

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.825 of 2015
and M.P.No.1 of 2015

1.Thangavel(Deceased)

2.Lakshmi

3.Chandra

4.Saroja

5.Santhi

6.Sarasu

7.Mani Mehakalai

8.Uma

9.Sumathi

10.Santhiya

11.Indumathi

(Petitioners 2 to 11 brought on record
as LRS of the deceased sole petitioner viz.,
Thangavel vide Court order dated 22-01-2018
made in CMP.Nos.1355 to 1357 of 2018
in CRP No.825 of 2015)

..Petitioners

Vs.

1.Raja

2.Sivagami

3.Thangamma

4.Alamelu

5.Amirtham

6.Mallika

7.Selvam

.. Respondents

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PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 06.12.2013 made in I.A.No.29 of 2013 in A.S.No.36 of 2012 on the file of the II Additional Subordinate Court, Salem.

For Petitioners : Mr.J.Ramakrishnan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 06.12.2013 made in I.A.No.29 of 2013 in A.S.No.36 of 2012 on the file of the II Additional Subordinate Court, Salem.

2. First respondent is the plaintiff, first petitioner is the first defendant, respondents 2 to 7 are the defendants 2 to 7 in O.S.No.1244 of 2008 on the file of the District Munsif Court, Salem. The first respondent/plaintiff filed said suit for partition against the first petitioner and respondents 2 to 7. After contest, the said suit was decreed by the judgment and decree dated 01.12.2011. Challenging the said judgment and decree, the first petitioner filed A.S.No.36 of 2012. In the said appeal, the first petitioner filed I.A.No.29 of 2013 under Order VI Rule 17 and Section 151 C.P.C. to

amend the plaint to include the property mentioned in the petition as third item of the suit property.

3. According to the first petitioner, the said property was allotted to Munia Gounder, his father in a partition effected on 14.02.1958, which is mentioned as 'A' schedule in the partition deed. As his father Munia Gounder died intestate, the first petitioner has share in the said property. Other legal heirs of Munia Gounder sold the said property and the said sale will not be binding on the first petitioner and prayed for amendment to include the said property also.

4. The first respondent filed counter affidavit, which was adopted by the respondents 2 to 7 and denied that the said Munia Gounder left out the properties. The property sought to be included by the petitioner was already sold by Munia Gounder during his life time. The suit is for partition of other properties only and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 06.12.2013 made in I.A.No.29 of 2013 in A.S.No.36 of 2012, the present Civil Revision Petition is filed by the first petitioner/first defendant.

7. Pending Civil Revision Petition, first petitioner died and the petitioners 2 to 11, who are the legal heirs of the first petitioner, were brought on record.

8. Heard the learned counsel for the petitioners and perused the materials available on record. The Civil Revision Petition is filed in the year 2015 and no notice was ordered to the respondents till today.

9. From the materials available on record, it is seen that the property now sought to be included by the petitioners for partition was allotted to the father of the first petitioner viz., Munia Gounder in the partition effected on 14.02.1958. The said Munia Gounder died intestate and the first petitioner has share in the said property. According to the first petitioner, other legal heirs have sold the property, which is not binding on him. The first petitioner has not furnished any details as to when the property was sold and to whom it was sold. On the

other hand, the contention of the respondent that the said property was sold during the life time of Munia Gounder himself. In view of the contention of the respondent and on the failure of the first petitioner to furnish details of alleged sale deed, the learned Judge dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 06.12.2013.

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

24.01.2018

Index:Yes/No

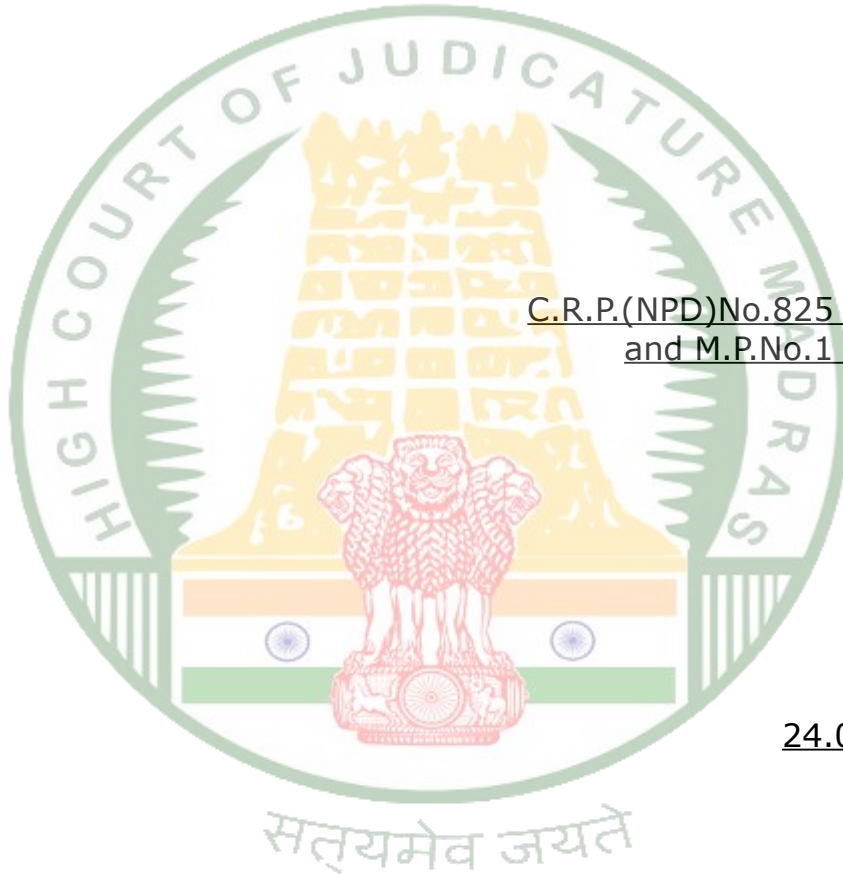
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To
The II Additional Subordinate Judge
Salem.

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V.M.VELUMANI,J.

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