

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.2746 of 2014
and M.P.No.1 of 2014
and
C.R.P.(PD).No.2747 of 2014

S.Selvi

...

Petitioner in
both CRPs.

Vs.

1.K.Indrani
2.K.Gouthaman
3.K.Gayathri

...

Respondents in
both CRPs.

Prayer :- The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 21.04.2014 passed in I.A.Nos.420 & 421 of 2013 in O.S.No.248 of 2009 respectively on the file of the Principal Sub Court, Salem.

For Petitioner in both CRPs : Mr.K.K.Muralitharan

Respondents in both CRPs : No appearance

COMMON ORDER

The instant revisions have been filed challenging the dismissal of I.A.Nos.420 & 421 of 2013 by order dated 21.04.2014 in O.S.No.248 of 2009 by the Principal Sub Court, Salem.

Brief facts leading to the filing of the revision:

2.The petitioner, in both the civil revision petitions, is the plaintiff in the suit. She has filed a suit for partition against the respondents in O.S.No.248 of 2009 before the Principal Sub-Court, Salem.

3.It is the case of the petitioner that she is the daughter of late Krishnasamy and the first respondent is the second wife of late Krishnasamy and the second and third respondents are the cousins of the petitioner. The partition suit was filed seeking for division of the suit schedule property into four equal shares and allotment of ¼th share to the petitioner.

4.A written statement was also filed by the respondents, wherein, they have stated that the petitioner is the daughter of one Chinnaponnu and Kandasamy. But, it is the case of the petitioner as seen from the plaint averments that she is the daughter of late N.Krishnasamy Udayar, who was the owner of the suit schedule property. According to the plaint averments, after his death, the petitioner as well as the respondents are entitled to a share in the schedule property.

5.After commencement of trial, the petitioner filed I.A.Nos.420 & 421 of 2013 in O.S.No.248 of 2009. I.A.No.420 of 2013 was filed under

Order 1 Rule 10 CPC seeking to implead Chinnaponnu her mother as a party to the suit. I.A.No.421 of 2013 was filed under Order VII Rule 14(3) r/w 151 CPC to permit the petitioner to file additional documents in the suit, viz., (i). School Transfer Certificate of the Petitioner (ii). Certificate issued by VAO, (iii). Marriage Photographs of the petitioner with negatives (iv). Marriage CD of the petitioner with bill. Both the I.As were dismissed by the trial Court on 25.04.2014. Aggrieved by the dismissal of I.A.Nos.420 & 421 of 2013, the instant revisions have been filed.

6.Heard Mr.K.K.Muralitharan, learned counsel appearing for the petitioner. Despite service of notice on the respondents and their names having been printed in the cause list today, there is no representation on their side.

7.According to the learned counsel appearing for the petitioner, the trial Court ought to have allowed the impleading application as well as the application filed to seek permission of the Court to file additional documents. Further, according to him, the party proposed to be impleaded is the natural mother of the petitioner and this fact came to her knowledge only after the written statement was filed by the respondents in the suit. Since the petitioner had all along been brought up by her step mother K.Indrani, the first respondent she did not have

the knowledge that chinnaponnu was her natural mother and the first wife of late Krishnasamy Udayar. According to learned Counsel for the petitioner, since the suit filed by the petitioner is a partition suit and the party proposed to be impleaded is the petitioner's mother, who is also entitled to get a share in the properties left behind by the petitioner's father late Krishnasamy Udayar, the trial Court ought to have allowed I.A.No.420 of 2013. He referred to the provisions of Order 1 Rule 10 CPC and submitted that the Court can add or strike out parties for the effective and complete adjudication of the dispute between the parties. He also submitted that the trial Court ought to have allowed I.A.No.421 of 2013 seeking permission of the Court to file additional documents as the list of documents mentioned therein are essential for proving the claim of the petitioner in the suit.

DISCUSSION:

8.As rightly contended by the learned counsel appearing for the petitioner under Order 1 Rule 10 CPC, a party can be impleaded at any stage of the suit for the effective adjudication of the dispute. In the case on hand, the petitioner has filed a partition suit. She has sought for impleadment of her natural mother Chinnaponnu as a party to the suit by way of I.A.No.420 of 2013 who according to her, is the first wife of late Krishnasamy Udayar. The subject matter of partition are the properties, which have been left behind by the petitioner's father Krishnasamy

Udayar. Even though the respondents in their written statement have disputed that Krishnasamy is the father of the petitioner, the petitioner sought for impleadment of her natural mother as a party to the suit. For the effective adjudication of the dispute, Chinnaponnu, the mother of the petitioner is a necessary party in the partition suit as she is entitled to get a share in the property of late Krishnasamy Udayar, in case, she is able to establish or the petitioner is able to establish that the proposed party was also the wife of Krishnasamy Udayar. The trial Court has rejected I.A.No.420 of 2013 on the ground that the application was filed belatedly that too, when the case was posted for Judgment. This Court is of the considered view, considering the position of the petitioner who claims that she was brought up by her step mother and she did not have knowledge about her natural mother until the written statement was filed by the respondents, the trial Court ought to have allowed the impleading application in I.A.No.420 of 2013 to implead the proposed party as the proposed party is a necessary party for the effective adjudication of the dispute. Further, this Court is also of the considered view, the trial Court, considering the nature of the documents, ought to have allowed I.A.No.421 of 2013 also, but without analysing the merits of the affidavit filed in support of I.A.No.421 of 2013, the trial Court has summarily rejected the said application without assigning proper reason after dismissing I.A.No.420 of 2013. Therefore, this Court is of the considered view that the order passed in I.A.No.420 of 2013 as well as in I.A.No.421

of 2013 dated 25.04.2014 is an erroneous order and will have to be set aside.

