

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HON'BLE MR.JUSTICE **N.SATHISH KUMAR**

C.R.P.(PD).Nos.4432 & 4433 of 2012 and
M.P.Nos.1 & 1 of 2012



1. R.Angamuthu
2. Elumalai
3. Manivannan ... Petitioners/Plaintiffs
in both petitions
Vs.
1. Kesavan ...
Respondent/Defendant in both petitions
2. Mrs.Ambika
3. V.Gunasekaran
4. Mrs.Ambika
5. Mrs.Rithu Rajkumar ...
Respondents/Defendants
in C.R.P.No.4432 of
2012

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Civil Revision Petitions filed under Section 227 of CPC against the common order dated 24.04.2012 in C.M.A.Nos.7 & 8 of 2010 on the file of the Subordinate Court, Chengalpattu, confirming the

common order dated 11.09.2009 in I.A.No.1126 of 2007 and I.A.No.1246 of 2008 in O.S.No.280 of 2007 on the file of the District Munsif Court, Chengalpattu.

For Petitioners
in both petitions : Mr.M.K.Kabir
Senior counsel

For R1
in both petitions : Mr.S.Thanka Sivan

For RR2 to 5
in both petitions : No appearance

ORDER

The above civil revision petition has been filed against the common order dated 24.04.2012 in C.M.A.Nos.7 & 8 of 2010 on the file of the Subordinate Court, Chengalpattu, confirming the common order dated 11.09.2009 in I.A.No.1126 of 2007 and I.A.No.1246 of 2008 in O.S.No.280 of 2007 on the file of the District Munsif Court, Chengalpattu.

2. The petitioners are the plaintiffs and the respondents are the defendants.

3. Heard the learned counsel for the petitioners and the

learned counsel for the respondents. I have perused the available materials placed on record.

4. Aggrieved over the concurrent finding of the Trial Court in I.A.No.1126 of 2007 and I.A.No.1246 of 2008 which was confirmed in C.M.A.Nos.7 and 8 of 2010 respectively, the present revision is filed. The application in I.A.No.1126 of 2007 has been filed for grant of interim injunction and another application in I.A.No.1246 of 2008 has been filed to vacate the interim injunction granted in I.A.No.1126 of 2007.

5. It is the contention of the learned counsel for the plaintiffs that the larger extent of the property in Survey No.30 was purchased by the father of the plaintiffs and eight others under a registered sale deed dated 15.12.1950. Thereafter, the father of the plaintiffs and eight others have partitioned the property. The father of the plaintiffs had died in the year 06.09.1992 leaving behind the plaintiffs and their mother. Thereafter, the mother of the plaintiffs executed a settlement deed dated 10.01.2003 in favour of the first plaintiff and the power of attorney has also been executed on

27.02.2006 in favour of the first plaintiff by the second and third plaintiffs. The patta for the entire properties were transferred in the name of the first plaintiff. Therefore, the plaintiffs are in possession and enjoyment of the suit properties.

6. The first respondent has filed a counter stating that he had purchased an extent of 0.17 cents in S.No.30/6F with specific boundaries under the registered sale deed dated 19.02.1996 from Varadappa Mudaliar and his son Gunasekaran, the third respondent herein. It is the further contention of the first respondent that all the nine purchasers who have originally purchased the property are entitled to equal share. All the joint owners got divided the property equally amongst themselves and each got 0.17 cents. The vendor of the first respondent has sold the 0.17 cents with specific boundaries under the registered sale deed dated 19.02.1996. The fourth respondent has purchased an extent of 0.30 cents out of 1.67 cents under the registered sale deed dated 21.06.2004. The father of the plaintiffs is entitled to only 0.17 cents.

7. Based on the above pleadings, the Trial Court has granted

the interim injunction which was also confirmed by the first Appellate Court. As against the concurrent finding, the present revision has been filed.

