

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).Nos.2843 & 2844 of 2010
and M.P.No.1 of 2010 in
C.R.P.(PD).No.2843 of 2010

Sulochana ... Petitioner in both C.R.Ps
Vs.
1.Amutha ... Respondent in C.R.P.2843/2010
& 1st respondent in C.R.P.2844/2010
2.Pavunammal ... 2nd respondent in C.R.P.2844/2010

Petitions filed under Article 227 of the Constitution of India against the fair and final order dated 02.06.2010 in I.A.Nos.901 & 900 of 2008 in O.S.No.220 of 2008 on the file of the District Munsif Court, Tirupattur.

For Petitioner : Mr.PA.Sudesh Kumar (in both C.R.Ps)

For Respondents : Mr.P.S.Kothandaraman (in both C.R.Ps)

COMMON ORDER

Challenging the fair and final orders passed in I.A.Nos.901 & 900 of 2008 in O.S.No.220 of 2008 on the file of the District Munsif Court, Tirupattur, the 5th defendant has filed the above Civil Revision Petitions.

2.The 1st respondent/plaintiff filed the suit in O.S.No.220 of 2008 for partition and other reliefs in respect of the suit Schedule mentioned properties. The 5th defendant filed a written statement stating that the plaintiff has not included all the joint family properties in the suit for partition. Subsequently, the 5th defendant filed an application in I.A.No.900 of 2008 to implead the 2nd respondent herein viz., Pavunammal as the 9th defendant in the suit. The 5th defendant also filed another application in I.A.No.901 of 2008 under Order 6 Rule 17 to amend the plaint by including 11 items of properties. The plaintiff filed her counter to the applications and contested the applications stating that the properties mentioned in the applications are not joint family properties. Further, the plaintiff has stated that the proposed party is not a proper and necessary party for proper adjudication of the suit. The trial Court, taking into consideration the case of both parties, dismissed both the applications. While dismissing the applications, the trial Court observed that the 5th defendant has not established that the properties sought to be included in the suit for partition are joint family properties and that the 5th defendant has filed the applications without impleading the other parties to the suit.

3. On a perusal of the applications filed by the 5th defendant, it could be seen that in both the applications, the 5th defendant has made only the plaintiff as a respondent. She has not made the other 7 defendants as parties in both the applications. When the suit has been laid against 8 defendants, the 5th defendant has filed the applications without impleading the other defendants as parties in the applications. That apart, when there is a dispute with regard to the status of the properties sought to be included by the 5th defendant, she should have let in evidence to establish that the properties are joint family properties. In the absence of any evidence produced by the 5th defendant to establish that the properties are joint family properties, the trial Court has rightly dismissed the applications.

4. In the counter filed by the plaintiff in I.A.No.900 of 2008, she has specifically stated that the proposed respondent was earning independently by working as a Teacher and by obtaining a loan, she has constructed a house in the property sought to be included in the suit for partition by the 5th defendant. Further, the plaintiff has stated that the property is the separate property of the proposed party and therefore, it cannot be included in the suit for partition. In these circumstances, in the absence of

any evidence produced by the petitioner to the effect that the properties are joint family properties, the trial Court has rightly dismissed the applications.

