

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.363 to 365 of 2015
and M.P.No.1 of 2015

1.Easwari
2.Saratha

..Petitioners in all C.R.P's

Vs.

1.Perumal
2.Veerappan
3.Abimanyu
4.Kandayammal
5. Duraisamy alias Senathipathi
6.Kandayee
7.Kolandaiammal
8.Gomathi
9.Yuvaraj

..Respondents in C.R.P.No.363 of 2015

1.Perumal
2.Veerappan
3.Abimanyu
4.Kandayammal
5.Duraisamy alias Senathipathi
6.Kandayee
7.Selvi Gounder
8.Kandasamy

9.The Commissioner
Edapadi Municipality
Edapadi, Salem Taluk.

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- 10.Rajammal alias Nachakkal
- 11.Chinnathayee alias Ammani
- 12.Lakshmi
- 13.Kolandaiammal
- 14.Gomathi
- 15.Yuvaraj

..Respondents in
C.R.P.Nos.364 & 365 of 2015

COMMON PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decretal order dated 09.08.2014 made in I.A.No.57 of 2007 in I.A.No.283 of 2005 in O.S.No.31 of 2005 (C.R.P.No.363 of 2015), in I.A.No.58 of 2007 in I.A.No.315 of 2006 in O.S.No.31 of 2005 (C.R.P.No.364 of 2015), in I.A.No.59 of 2007 in O.S.No.31 of 2005 (C.R.P.365 of 2015) on the file of the Sub Court, Sankari.

In all C.R.Ps.

For Petitioners : Mr.T.Murugamanickam, Senior Counsel
for Ms.Zeenath Begum

In C.R.P.No.363 of 2015

For R7 to R9 : Mr.R.Marudhachalamurthy

For R1 to R6 : No appearance

In C.R.P.No.364 of 2015

For R13 to R15 : Mr.R.Marudhachalamurthy

For R1 to R6 : No appearance

R7 to R12 : Given up

In C.R.P.No.365 of 2015

For R13 to R15 : Mr.R.Marudhachalamurthy

For R1 to R6 : No appearance

R7 to R12 : Given up

COMMON ORDER

—
C.R.P.No.363 of 2015 is filed against the fair and decretal order dated 09.08.2014 made in I.A.No.57 of 2007 in I.A.No.283 of 2005 in O.S.No.31 of 2005 on the file of the Subordinate Court, Sankari.

C.R.P.No.364 of 2015 is filed against the fair and decretal order dated 09.08.2014 made in I.A.No.58 of 2007 in I.A.No.315 of 2006 in O.S.No.31 of 2005 on the file of the Subordinate Court, Sankari.

C.R.P.No.365 of 2015 is filed against the fair and decretal order dated 09.08.2014 made in I.A.No.59 of 2007 in O.S.No.31 of 2005 on the file of the Subordinate Court, Sankari.

2. The petitioners are defendants 5 and 6, respondents 1 to 6 are the plaintiffs, respondents 7 to 9 (C.R.P.No.363 of 2015)/respondents 13 to 15 (C.R.P.Nos.364 and 365 of 2015), are the defendants 10 to 12, respondents 7 to 9 (C.R.P.Nos.364 and 365 of 2015) are the defendants 2 to 4, respondents 10 to 12 (C.R.P.Nos.364 and 365 of 2015) are the defendants 7 to 9 in O.S.No.31 of 2005 on the file of the Subordinate Court, Sankari.

3. Parties are referred to as per their ranks in the suit.

4. The plaintiffs filed the said suit against one Arumugam/first defendant and other defendants for partition and permanent injunction. The first defendant Arumugam died. The defendants 5 and 6 were the wife and daughter of the deceased Arumugam/first defendant. They were impleaded as defendants 5 and 6 in the suit by the order dated 28.07.2006 in I.A.No.212 of 2006. The deceased Arumugam/first defendant has other legal heirs and they were impleaded as defendants 10 to 12 by order dated 24.07.2007 made in I.A.No.59 of 2007. The defendants 7 to 9 were impleaded in the suit by the order dated 24.07.2007 made in I.A.No.315 of 2006.

4(i) The plaintiffs filed I.A.No.283 of 2005 for interim injunction restraining the deceased Arumugam/first defendant from alienating or encumbering their 3/4th shares in the suit properties and from interfering with their joint possession especially not to cut and carry away the Palmyra trees in the suit properties till the disposal of the suit.

(ii) The plaintiffs filed I.A.No.315 of 2006 to amend the plaint. According to the plaintiffs, after filing of the suit, the defendants 5 and 6 have filed I.A.No.212 of 2006 to implead them as defendants 5 and 6 in the suit and the same was allowed on 28.07.2006. Therefore, I.A.No.315 of 2006 is filed to include their names and address in short and long cause title.

(iii) The plaintiffs filed I.A.No.57 of 2007 to implead the proposed parties/defendants 10 to 12 as respondents 4 to 6 in I.A.No.283 of 2005 and I.A.No.58 of 2007 to implead the proposed parties/defendants 10 to 12 as respondents 10 to 12 in I.A.No.315 of 2006. The plaintiffs filed I.A.No.59 of 2007 to implead the legal heirs of the deceased Arumugam as defendants 10 to 12 in the suit O.S.No.31 of 2005.

5. According to the plaintiffs, the defendants 10 to 12 being second wife, daughter and son of the first defendant/deceased Arumugam, are necessary and proper parties to the suit.

