

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM
THE HONOURABLE Mr.JUSTICE N.SATHISH KUMARC.R.P.(PD).No.1266 of 2011
and M.P.No.1 of 2011

Palanisamy

...Petitioner

Vs.

1.Eswaramoorthy
2.R.Govindasamy
3.M.Subramaniam
4.C.Ashokan
5.K.Periyasamy
6.Nachathal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.02.2011 made in I.A.No.1471 of 2010 in O.S.No.73 of 2006 on the file of the District Munsif Court, Kangayam.

For Petitioner : Mr.N.Manokaran

For Respondents : No appearance

ORDER

The Civil Revision Petition has been filed against the fair and decretal order dated 15.02.2011 made in I.A.No.1471 of 2010 in O.S.No.73 of 2006 on the file of the District Munsif Court, Kangayam.

2. The brief facts leading to filing of this revision petition is as follows :

The suit in O.S.No.73 of 2006 has been filed by the plaintiff Nachathal against the sole defendant Palanisamy for partition of the suit property in two

equal shares. It appears that during the pendency of the suit, she has filed an application seeking interim injunction restraining the defendant from alienating or creating encumbrance over the suit property and the injunction was granted in favour of the plaintiff. Thereafter, the suit commenced for trial and the plaintiff examined herself as P.W.1 and also cross examined. In fact, during her examination, the plaintiff has stated that she has not made any encumbrance over the property. However, when the trial in the suit was in progress, the respondents 1 to 5 herein have filed an application to implead themselves as plaintiffs 2 to 6 in the suit, since they have purchased the portion of the property from the plaintiff's power agent Baskaran. The trial Court has allowed the application, as against which, the present Civil Revision Petition is filed.

3. Heard the learned counsel appearing for the revision petitioner. Despite service of notice to the respondents and their names being printed in the cause list, there is no appearance either in person or through counsel.

4. The learned counsel for the revision petitioner would submit that the impleading application filed by the subsequent purchasers ought not have been allowed by the trial Court and they could not have been arrayed as plaintiffs 2 to 6 in the suit. Even during the cross-examination of the plaintiff on 08.07.2009, she has categorically asserted that she has not alienated the property to any one. In any event, the respondents 1 to 5 are *pendente lite* purchasers and they have purchased the property knowing fully well about the pendency of

the suit. Further, the plaintiff, after obtaining an interim injunction in the suit has unlawfully sold the suit property in favour of the respondents 1 to 5 herein. In such circumstances, the trial court ought not to have allowed the application for impleading the respondents 1 to 5 and therefore he prayed for allowing this Civil Revision Petition.

5. At the outset, I am of the view that the trial Court ought not to have allowed the application seeking to implead the subsequent purchasers as plaintiffs in the suit. After filing the suit, the plaintiff has obtained an interim injunction and she ought not to have alienated the suit property in favour of the respondents 1 to 5. The plaintiff, by taking advantage of the order of injunction has sold the property to the subsequent purchasers namely respondents 1 to 5. Though, such sale is not a bar under Section 44 of the Transfer of Property Act. It is to be noted that subsequent to the purchasers cannot have any better title than their vendor the first plaintiff herein as they have stepped into her shoes. It is also to be noted that the suit for partition is pending and the suit property has not been divided into metes and bounds. Whether the first plaintiff herself has got any right in the suit property depends upon the decision of the suit. In any event, if the subsequent purchasers namely the respondents 1 to 5 herein have got any right, they have to work out their remedy in a manner known to law and they cannot be allowed to get impleaded in the suit filed by the plaintiff for partition. Therefore, the order of the trial Court allowing the application to implead the respondents 1 to 5 herein as plaintiffs 2 to 6 is hereby set aside. The