9.In the result, the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous petition is closed. Since the suit is of the year 2009, the trial Court is directed to dispose of the suit within a period of 6 months from the date of receipt of a copy of this order.

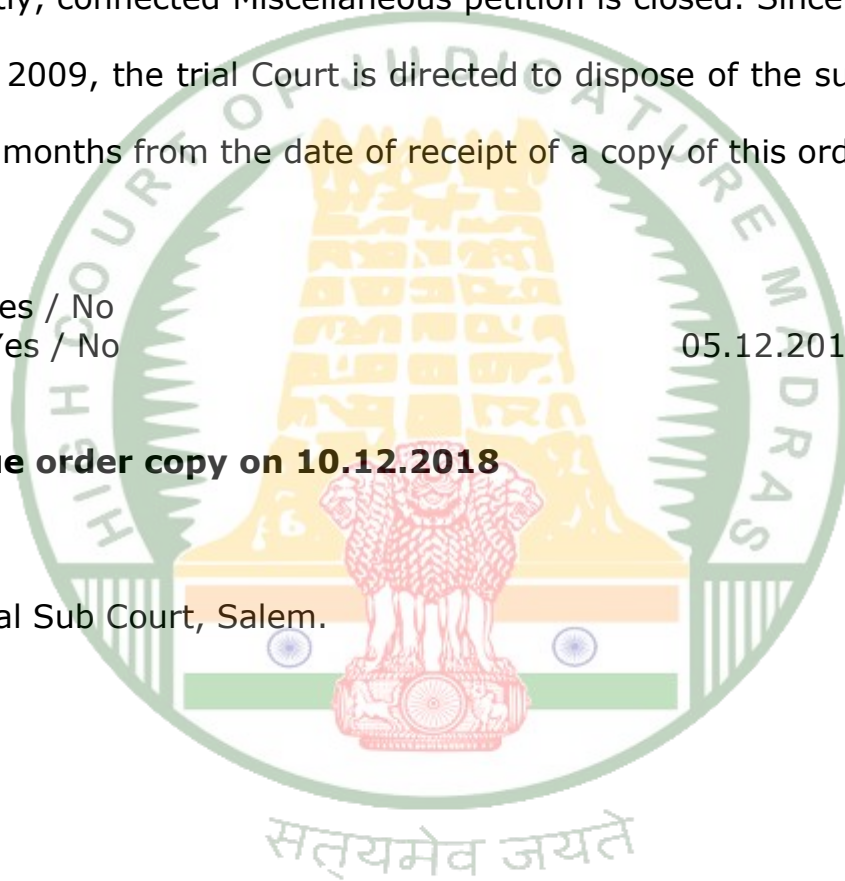
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Note: Issue order copy on 10.12.2018

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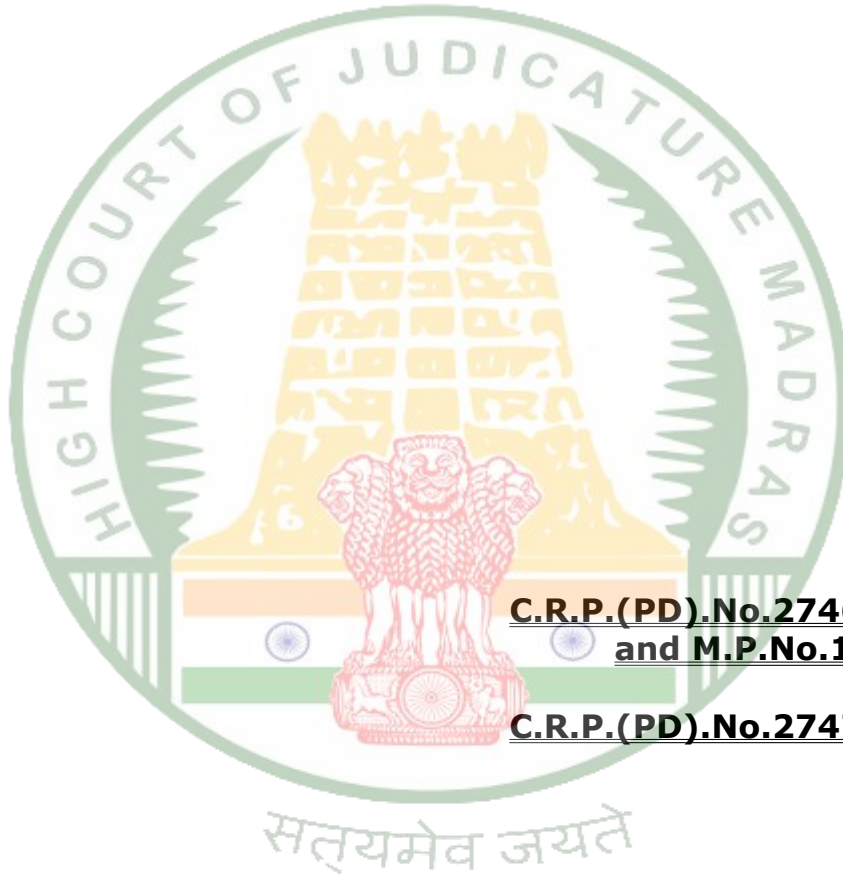
The Principal Sub Court, Salem.



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ABDUL QUDDHOSE,J.

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