

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3389 of 2016
and
C.M.P NO. 17262 of 2016

Anaiammal @ Perumayee (died)

1. N. Manivannan
2. N. Saravanan

.. Petitioners

Vs

R. Kuppusamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 16.09.2016 made in I.A. No. 441 of 2016 in O.S. No. 82 of 2008 on the file of the Sub Court, Attur.

For Petitioners : Ms. P. Saritha
for M/s. T. Muruga Manickam
For Respondent : Mr. L. Rajendran

ORDER

This revision petition arises against the fair and final order

dated 16.09.2016 made in I.A. No. 441 of 2016 in O.S. No. 82 of 2008 on the file of the Sub Court, Attur.

2. The petitioners and their mother filed the suit in O.S. No. 61 of 2007 for partition. In O.S. No. 61 of 2007, preliminary decree and final decree were passed, allotting western side (A-property) to the petitioner's mother Anjalam and the petitioners. The eastern half share of the property was allotted to the petitioner's maternal Aunt Anaiammal. According to the petitioners, under the guise of obtaining a Power of Attorney from their maternal Aunt Anaiammal, the respondent has registered the document as a sale deed in his favour. Hence, the petitioners' maternal Aunt filed a suit in O.S. No. 82 of 2008 for declaration of the sale deed dated 16.06.2004 as null and void. Consequent to the final decree dated 30.06.2010 passed in O.S. No. 61 of 2007, allotting the western portion to Anjalam, the revision petitioners filed an application under Order 6 Rule 17 (1) and (2) of CPC , in I.A. No. 441 of 2016 in O.S. No. 82 of 2008 seeking for amendment of plaint. The aforesaid application was dismissed by the court below, holding that the proposed amendment would change the very nature and subject matter

of the suit. Challenging the said order, the present revision petition is filed before this Court.

3. The learned counsel for the petitioners would submit that the petitioners are in continuous possession in the B Schedule property, as per the final decree proceedings. Hence, they filed the aforesaid application to allot the B-schedule property instead of A-schedule property, as per the final decree proceedings. It is further stated that no prejudice would be caused to the respondent, if the present application is allowed.

4. The learned counsel for the respondent would submit that the application filed by the revision petitioners is incorrect in law and on facts. The respondent was set ex-parte while passing of the final decree and only based on the report of the Advocate Commissioner final decree was passed dividing the suit property into two equal shares. Hence, the present application is not maintainable and the court below has rightly dismissed the application.

5. Heard the rival submissions and perused the material available on record.

6. After considering the submissions made by both the parties, on merits, final decree has been passed by the court below. Hence, the same has become final. Filing of an application to amend the plaint, at this stage, is not maintainable. Hence, this Court finds no warrant to interfere with the order of the court below and the same is confirmed.

7. Therefore, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

12.03.2018

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on 03.05.2018]

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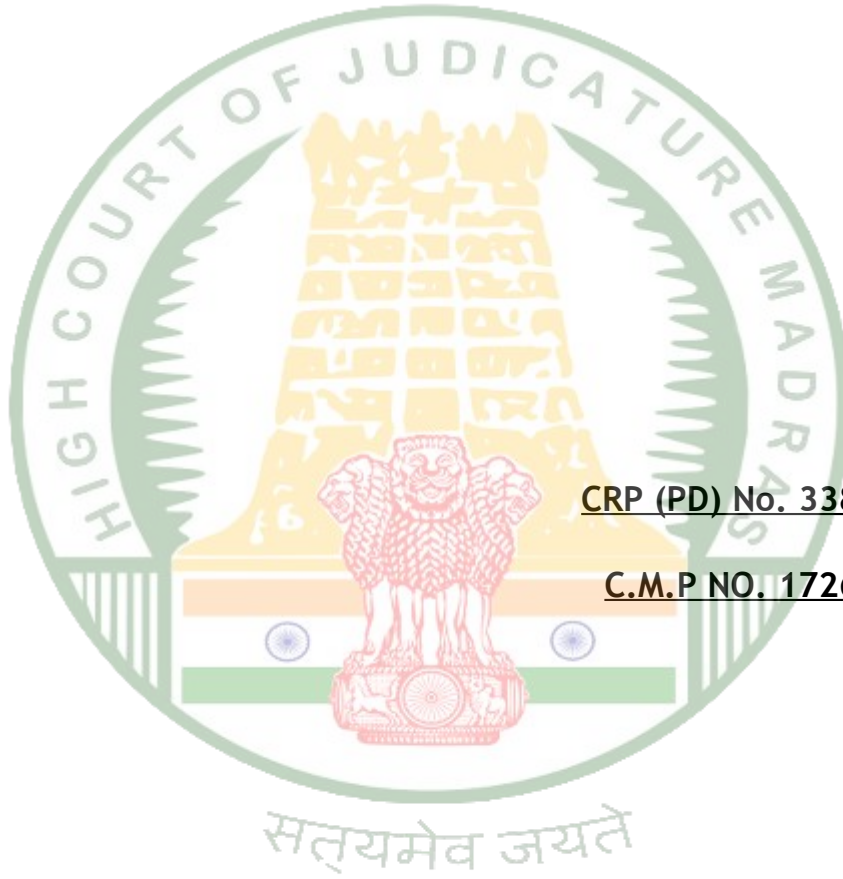
To

The Sub Court, Attur.

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D. KRISHNAKUMAR J.,

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