

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2019

Coram

The Honourable Mrs. **Justice R.HEMALATHA**

C.R.P.(PD)No.141 of 2009

and

M.P.No.1 of 2009

1.Lakshmi

2.Murugamani

... Petitioners/Plaintiffs

Vs.

1.Periyasamy

2.Palaniammal

3.Iythammal

3.Iyammal

5.Mariammal

6.Lakshmi

7.Pappa

8.Muthusamy

9.Perumal

10.Veerappan

11.Siddhan

12.Sidhammal

13.Muthupillai

... Respondents/Defendants 2 to 8

... Respondents/proposed parties

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This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal Order dated 07.08.2008 passed in I.A.No.856 of 2006 in O.S.No.62 of 1998 by the District Munsif Court, Sankari.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.C.Kulanthaivel for R1

R2 to R8 No appearance

ORDER

The present civil revision petition has been filed against the order passed in I.A.No.856 of 2006 in O.S.No.62 of 1998 by the learned District Munsif, Sankari.

2.The civil revision petitioners are the plaintiffs in O.S.No.62 of 1998 on the file of the District Munsif Court, Sankari. The plaintiffs filed the suit in O.S.No.62 of 1998 for partition of the suit properties into three equal shares and to allot one such share to them. The respondents 1 to 7/defendants filed their written statements and both parties went for trial. At this stage, the civil revision petitioners/plaintiffs filed an application in I.A.No.856 of 2006 under Order 1 Rule 10(2) of the Civil Procedure Code praying to implead the proposed parties as defendants 9 to 14 in the suit in O.S.No.62 of 1998. The respondents/ defendants filed their counters while the proposed respondents 9 to 14 remained absent and were set exparte. The learned District Munsif, Sankari after full contest dismissed the application filed by the civil revision petitioners/ plaintiffs. Aggrieved over the said orders passed by the learned District Munsif, Sankari, the plaintiffs have filed the present civil revision petition.

3.The learned counsel appearing for the civil revision petitioners contended that since the proposed parties are co-properties, they have to be impleaded as parties to the suit. His further contention is that the advocate commissioner who would be appointed in the final decree proceedings would find it difficult to measure the suit property, if there is no binding decree on the joint patta holders.

4.Per contra, the learned counsel appearing for the first respondent would contend that the properties belong to the family of the plaintiffs and the defendants and merely because the proposed parties are joint patta holders, they cannot be said to be proper and necessary parties to the suit. He also drew the attention of the orders passed by the trial Court wherein, the trial Court has held that the civil revision petitioners/plaintiffs did not file necessary documents to show that the proposed parties are joint patta holders of the suit properties. It is also contended by him that since the proposed parties did not belong to the family of the plaintiffs and the defendants, the trial Court was right in dismissing the application filed by the plaintiffs.

5.The suit in O.S.No.62 of 1998 is filed before the District Munsif Court, Sankari for partition of the suit properties into three

equal shares and to allot one such share to the plaintiffs. Before commencement of the trial, the plaintiffs have filed the application in I.A.No.856 of 2006 under Order 1 Rule 10(2) of the Civil Procedure Code praying to implead the proposed parties as the defendants 9 to 14 in the suit in O.S.No.62 of 1998. The respondents/defendants filed their counter and proposed respondents 9 to 14 remained absent and they were set exparte. The contention of the civil revision petitioners is that since they are joint patta holders, they have to be impleaded as proposed parties and they are necessary parties to the suit. It is pertinent to point out that the plaintiffs filed the suit for partition of the suit properties and the proposed parties are total strangers to the family of the plaintiffs and the defendants. Even assuming they are joint patta holders they are not co-sharers. A perusal of the plaint also shows that no relief is sought for against the proposed respondents. The contention of the civil revision petitioners that the advocate commissioner would find it difficult to measure the suit property at the time of final decree proceedings, in the absence of the joint patta holders in the suit, is only based on assumptions. Therefore, I do not find any reason to interfere with the findings of the learned District Munsif, Sankari, especially when the plaintiffs have not shown the proposed parties/respondents 8 to 13 are proper and necessary parties to the suit in O.S.No.62 of 1998.

6. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2019

rrg

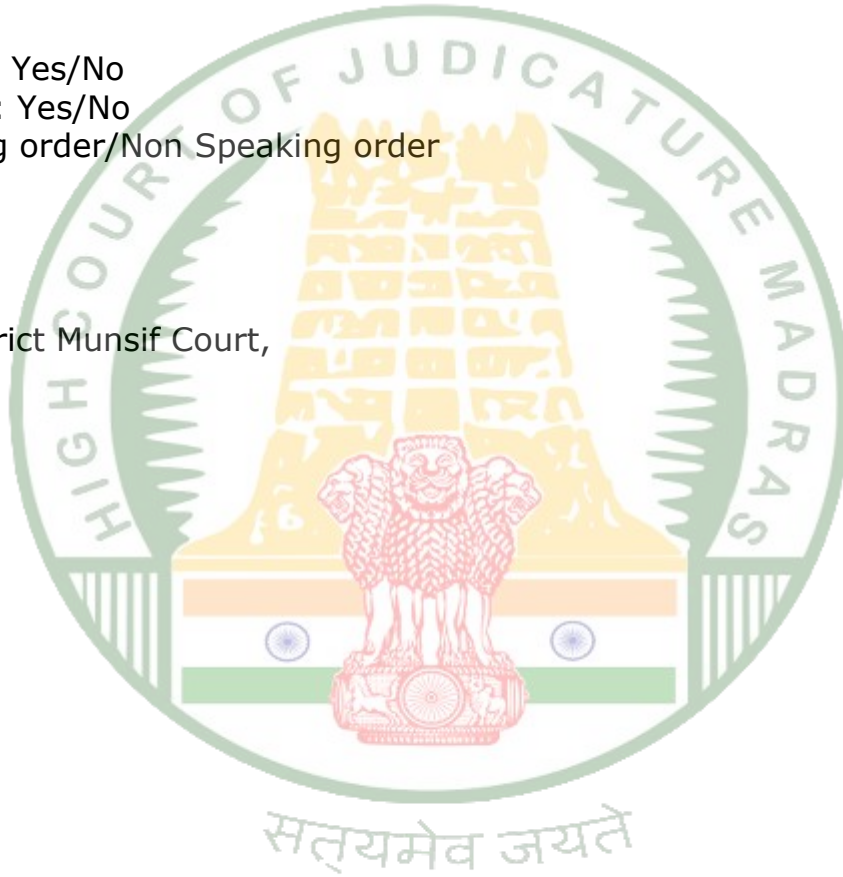
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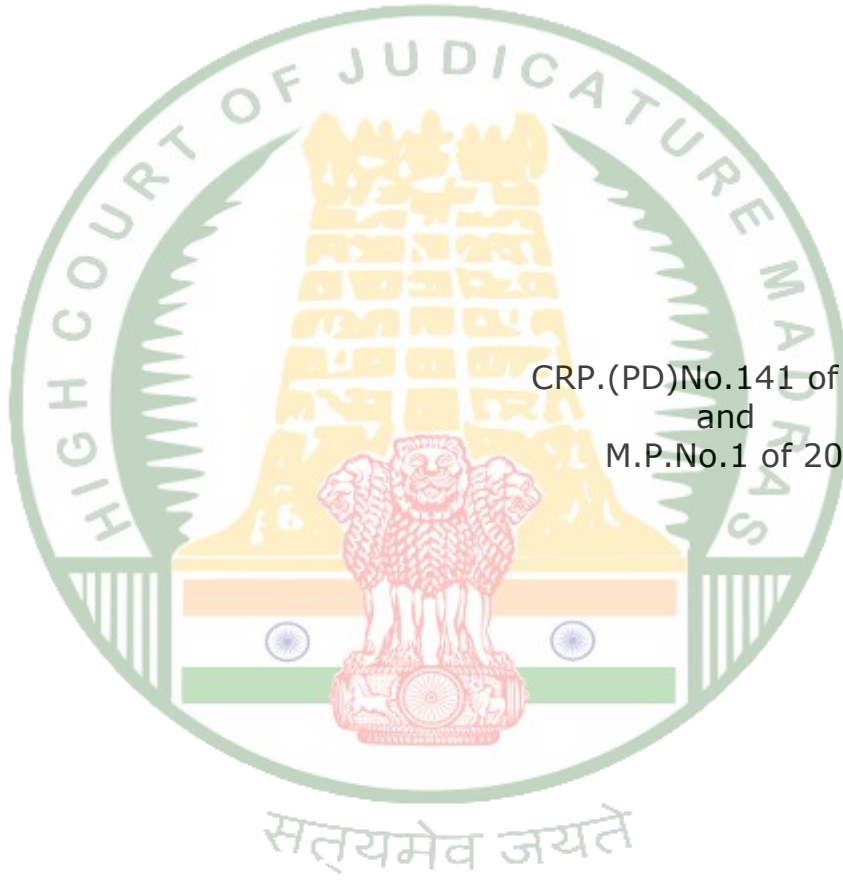
Speaking order/Non Speaking order

To

The District Munsif Court,
Sankari.



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