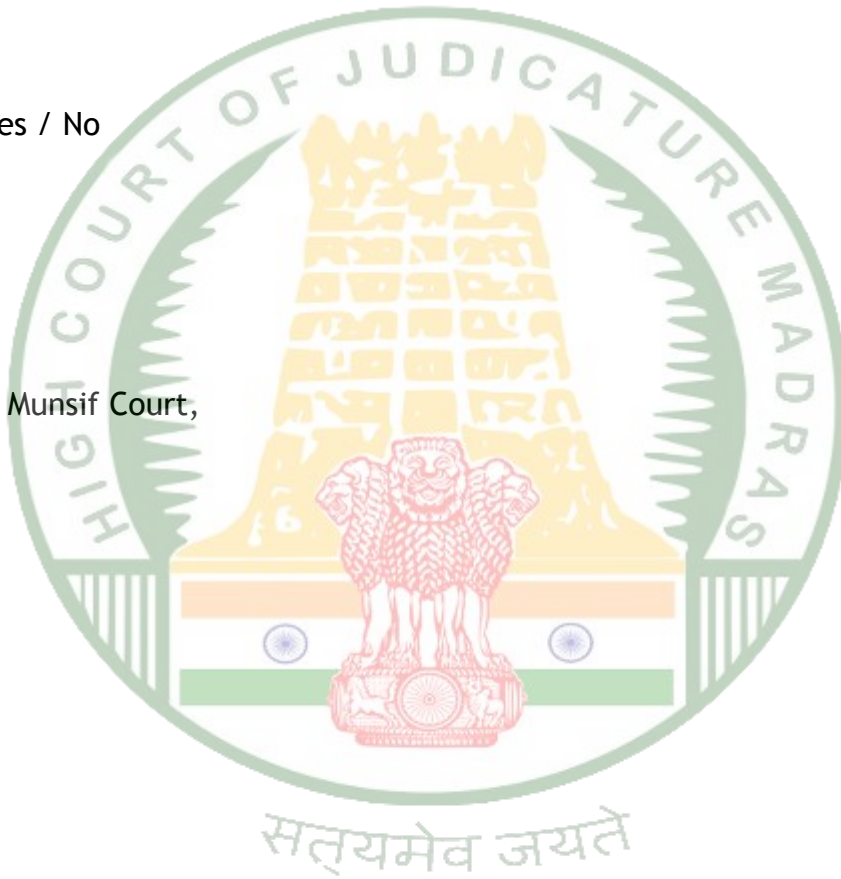
civil revision petition is allowed. The trial Court is directed to dispose of the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2019

Internet : Yes / No
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To

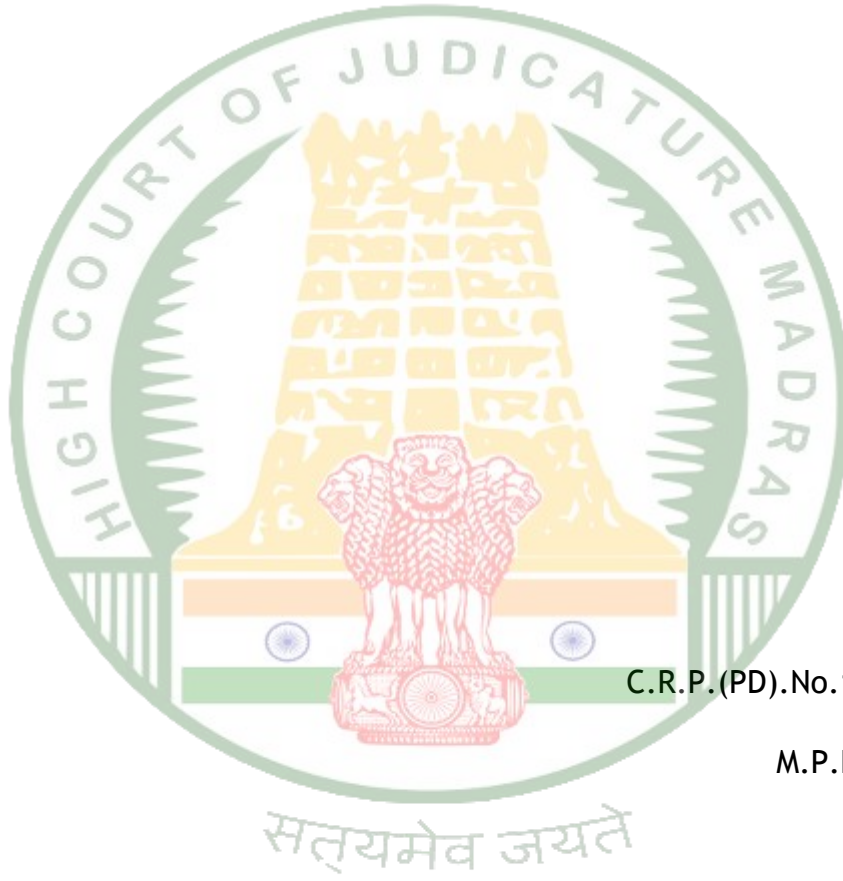
The District Munsif Court,
Kangayam.



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N.SATHISH KUMAR, J.

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