

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.572 of 2011 &

M.P.No.1 of 2011

Mr.Arumugam

.. Petitioner

Vs.

- 1.Mrs.Logambal
2. Mr.Senthil Kumar
3. Mr.Ravi Kumar
4. Mr.Siva Kumar
5. Ms.Amuthavalli
6. Mr.Pazhamali

.. Respondents

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the fair and decreetal Order of the learned Additional Subordinate Judge, Virudhachalam passed in I.A.No.425 of 2009 in O.S.No.82 of 2005 dated 03.11.2010.

For Petitioner : Mr.J.Antony Jesus

For Respondents : Ms.R.Meenal

WEB COPY

ORDER

This revision has been filed as against the Order of dismissal of the application filed to modify the preliminary decree for declaration of the right of the first defendant.

2. The suit has been filed for dividing the suit property into 4 equal shares and allot two equal shares to the plaintiffs. The written statement has been filed by the first defendant and he has not sought any partition. Thereafter, the trial Court has granted preliminary decree to divide the suit property into 4 equal shares and allot 2 shares to the plaintiffs and declared the right of the plaintiffs and there is no declaration of right in respect of the defendants. At this stage an application has been filed by the first defendant to modify the preliminary decree or for supplementary decree to declare the rights of the first defendant. In the above application, he has filed Court fee.

3. There is no dispute with regard to the allotment of $\frac{1}{2}$ share to the plaintiffs. The remaining $\frac{1}{2}$ share shall certainly go to the defendants. It is also not in dispute. However, the rights of the defendants has not been declared by the Court while passing the preliminary decree. Therefore, the first defendant has filed an application to get his rights declared by a supplementary decree or for modification of the preliminary decree. Admittedly, the Court fees has also been

filed while filing this application.

4. Of course, when the rights of the defendants was not declared in the preliminary decree, they have right to file an application seeking amendment of the preliminary decree or passing of supplementary decree and such right can be exercised by the defendants. But the fact remains that in the judgment of the trial Court in para 9, the trial Court has clearly given a finding to the effect that the defendants 1 and 2 are each entitled to $\frac{1}{4}$ share in the suit property. Only, while drafting the decree, the same has not been included. Since the finding has already been given in the judgment and the rights of the defendants have also been declared in the judgement, I am of the view that no further preliminary decree is required to be passed and no amendment is required. The defendants can very well get their shares allotted in their favour in the final decree proceedings.

5. Accordingly, this Civil Revision Petition is dismissed and the Order of the trial Court is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

vrc

To

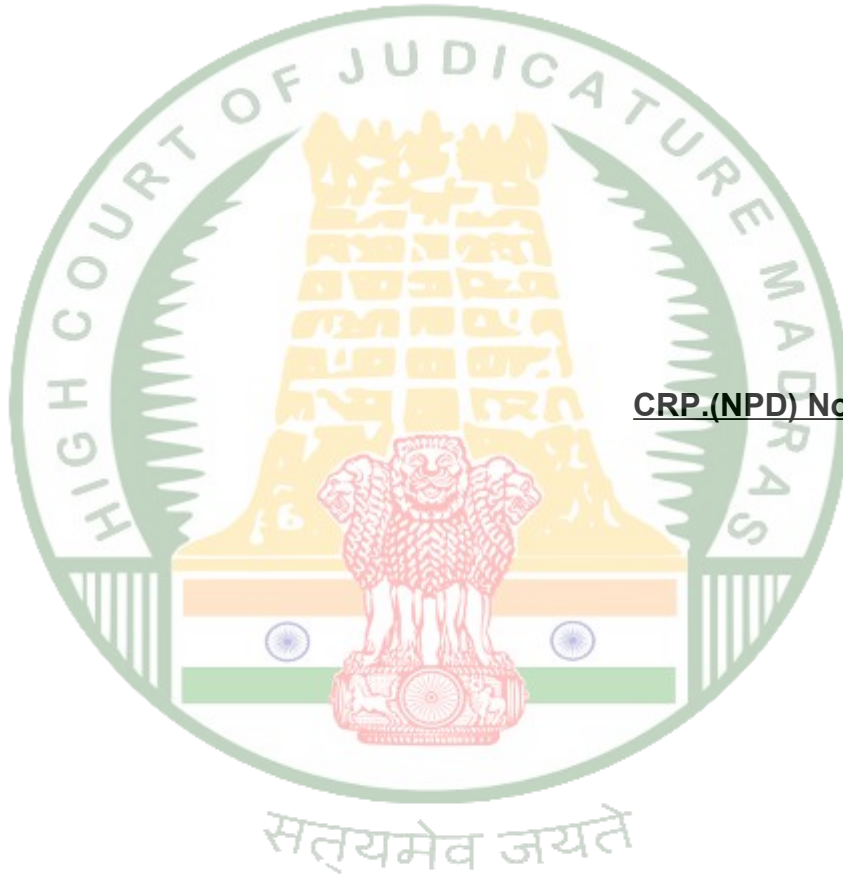
The Additional Subordinate Judge, Virudhachalam.

28.02.2019

WEB COPY

N.SATHISH KUMAR, J.

VRC



CRP.(NPD) No.572 of 2011

WEB COPY

28.02.2019