

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM :**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR****C.R.P. (NPD)No.1600 of 2000**

1. Mr.A.Ayyannan
2. Mrs.Pachiyammal
3. Muthusamy

.. Petitioners

Vs.

1. Mr.K.V.Duraisamy
2. Mr.K.V.Chinnusamy

.. Respondents

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure to set aside the fair and decreetal Order dated 24.12.1998 made in I.A.No.1276 of 1998 in A.S.No.203 of 1995 on the file of the II Additional District Judge, Salem.

For Petitioners : Ms.K.Janani
for Mrs.V.Ambika

For Respondents : No appearance

ORDER

This revision has been preferred against the Order of dismissal of the interim application filed for reception of additional documents stating that these documents are required to prove the fact that partition has already taken

place between the family members. The first appellate Court by holding that those documents are only revenue records and pattas have been issued only on the basis of the enjoyment of both the parties, rightly came to the conclusion that merely revenue entries were mutated on the basis of enjoyment of co-owners of the properties, it cannot be concluded that partition has already taken place and rejected the application.

2. Heard the learned counsel for the revision petitioner and perused the entire materials available on record.

3. It is to be noted that the suit itself has been filed for partition of the properties. Though a defence has been taken by the defendant that there was an earlier partition, the trial Court and the first appellate Court disbelieved the above facts. Now, the judgment of the first appellate Court is under challenge which pending in S.A.No.415 of 2015 before this Court and all these aspects can be dealt in the Second Appeal itself.

4. Therefore, I am of the view that merely because pattas stand in the name of the appellants, it cannot be concluded that there was an earlier partition. The revenue records at the most can be used only to prove their possession and not for any other aspects. Previous partition has to be proved independently and there must be specific pleading and evidence. Merely on the basis of the

revenue records, the Court cannot conclude that there was a partition. Hence, I am of the view that the documents filed by the appellant, namely pattas and earlier proceedings of the Court is not at all necessary to decide the actual lis between the parties in the appeal.

5. Accordingly, this Civil Revision Petition is dismissed and the parties are directed to canvass their respective pleadings in the Second Appeal which is pending before this Court. No cost.

04.02.2019

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To

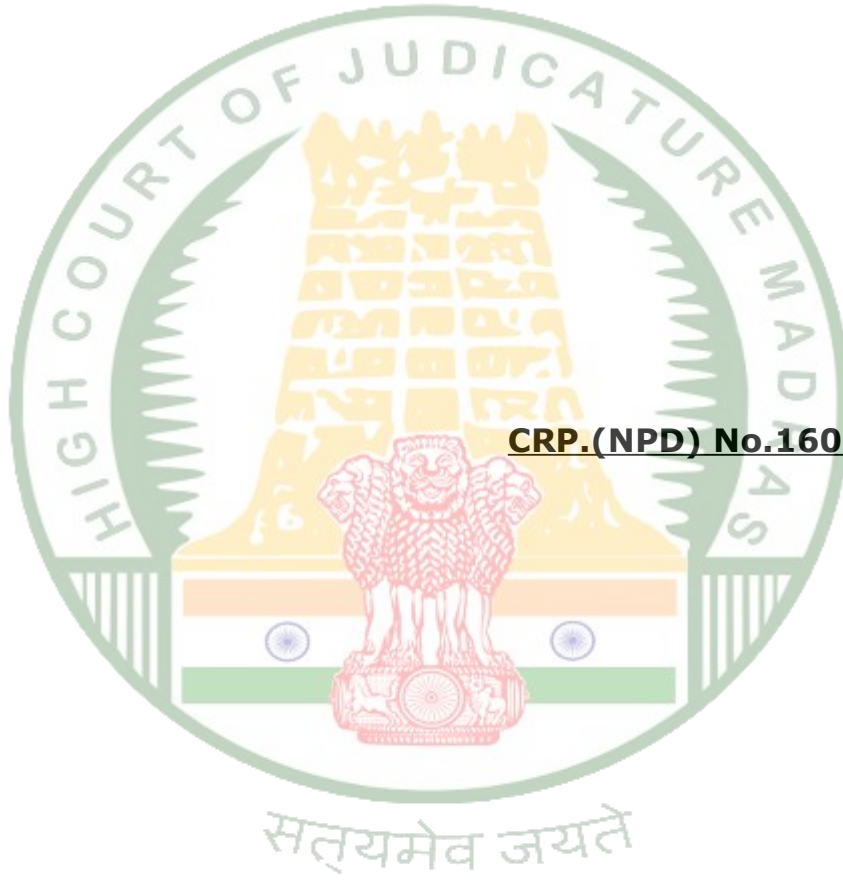
The II Additional District Judge,
Salem.



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N.SATHISH KUMAR, J.

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