

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) No.793 of 2015
and M.P.No.1 of 2015**

1.Chitra
2.Rajesh
3.Ramya

Petitioners / Plaintiffs

Vs

1.Elasi Ammal
2.Murugammal
3.Sankar
4.Aathimoolam
5.Natesan
6.Kumar
7.Kalaivani
8.Prakasam
9.Murugesan
10.Lakshmi
11.Poovarasan
12.Ananthi
13.Kantha
14.Muthusamy
15.Poongodi
16.Baskar
17.Chinnapaiyan
18.Pooviyarasu
19.Silambarasan

... Respondents / Defendants

[Respondents 1,2 & 13 were set
exparte in Trial Court]

Prayer : Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decreetal order of the

Subordinate Judge's Court at Harur dated 14.07.2014 in I.A.No.435 of 2013 in O.S.No.16 of 2011.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.Hariharan for
M/s.V.Nicholas for
R1 to R11 and R14 to R19.

ORDER

This Civil Revision Petition is filed against the fair and decreetal order of the Subordinate Judge's Court at Harur dated 14.07.2014 in I.A.No.435 of 2013 in O.S.No.16 of 2011.

2. The petitioners are plaintiffs and respondents are defendants in O.S.N.16 of 2011 on the file of Sub Court, Harur. The petitioners filed the said suit for partition against the respondents. The 9th respondent filed written statement on 18.10.2012 and the same was adopted by respondents 3 to 8, 10 to 12 and 14 to 19 and are contesting the suit. Trial commenced. The petitioners let in evidence and closed their side. The witness on behalf of the respondents was examined and documents were marked. When the suit was posted for cross examination, the petitioners took adjournment to cross examine the witness and filed application in I.A.No.435 of 2013 for amendment of the plaint to include the relief

to declare the release deed executed by the father and partition deed entered into between the respondents as null and void and are not binding on the petitioners and to include one more property mentioned in the petition for partition.

2(a) According to the petitioners, they came to know about those documents only when the 9th respondent filed written statement which was adopted by respondents 3 to 8, 10 to 12 and 14 to 19 and after obtaining certified copies of the documents from Sub Registrar Office, Harur, they filed the present application, at the time of Trial. The 9th respondent filed counter and the same was adopted by respondents 3 to 8, 10 to 12 and 14 to 19 and opposed the said application stating that the petitioners knew about the partition deed which is of the year 1996, at the time of filing of the suit itself. The respondents filed written statement on 18.10.2012. But the petitioners have filed the present application only after one year of filing of the written statement and after completion of evidence on their side, only to drag on the proceedings and prayed for dismissal of the application. The learned Judge, considering the averments in the affidavit, counter affidavit and judgments relied on by the learned counsel for the parties, dismissed the application.

3. Against the said order of dismissal dated 14.07.2014 in I.A.No.435 of 2013 in O.S.No.16 of 2011, the present Civil Revision Petition is filed by the petitioners.

4. Heard the learned counsel for the petitioners as well as respondents and perused the materials available on record.

5. From the materials on record, it is seen that the petitioners filed suit for partition in the year 2011. After commencement of trial and evidence on behalf of the petitioners was closed and when the suit was posted for cross examination of the respondent's witness, petitioners have filed the present application seeking declaration that the partition deed dated 19.01.1996 executed by their father in the year 1996 and subsequent deeds executed by the respondents are null and void and are not binding on them. According to the petitioners, they came to know about the documents in question only when the respondents mentioned about the same in the written statement. On coming to know about the same, they applied for certified copies and filed application for amendment. The petitioners have filed the present application within three years from the date of filing of the written statement by the respondents and also within three years from the date of

knowledge of the same and hence it is not barred by limitation, as alleged by the respondent.

5(a) On the other hand, the respondents claim that the petitioners knew about the documents even before filing of the suit. It is for the respondents to prove the said contention by letting in acceptable evidence. By the amendment sought for, the petitioners are not introducing a new cause of action or new case. The said amendment of declaration is necessary to decide the issue as the suit is for partition. The petitioners have given acceptable reason to include the relief of declaration after commencement of trial. In a suit for partition, any property left out to be included in the suit property at the time of filing can be included at any stage either at the instance of the plaintiff or defendant. The learned Judge failed to consider the facts in proper perspective and dismissed the application.

6. For the reasons stated above, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The petitioners are directed to carry out amendment within two weeks from the date of receipt of a copy of this order.

