

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2724 of 2012
& M.P.No.1 of 2012

1.Karpagam
2.Nagammal

.. Petitioners

Vs.

1.Vellachi
2.Poongavanam
3.Vasalambal
4.Pandurangan
5.Murugan
6.Andal
7.V.Valli

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 28.11.2011 made in I.A.No.195 of 2011 in O.S.No.26 of 2010 on the file of the I Additional Subordinate Court, Villupuram.

For Petitioners : Mr.P.Satheesh Kumar

For R1 : Died

For R2, 4 & 5 : Not ready in notice

For R3, 6 & 7 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 28.11.2011 made in I.A.No.195 of 2011 in O.S.No.26 of 2010 on the file of the I Additional Subordinate Court, Villupuram.

2.The petitioners are the plaintiffs, respondents 1 and 2 are the third parties and respondents 3 to 7 are the defendants in O.S.No.26 of 2010 on the file of the I Additional Subordinate Court, Villupuram. The petitioners filed the said suit for partition of the suit property and for permanent injunction restraining the respondents 3 to 7 from alienating or encumbering the suit properties. The 4th respondent filed written statement and is contesting the suit. The respondents 3 to 5 in the written statement have stated that the petitioners have not impleaded necessary and proper party in the suit. The respondents 1 and 2 filed I.A.No.195 of 2011 under Order I Rule 10 of C.P.C to implead them as defendants 6 and 7 in the suit. The first defendant / third respondent is wife of their brother Elumalai Udaiyar. Other defendants and plaintiffs are their brother's children. The suit properties are joint family properties of Nallathambi Udaiyar, consisting the petitioners, their deceased

brother and their father. The petitioners along with respondents 3 to 7 colluded together and filed suit without impleading the respondents 1 and 2. They have right in the suit properties as co-parcenors along with their brothers and father. They are proper and necessary parties in the suit and filed the present application to implead them as defendants 6 and 7.

3.The first petitioner filed counter affidavit and contended that the respondents 1 and 2 got married 40 years before the State amendment to the Hindu Succession Act in the year 1989. There was a partition on 05.08.1988 itself between the Nallathambi Udaiyar and his sons Elumalai Udaiyar and Mannu Udaiyar. The petitioners are very well aware of the said partition dated 05.08.1988. At that time, they have not raised any objection and therefore, they are estopped from claiming any right as per Hindu Succession Act. Even as per the State and Central amendment to the Hindu Succession Act, they are not necessary parties. The daughters are entitled to share in family properties only if they got married after the said amendment. Hence, the petitioners are not entitled to any share in the suit properties and they are not necessary parties to the suit. As the partition effected between the

Nallathambi Udaiyar and his sons Elumalai Udaiyar and Mannu Udaiyar on 05.08.1988 itself, the State and Central amendment to Hindu Succession Act are not applicable to the respondent 1 and 2. Nallathambi Udaiyar died in the year 1996 itself. The respondents 1 and 2 have not claimed any share in the properties for more than 14 years. Therefore, the claim of share in the suit properties is barred by limitation and petitioners denied that the respondents 1 and 2 are in joint possession of the suit properties along with their father and brothers.

4.The learned Judge considering the averments in the affidavit, counter affidavit and judgments relied on by the parties, allowed the application, holding that the objection of the petitioners can be decided during trial.

5.Against the said order dated 28.11.2011 made in I.A.No.195 of 2011 in O.S.No.26 of 2010, the petitioners have come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioners and perused the materials available on record. Though notice has been served on

the respondents 3, 6 and 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.The learned counsel for the petitioners reiterated the averments in the counter affidavit filed in the above application and contentions raised in the grounds of revision. According to the learned counsel for the petitioners, the respondents 1 and 2 are not necessary and proper parties to the suit. They do not have any share in the suit properties and the learned Judge, on erroneous consideration allowed the application filed by the respondents 1 and 2.

8.From the materials available on record, it is seen that the respondents 1 and 2 are daughters of Nallathambi Udaiyar. It is an admitted fact that the suit properties are ancestral properties. According to the petitioners, the respondents 1 and 2 got married 40 years back and have not become co-parcenors either by State amendment or by Central amendment to the Hindu Succession Act. In view of the fact that respondents 1 and 2 are daughters of Nallathambi Udaiyar, they are class I heirs and they are necessary

and proper parties in the suit for partition of the properties including share of the Nallathambi Udaiyar. Whether the respondents 1 and 2 have either share as co-parceners or Clause 1 heir can be decided only at the time of trial. There is no illegality or irregularity in the order impugned in this revision, warranting interference by this Court.

9. For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :: Yes
gsa

16.03.2018

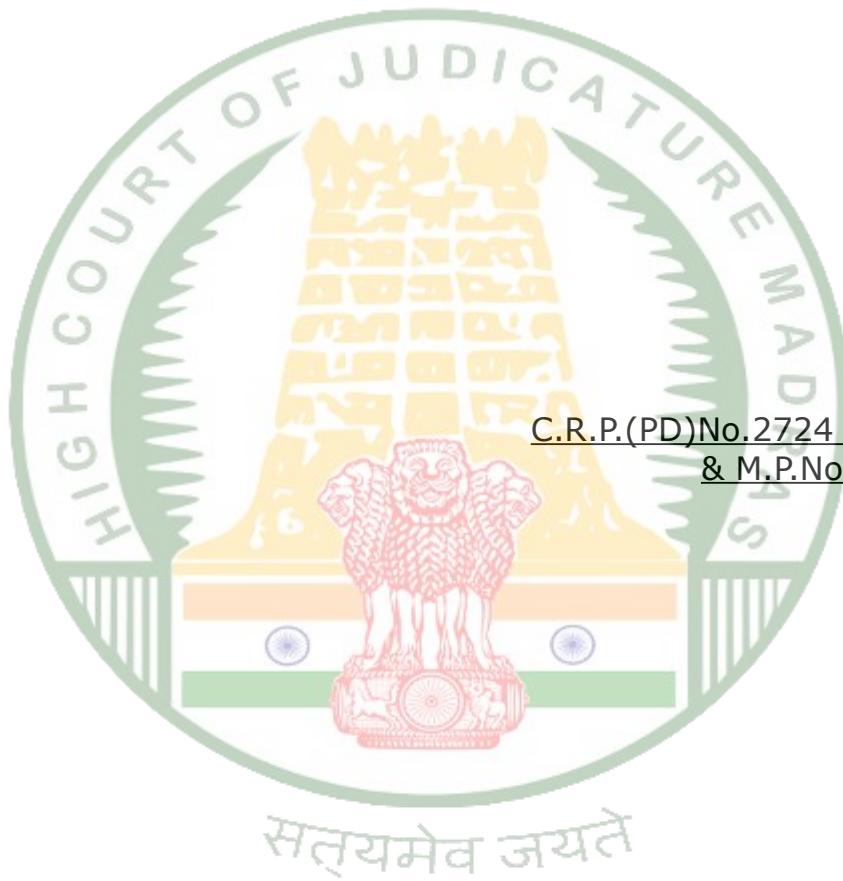
To

The I Additional Subordinate Judge,
Villupuram.

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V.M.VELUMANI,J.

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