

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.632 of 2014
& M.P.No.1 of 2014

1.P.Ganapathi Kounder
2.P.Radha Kounder

.. Petitioners

Vs.

V.Kannammal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.12.2013 made in I.A.No.181 of 2012 in O.S.No.5 of 2012 on the file of the Principal Subordinate Court, Tindivanam.

For Petitioners : Mr.T.Dhanasekaran

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 07.12.2013 made in I.A.No.181 of 2012 in O.S.No.5 of 2012 on the file of the Principal Subordinate Court, Tindivanam.

2.The petitioners are defendants and respondent is the plaintiff in O.S.No.5 of 2012 on the file of the Principal Subordinate Court, Tindivanam. The respondent filed the said suit against the

petitioners for partition in respect of "A and B" Schedule properties. According to the respondent, 'A' schedule property belongs to her father Perumal Kounder and 'B' schedule property belongs to her mother Viruthambal. After the death of their parents, the petitioners and respondent are only clause 1 legal heirs and respondent are entitled to claim share in both the 'A' and 'B' schedule properties. The petitioners filed written statement and are contesting the suit. The petitioners filed I.A.No.181 of 2012 under Order VII Rule 11 of C.P.C to reject the plaint. According to the petitioners, earlier, the respondent filed O.S.No.193 of 2003 on the file of Additional District Munsif, Gingee for declaration that 'A' schedule property belongs to their mother and she became owner of the said property. The said suit was dismissed by the judgment and decree dated 17.02.2011. After dismissal of the said suit, O.S.No.193 of 2003, the respondent filed the present suit, claiming share in the 'A' schedule property on the ground that the properties belong to her father. The respondent has taken contradictory statement and the suit is barred by res judicata and prayed for rejection of the plaint.

3.The respondent filed counter affidavit and denied all the allegations and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit, averments in the plaint and the

judgments relied on by the parties, dismissed the application.

5. Against the said order of dismissal dated 07.12.2013 made in I.A.No.181 of 2012 in O.S.No.5 of 2012, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

7. From a reading of the plaint in both the suit, it is seen that in the earlier suit, the respondent has sought for declaration in respect of first 6 items of 'A' schedule property mentioned in the present suit. Item No.7 in 'A' schedule property and all the 3 items in 'B' schedule property are not subject matter of earlier suit in O.S.No.193 of 2003. In view of the same, it cannot be contended that issues in both the suits are one and the same. The issue with regard to first 6 items in 'A' schedule property was contested in the earlier suit. The claim of the respondent with regard to 7th item in 'A' schedule property and all the 3 items in 'B' schedule property are yet to be decided. A plaint cannot be rejected in part. Either it must be rejected in toto or the application to reject the plaint must be dismissed. The learned Judge considering the facts that right of the

respondents in respect of 7th item in 'A' schedule property and 3 items in 'B' schedule property in the present suit are yet to be decided has rightly held that the plaint in the present suit cannot be rejected. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 07.12.2013 made in I.A.No.181 of 2012 in O.S.No.5 of 2012.

8.In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2012, the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order.

सत्यमेव जयते

13.02.2018

Index : Yes/No

gsa

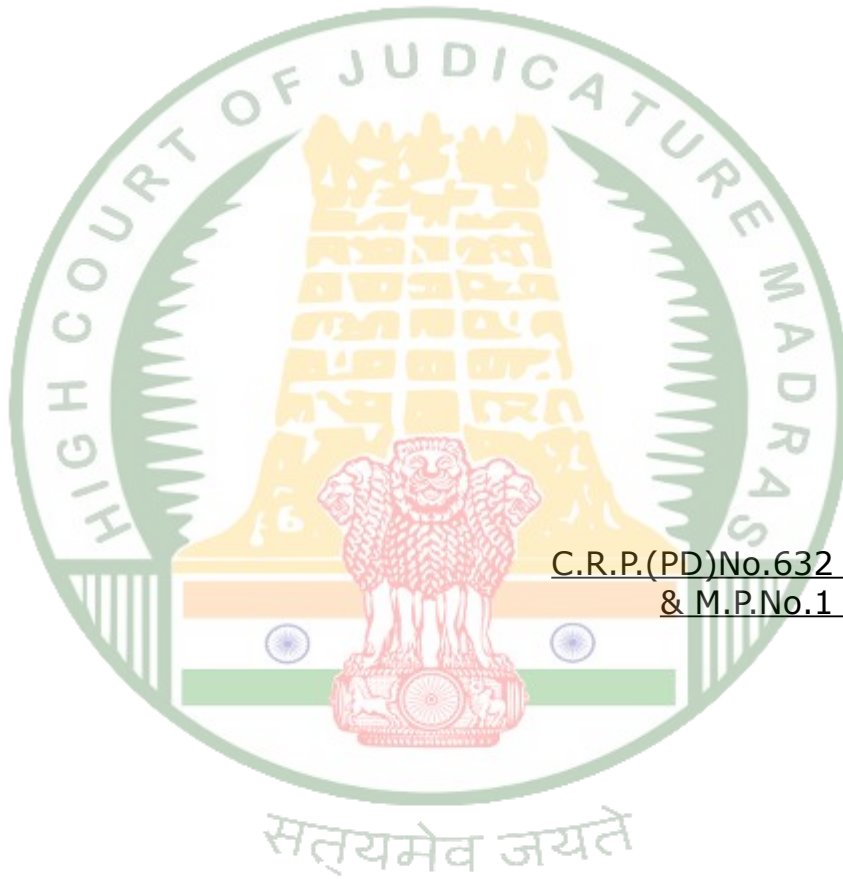
To

The Principal Subordinate Judge,
Tindivanam.

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V.M.VELUMANI, J.

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