6. The defendants 5 and 6 filed counter affidavit and contended that they are the only legal heirs of the first defendant/deceased Arumugam and their status was confirmed in the earlier proceedings in O.S.No.345 of 1995 on the file of the Subordinate Court, Sankari, which was filed by them. The present contention that the defendants 10 to 12 are also the legal heirs of the deceased Arumugam, was not mentioned in the suit filed by them.

7. The defendants 10 to 12 filed counter affidavit and contended that 10th defendant is the wife, 11th and 12th defendants are the daughter and son of the deceased Arumugam and he was living with them and died in their house. They have produced document to show that they are wife and children of the deceased Arumugam. So they are necessary and proper parties to the suit.

8. Before the learned Judge, the defendants 10 to 12/proposed parties filed six documents and the same were marked as Exs.R1 to R6.

9. The learned Judge considering the averments made in the affidavit, counter affidavit and documents marked, allowed the applications.

10. Against the said order dated 09.08.2014 made in I.A.No.57 of 2007 in I.A.No.283 of 2005, I.A.No.58 of 2007 in I.A.No.315 of 2006 and I.A.No.59 of 2007 in O.S.No.31 of 2005, C.R.P.Nos.363 to 365 of 2015 are filed by the defendants 5 and 6 respectively.

11. Heard the learned Senior Counsel for the petitioners/defendants 5 and 6 as well as the counsel for the respondents 7 to 9 (C.R.P.No.363 of 2015)/respondents 13 to 15 (C.R.P.Nos.364 and 365 of 2015), who are the defendants 10 to 12 and perused the materials available on record.

12. The learned Senior Counsel for the petitioners/defendants 5 and 6 contended that the fifth defendant is first wife of the deceased Arumugam and her status was proved in O.S.No.345 of 1995, which was filed by the defendants 5 and 6 and status of the second wife/10th defendant has to be proved only at the time of trial.

13. From the materials available on record, it is seen that the counsel for the first defendant/deceased Arumugam has stated that the defendants 10 to 12 are also the legal heirs of the deceased Arumugam and furnished particulars to the plaintiffs. The defendants 5 and 6 denied that 10th defendant is the second wife of deceased Arumugam and the defendants 11 and 12 are their children. The defendants 10 to 12 filed six documents before the trial Court to prove that they are the wife, daughter and son of the deceased Arumugam/first defendant.

14. The learned Judge considering those documents, have concluded that the defendants 10 to 12 are necessary and proper parties to the suit as they are also the legal heirs of the deceased Arumugam/first defendant. The learned Judge has allowed the

applications after considering the documents filed by the defendants 10 to 12, which reveal that the 10th defendant is wife, 11th defendant is the daughter and 12th defendant is the son of the deceased Arumugam/first defendant. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 09.08.2014.

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

31.01.2018

Index:Yes/No

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To

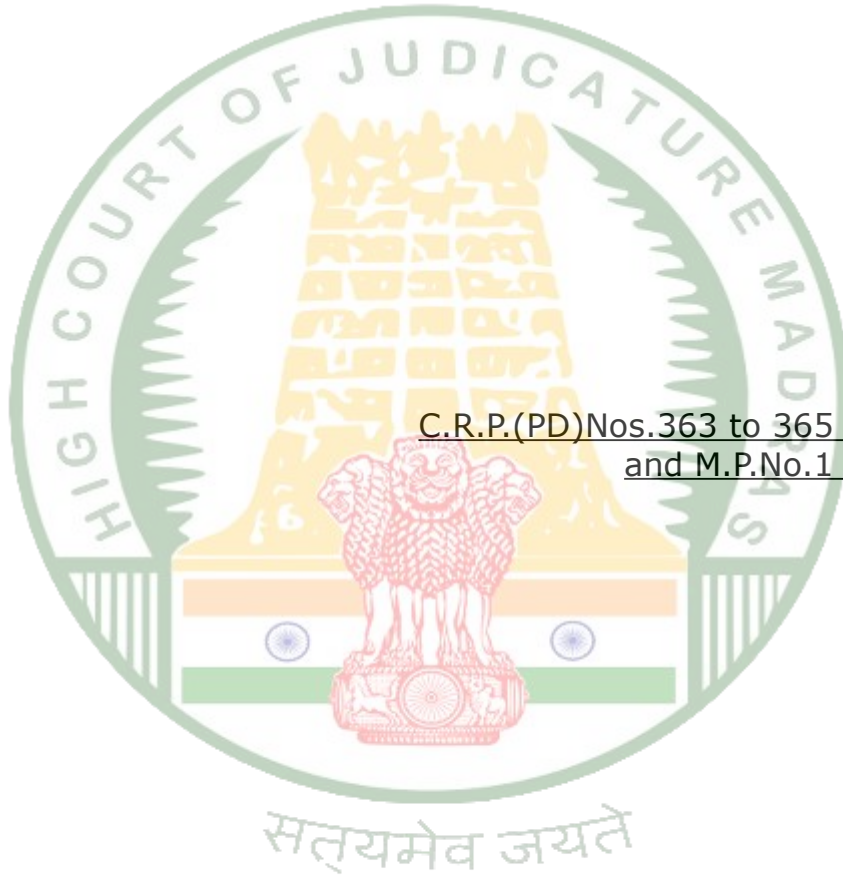
The Subordinate Judge
Sankari.

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V.M.VELUMANI,J.

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