8. The learned counsel appearing for the revision petitioners would submit that admittedly, the joint purchase by the common owners is not in dispute. According to the respondents, the properties have been partitioned as per their contribution whereas the plaintiffs' contention is that the properties have been partitioned as equal shares which is a triable issue. That being the position, it is the contention of the learned counsel for the petitioners is that now in view of the pendency of the suit, alienations are taking place which in fact create serious consequences. Hence, his only contention before this Court is that both parties should be restrained from alienating the properties till the disposal of the main suit and the suit may be directed to be disposed of within the time frame. The learned counsel appearing for the respondents would submit that both the Courts have found that the respondents possession of the properties. However, he has no objection in directing both the parties not to alienate the property till the

disposal of the suit.

9. In view of the above and on perusal of the orders, the Court below has factually found that the first defendant is in possession of 0.34 cents and granted interim injunction. The contention of the both sides makes it clear that both have admitted that the plaintiffs' father and eight others have jointly purchased 6.26 cents in the year 1950. The contention of the plaintiffs is that the properties have been equally divided among the joint owners by oral partition. In view of such division, the plaintiffs are entitled to the properties and in possession of the properties. The defendants' only defence is that the properties are not equally divided among themselves. The division has taken place based on the contribution of each purchaser at the time of purchase in 1950. Since, the dispute mainly pertains to the nature of division whether based on equal division or based on the contribution, such thing can be decided in the Trial Court. That cannot be gone at this stage. However, since the Court below has found that the plaintiffs had possession of the property, on factual basis, the same need not be interfered at this stage. Further, the suit is for bare injunction based on oral division of the properties and if any alienation is allowed in

the properties, it will lead to the third party interest. Therefore, the Trial Court is directed to dispose of the suit itself within a period of four months from the date of receipt of a copy of this order. Till the disposal of the suit, both sides are restrained from alienating the properties.

10. With the above observation, this civil revision petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No Costs. The trial Court shall decide the issue on the basis of the evidence, not influenced by the order of this Court or the earlier order passed in the interlocutory applications.

