 3 to 5, respondents 1 to 5 are the defendants and respondents 6 & 7 are the plaintiffs 1 and 2 in O.S.No.243 of 1999 on the file of the Additional Sub Judge, Puducherry. The petitioners and respondents 6 and 7 filed the above suit for partition, claiming 1/5 share in the suit property and for a declaration to declare the sale deed dated 28.11.2003 and the two settlement deeds both dated 30.06.2006 bearing document Nos.5425/2003, 3272/2006 and 3273/2006 executed by the 2nd respondent in favour of the respondents 3 to 5 as null and void. The second respondent herein filed written statement on 26.11.1999. The petitioners along with respondents 6 and 7 filed I.A.No.1388 of 2001 under Order XL Rule 1 read with Section 151 of C.P.C for appointment of an Advocate-Receiver to take over the possession of the suit property, management and running of the entire business of S.S.Bar to take into his custody of all the assets of the business, account books and to improve the said property and business.

According to the petitioners, the said business is joint family business for the benefit of all the members. Previously, one Sambasivam @ Sinnaiyan was administering and managing the business among other properties for himself and for the benefit of other members of Hindu Undivided Family. After his death, the second respondent is managing the business and he is not sharing income from the business and is diverting the income from the business to his other investments. In such circumstances, the petitioners and respondents 6 and 7 filed the present I.A for appointment of an Advocate-Receiver.

3.The second respondent filed counter affidavit and denied all the averments and submitted that it is not a joint family property. It is a separate business of Sambasivam @ Sinnaiyan. In the income Tax Returns, it is shown as an individual business. After his death, the second respondent alone is entitled to run the business and prayed for dismissal of the application.

4.By the order dated 13.03.2015, the learned Judge, extracting the averments in the affidavit, counter affidavit and considering the fact that the suit is of the year 1999 and I.A was pending since 2001, posted the present application to be tried along

with the main suit, without deciding the matter on merits.

5. Against the said order dated 13.03.2015 made in I.A.No.1388 of 2001 in O.S.No.243 of 1999, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners as well as the 3rd respondent and respondents 2, 4 and 5 and perused the materials available on record. Though notice was served on the 1st respondent and he entered appearance through counsel, today there is no representation for him either in person or through counsel.

7. From the materials on record, it is seen that this Court, by the order dated 06.04.2011 made in C.R.P.(PD).No.849 and 850 of 2009, remitted I.A.No.1388 of 2001 to the Trial Court for fresh disposal, with a direction to consider I.A.No.1388 of 2001 and pass orders on merits and in accordance with law, after giving opportunity to both the parties. The learned Judge, while deciding the application, has not complied the order passed by this Court, but posted the application along with the suit to be contested together. The learned Judge has erred in not deciding the

application as directed by this Court. For the above reason, the impugned order of the learned Judge is set aside and I.A.No.1388 of 2001 is remitted back to the Trial Court for fresh disposal on merits and pass orders in accordance with law, in compliance of the earlier order of this Court dated 06.04.2011 passed in C.R.P.(PD).Nos.849 and 850 of 2009 within two months from the date of receipt of a copy of this order and since the suit is of the year 1999, the learned Judge is directed to dispose of the suit within a period of four (4) months thereafter.

8. With the above direction, this Civil Revision Petition is allowed. No costs.

14.02.2018

Index : Yes/No

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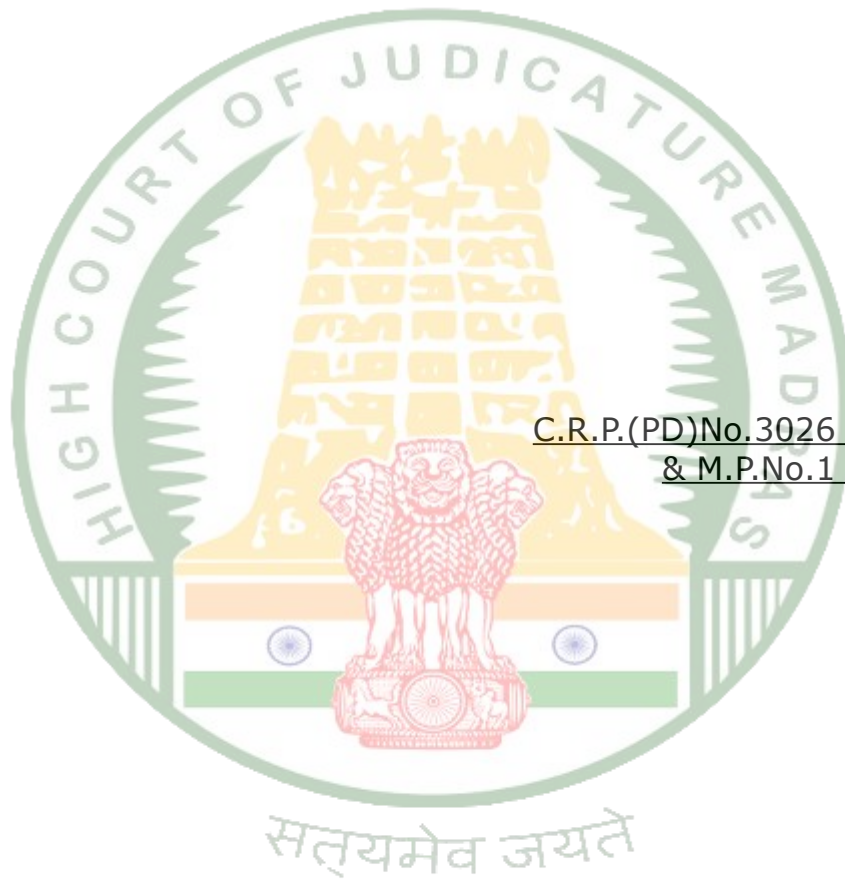
To

The I Additional Subordinate Judge,
Puducherry.

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V.M.VELUMANI,J.

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