

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.607 of 2015

Raja

.. Petitioner

Vs.

1.Chinnapillai
2.Chinnaponnu
3.Thangamani
4.Manickam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.12.2014 passed in I.A.No.1257 of 2013 in O.S.No.193 of 2005 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mr.P.Jagadeesan

सत्यमेव जयते

ORDER

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This Civil Revision Petition has been filed against the fair and decretal order dated 05.12.2014 passed in I.A.No.1257 of 2013 in O.S.No.193 of 2005 on the file of the District Munsif Court, Sankari.

2.The petitioner is the plaintiff and respondents are the defendants 5 to 8 in O.S.No.193 of 2005 on the file of the District Munsif Court, Sankari. The petitioner initially filed the said suit against the defendants 1 to 3 and father of the respondents viz., Kaveri/fourth defendant. The fourth defendant filed written statement on 30.11.2005. After the death of father of the respondents/fourth defendant, the respondents were brought on record as the defendants 5 to 8. The respondents adopted the written statement filed by their father/fourth defendant. The petitioner also filed reply statement. Trial commenced. The petitioner was examined as PW1 and was cross examined by the counsel for the defendants. At this stage, the respondents filed I.A.No.1257 of 2013 under Order VIII Rule 9 of C.P.C for permission to file additional written statement. According to the respondents, during cross examination, the petitioner admitted that his grandfather, Dasappagounder had two wives. The petitioner's father and the respondents' father are the two sons through first wife and through second wife, Dasappagounder had two sons. The sons through second wife sold the properties at Chittoor. According to the respondents, they came to know about these facts through the

enquiries made by them. The petitioner has not impleaded all the co-parceners and has not included all the properties. Hence, the relief of declaration of title is not maintainable.

3.The petitioner filed counter affidavit and denied all the averments and submitted that the respondents are not entitled to file additional written statement after cross examination of PW1. The respondents have taken contradictory stand in the additional written statement and if the respondents are permitted to file additional written statement, it will lead to unnecessary complication.

4.The learned Judge allowed the application on the ground that additional written statement will assist the Court in deciding the issue in the suit on merits and awarded cost of Rs.1000/- to be paid to the petitioner by the respondents.

5.Against the said order dated 05.12.2014, allowing I.A.No.1257 of 2013 in O.S.No.193 of 2005, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

7. From the materials available on record and order of the learned Judge, it is seen that the respondents have filed application seeking permission to file additional written statement after cross examination of PW1. According to the respondents, they came to know about the second wife of Dasappagounder and two sons born to him through second wife. Subsequently, they have also stated that there are some other properties liable to be partitioned and other two sons of Dasappagounder through second wife who are also the co-parceners to be impleaded as parties in the suit and petitioner has not sought for partition of those properties also. The respondents have not furnished names and address of the two sons of Dasappagounder born through second wife and also address of the properties left out by the petitioner. The respondents allege that they came to know about the two sons of Dasappagounder through second wife and other properties left out during the enquiries made by them. The respondents have made vague allegations after nine years of filing of their written statement. The learned Judge failed to consider that the respondents have not furnished any details in

additional written statement and without properly appreciating these facts, allowed the application on payment of cost. The learned Judge committed an irregularity by not properly considering the materials on record and failed to exercise his powers properly.

8. In the result, the impugned order of the learned Judge dated 05.12.2014, allowing I.A.No.1257 of 2013 in O.S.No.193 of 2005 is liable to be set aside and it is hereby set aside. The learned Judge is directed to return the additional written statement filed by the respondents. With the above direction, this Civil Revision Petition is allowed. No costs.

02.01.2018

Index: Yes/No
gsa

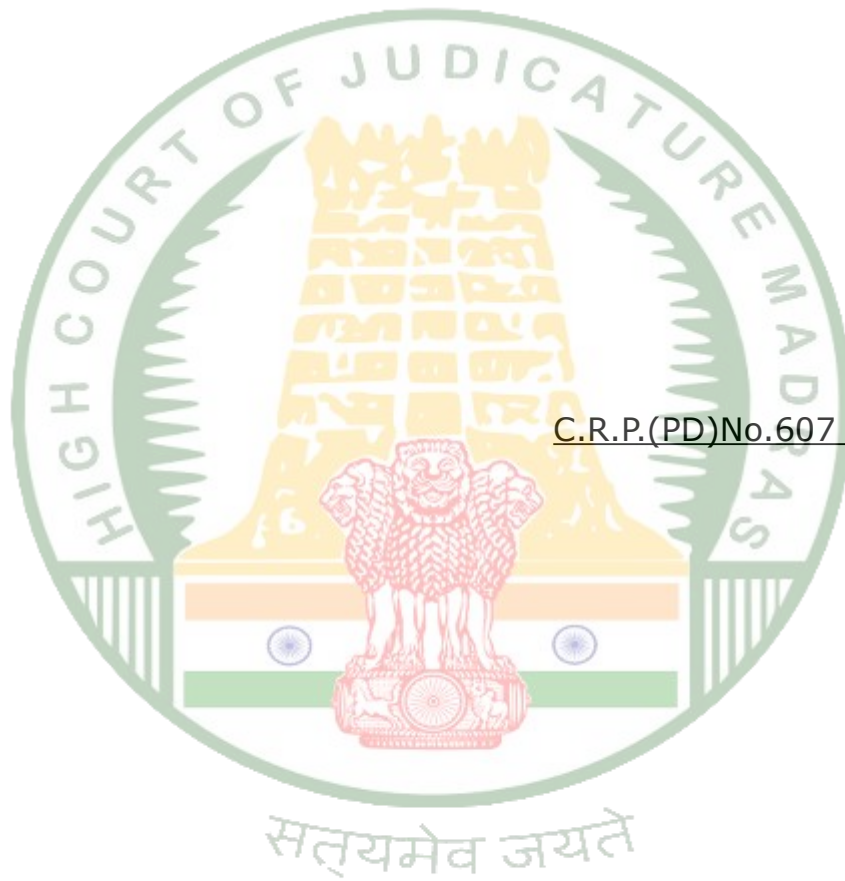
To

The District Munsif,
Sankari.

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V.M.VELUMANI,J.

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