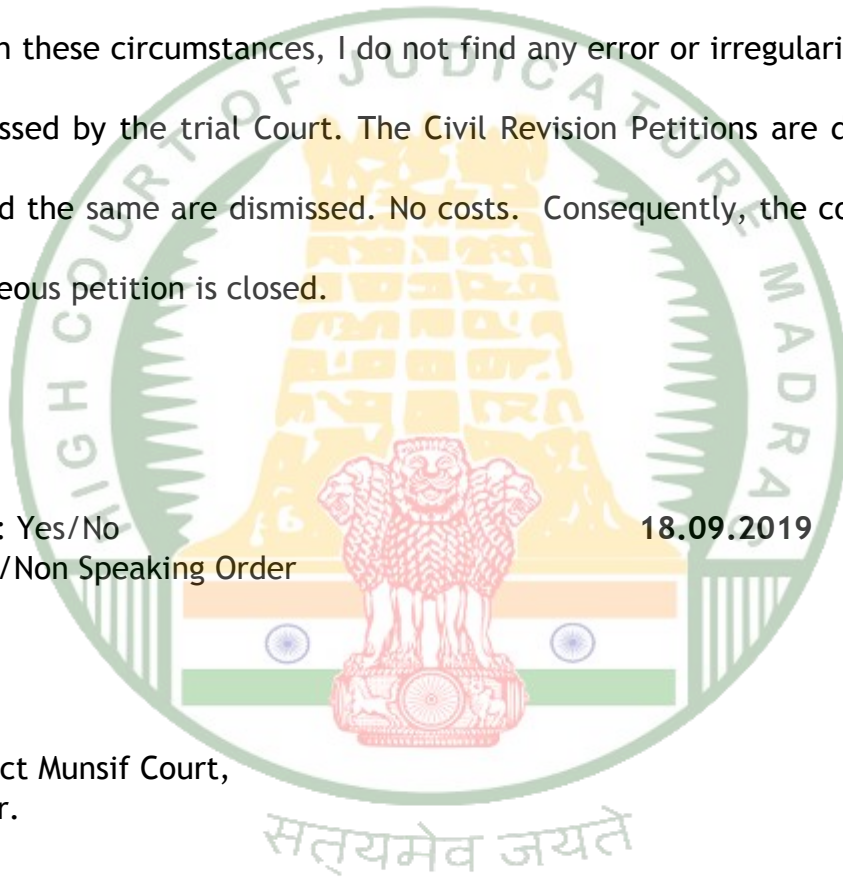
5.In these circumstances, I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Speaking /Non Speaking Order
va

18.09.2019

To

The District Munsif Court,
Tirupattur.

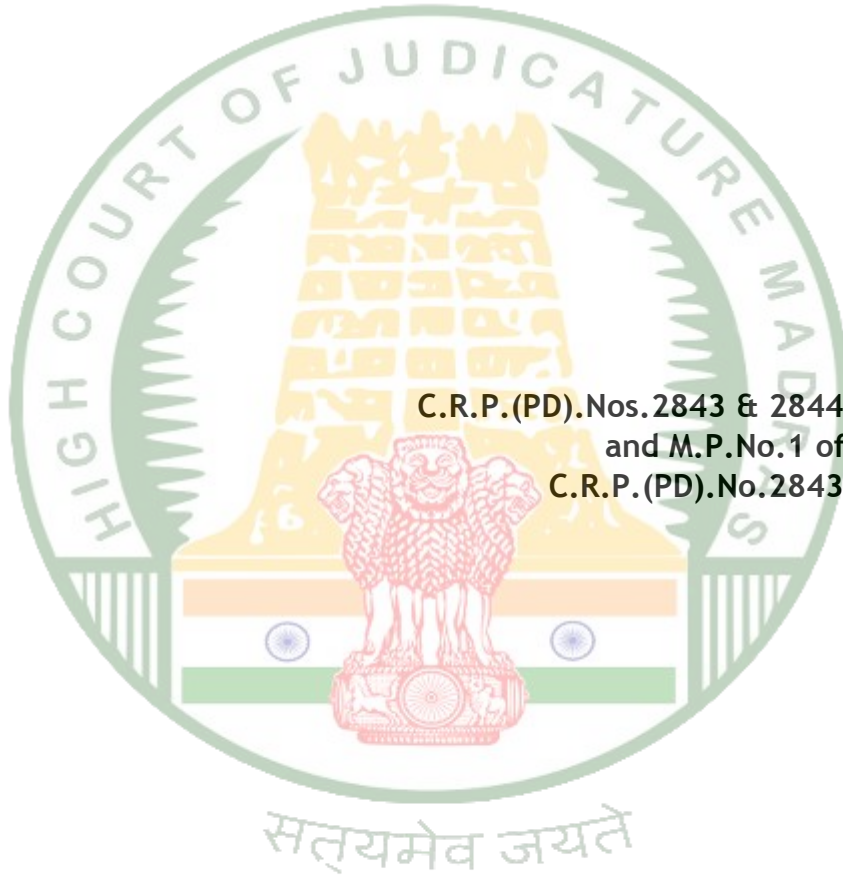


WEB COPY

M. DURAISWAMY,J.

C.R.P.(PD).Nos.2843 & 2844 of 2010

va



C.R.P.(PD).Nos.2843 & 2844 of 2010
and M.P.No.1 of 2010 in
C.R.P.(PD).No.2843 of 2010

WEB COPY

18.09.2019