15.04.2019

Index:yes/No
Speaking/Non-speaking
nsd

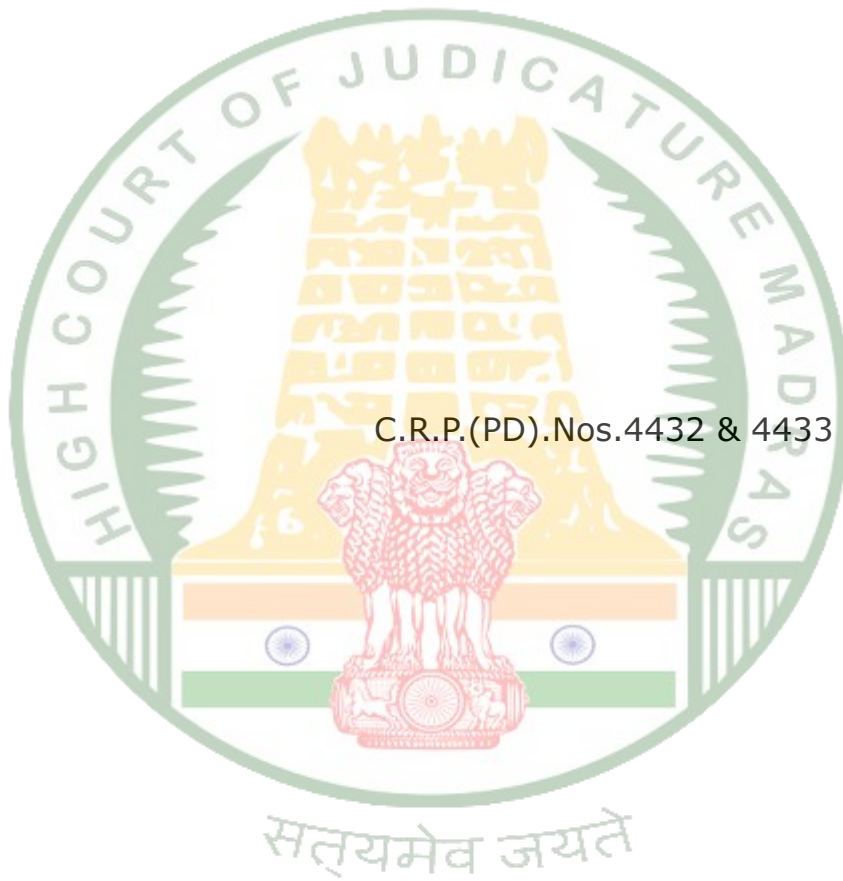
To

1. The Subordinate Judge,
Chengalpattu.
2. The District Munsif,
Chengalpattu.

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N.SATHISH KUMAR,J.

nsd



C.R.P.(PD).Nos.4432 & 4433 of 2012

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C.R.P.(PD)No.4432 and 4433 of 2012**and****M.P.Nos. 1 and 2 of 2012****N.SATHISH KUMAR, J.**

This matter came up today before this Court under the caption "for being mentioned".

2.The learned counsel for the petitioner has brought to the notice of this Court that in the order dated 15.04.2019, in the third line in paragraph No.8, the following sentence shall be incorporated;

"According to the petitioner, the properties have been partitioned as per their contribution whereas the defendants contention is that the properties have been partitioned as equal shares which is a triable issue".

instead of,

"According to the respondents, the properties have been partitioned as per their contribution whereas the plaintiffs' contention is that the properties have been partitioned as equal shares which is a triable issue".

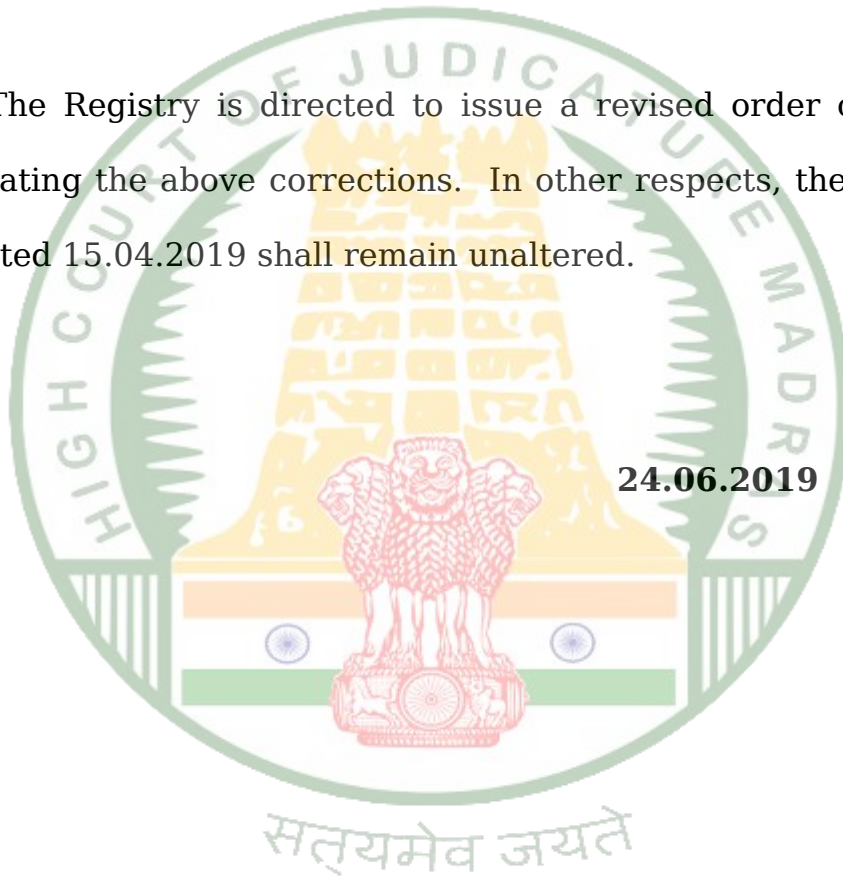
3.Paragraph No.9, shall be replaced as follows;