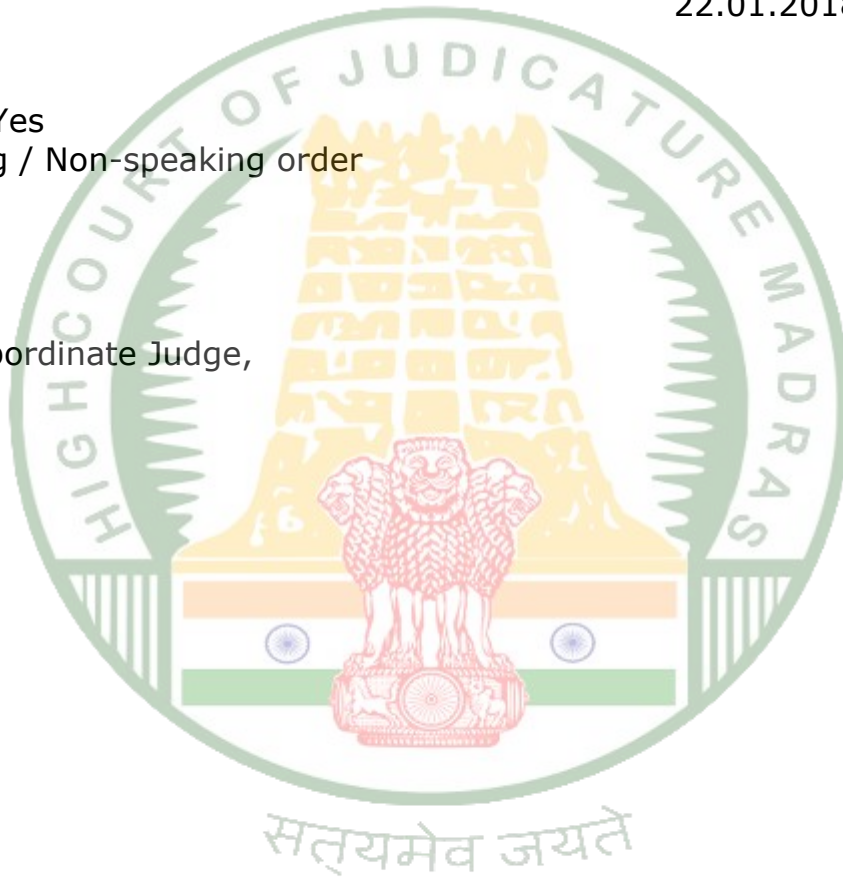
7. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.01.2018

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Index : Yes
Speaking / Non-speaking order

To

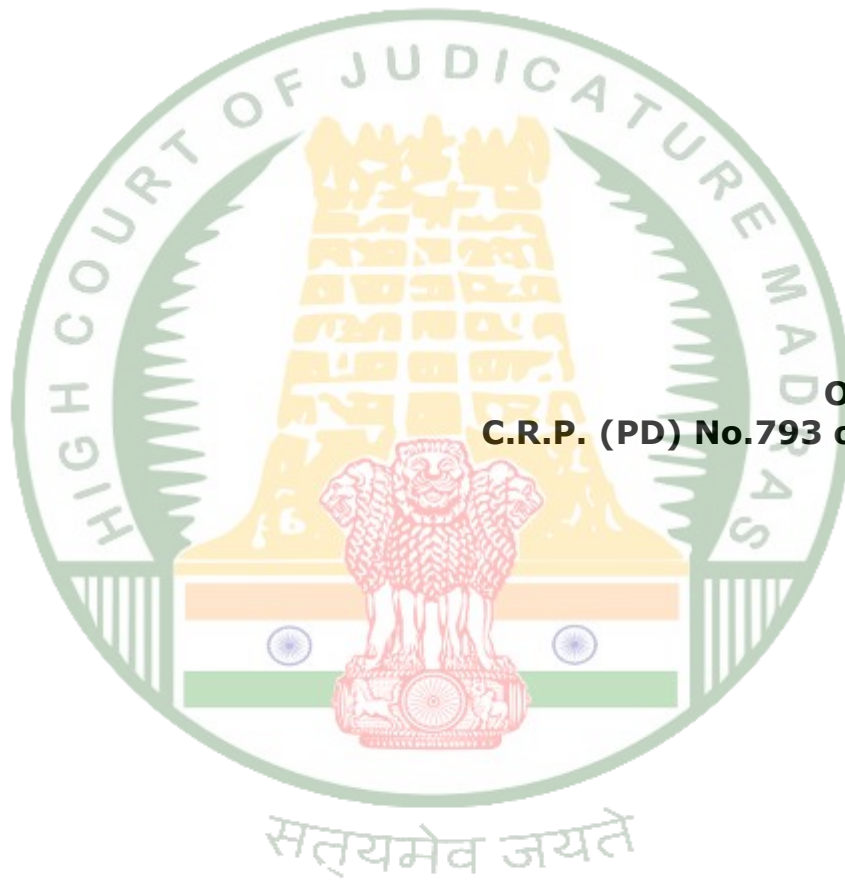
The Subordinate Judge,
Harur.



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V.M.VELUMANI, J.

rgr



**Order in
C.R.P. (PD) No.793 of 2015**

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