

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4769 of 2011
and M.P.No.1 of 2011

1.Mani @ Annamalai (died)
2.M.Geethalakshmi
3.Jayabharathi
4.Mala
5.M.Srinivasan

.. Petitioners

(Petitioners 2 to 5 brought on record as legal heirs of the deceased sole petitioner viz., Mani @ Annamalai vide Court order dated 09.03.2018 made in M.P.Nos.2&3 of 2015 in CRP.No.4769/2011)

Vs.

1.Vijaya
2.Saroja
3.Mani

.. Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.06.2011 made in I.A.No.277 of 2011 in O.S.No.139 of 2009 on

the file of the Principal District Munsif Court, Poonamallee.

For Petitioners	: Mr.R.Bharath Kumar
For R1	: Mr.G.Dilip Kumar
For R2	: No appearance
For R3	: Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.06.2011 made in I.A.No.277 of 2011 in O.S.No.139 of 2009 on the file of the Principal District Munsif Court, Poonamallee.

2.The first petitioner is second defendant, first respondent is the second plaintiff, respondents 2 and 3 are the defendants 1 and 3 in O.S.No.139 of 2009 on the file of the Principal District Munsif Court, Poonamallee. First respondent/second plaintiff along with one Rajamaniammal/first plaintiff filed the above suit for permanent injunction restraining the first petitioner and respondents 2 and 3 from interfering with their peaceful possession and enjoyment of the suit property. The first petitioner filed written statement on 16.08.2009 and is contesting the suit. Pending suit, the first plaintiff/Rajamaniammal died on 01.07.2010. The learned counsel for the plaintiffs filed a memo stating that the first respondent is the

only legal heir of the deceased first plaintiff and prayed for recording the same. The learned counsel for the first petitioner filed a memo stating that the first plaintiff had no issues, first respondent is not the adopted daughter of the deceased first plaintiff and the first respondent has to prove that whether she is the adopted daughter of the deceased first plaintiff. The learned counsel for the first respondent filed objection memo on 14.01.2011 stating that except the first respondent, first plaintiff has no other legal heirs and prayed for recording the same. The learned Judge allowed the memo on 28.02.2011 after recognising the first respondent as a legal heir of the deceased first plaintiff. The first respondent filed I.A.No.277 of 2011 under Order VI Rule 17 C.P.C. for consequential amendment based on the order dated 28.02.2011 to amend the short cause title by recording first plaintiff as died and first respondent is recognised as a legal heir of the deceased first plaintiff, as per the order dated 28.02.2011.

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3.The petitioner filed counter and opposed the said application on the ground that the first respondent is not the adopted daughter of the deceased first plaintiff and prayed for dismissal of the

application.

4.The learned Judge considering the averments made in the affidavit, counter and materials available on record including the settlement deed dated 16.03.2009 produced by the first respondent, allowed the application.

5.Against the said order dated 24.06.2011 made in I.A.No.277 of 2011 in O.S.No.139 of 2009, the present Civil Revision Petition is filed by the first petitioner. Pending Civil Revision Petition, first petitioner died and the petitioners 2 to 5 were brought on record as legal heirs of the deceased first petitioner.

6.Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record.

7.The learned counsel for the petitioners contended that the learned Judge has failed to conduct an enquiry under Order XXII Rule 5 C.P.C. to decide whether the first respondent is the adopted daughter and sole legal heir of the deceased first plaintiff. The said contention is untenable. The learned Judge by order dated 28.02.2011, allowed the memo filed by the first respondent and

recognised her as the sole legal heir of the deceased first plaintiff. The petitioner, respondents 2 and 3 did not challenge the said order. The present application filed by the first respondent is for consequential amendment as per the order dated 28.02.2011. The learned Judge considering the averments made in the settlement deed dated 16.03.2009 executed by the deceased first plaintiff settling the property on the first respondent stating that the first respondent is the adopted daughter of the deceased first plaintiff, allowed the application. In view of the fact that the first petitioner has not challenged the order dated 28.02.2011, the said order has become final and there is no infirmity in the order of the learned Judge allowing the application for consequential amendment.

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

Index: Yes/No

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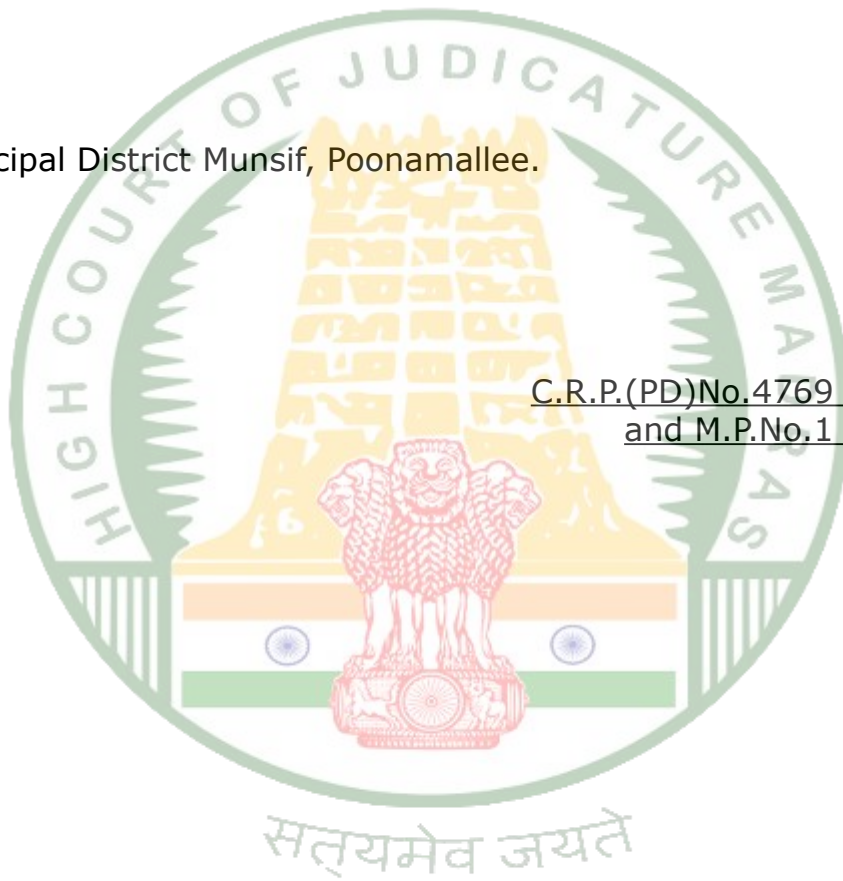
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V.M.VELUMANI,J.

Kj

To

The Principal District Munsif, Poonamallee.



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