"8.In view of the above and on perusal of the orders, the Court below has factually found that the first defendant is in possession of 0.34 cents and granted interim injunction. The contention of the both sides makes it clear that both have admitted that the plaintiffs' father and eight others have jointly purchased 6.26 cents in the year 1950. The contention of the defendants is that the properties have been equally divided among the joint owners by oral partition. In view of such division, the plaintiffs are entitled to the properties and in possession of the properties. The plaintiffs' only defence is that the properties are not equally divided among themselves. The division has taken place based on the contribution of each purchaser at the time of purchase in 1950. Since, the dispute mainly pertains to the nature of division whether based on equal division or based on the contribution, such thing can be decided in the Trial Court. That cannot be gone at this stage. However, since the Court below has found that the defendants had possession of the property, on factual basis, the same need not be interfered at this stage. Further, the suit is for bare injunction based on oral division of the properties and if any alienation is allowed in the properties, it will lead to the third party

interest. Therefore, the Trial Court is directed to dispose of the suit itself within a period of four months from the date of receipt of a copy of this order. Till the disposal of the suit, both sides are restrained from alienating the properties."

4.The Registry is directed to issue a revised order copy by incorporating the above corrections. In other respects, the earlier order dated 15.04.2019 shall remain unaltered.

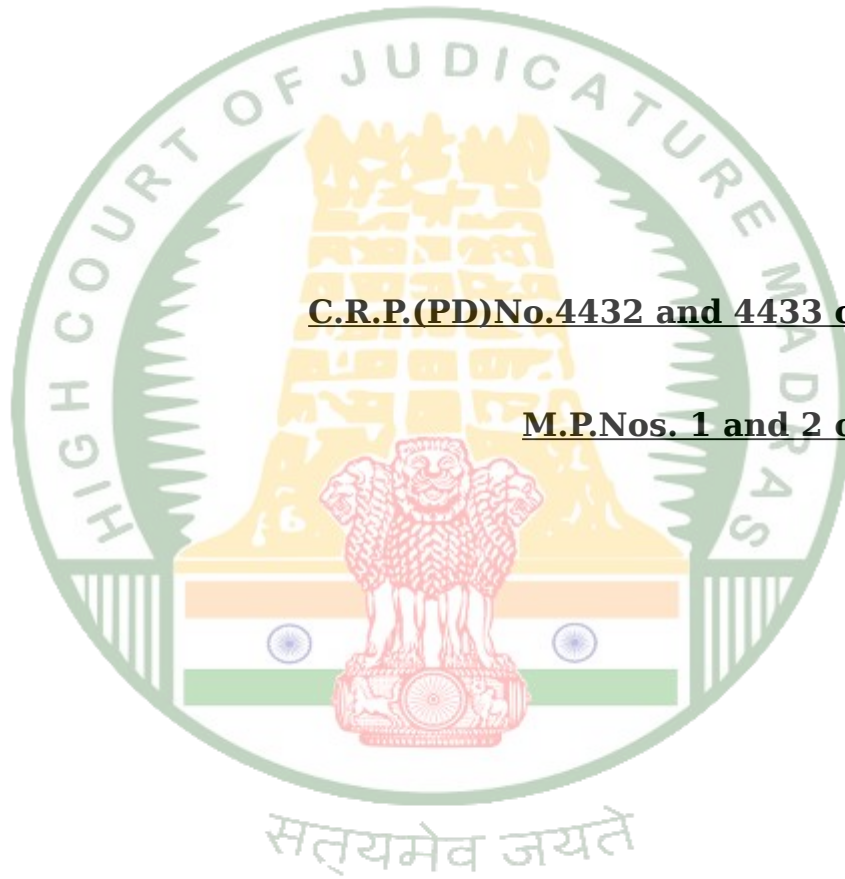
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N.SATHISH KUMAR, J.

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C.R.P.(PD)No.4432 and 4433 of 2012

and

M.P.Nos. 1 and 2 of 2012

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24.06.2019