

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.PD.No.1338 of 2013
and
M.P.No. 1 of 2013

- 1.Dhanalakshmi
- 2.Thulasi
- 3.Rajakumari
- 4.Indhira

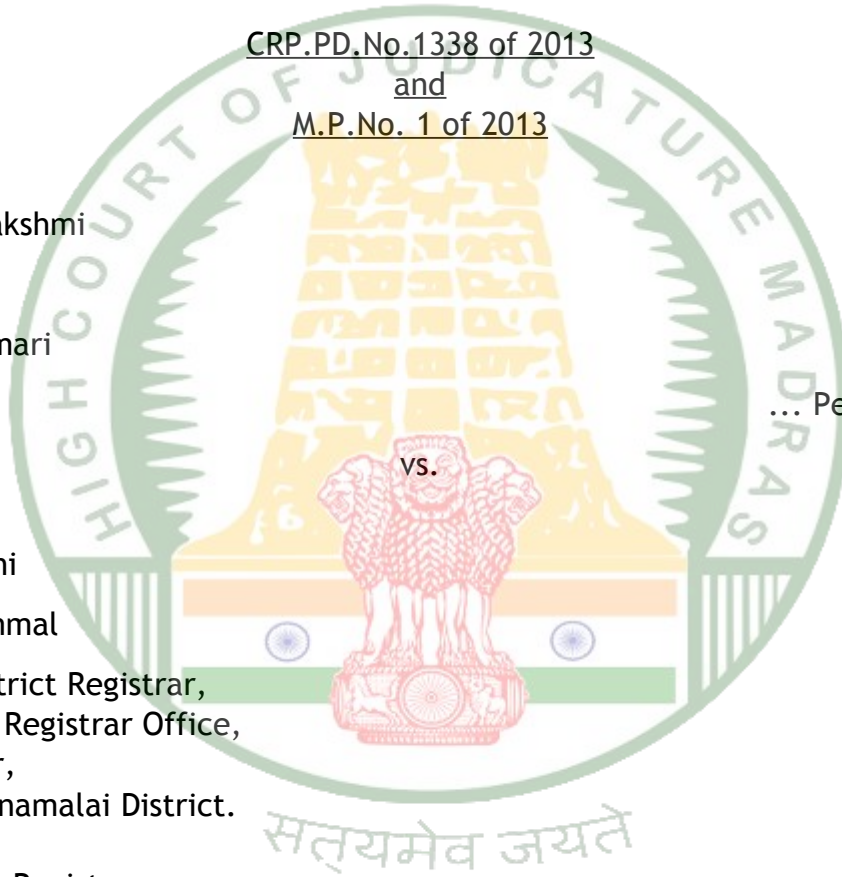
... Petitioners

vs.

- 1.Arulmani
- 2.Kasiyammal
- 3.The District Registrar,
District Registrar Office,
Cheyyar,
Tiruvannamalai District.

- 4.The Sub Registrar,
Sub Registrar Office,
Dusi, Cheyyar Taluk,
Tiruvannamalai District.

...Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 28.11.2012 in IA.No.398 of 2012 in OS.No.194 of 2008 on the file of the Principal District Munsif Court, Cheyyar.

For Petitioners : Mr.P.Mani

For Respondents : Mr.S.Jaganathan for R3 and R4,
Government Advocate

No appearance for R1 and R2

ORDER

The revision petitioners are the plaintiffs in OS.No.194 of 2008 on the file of the Principal District Munsif Court, Cheyyar. They filed the said suit to divide the suit property into five equal shares and to allot four such shares to the plaintiffs and also for a permanent injunction restraining the defendants from alienating the suit properties. The plaintiffs and the first defendant are siblings. The second defendant is the purchaser of some properties from the first defendant. The third and fourth defendants are the District Registrar and the Sub-Registrar, Cheyyar District respectively. The plaintiffs have prayed for a permanent injunction restraining the third and fourth defendants from registering any documents in respect of the suit

property in the original suit. The first defendant remained absent in the main suit and the other defendants filed their respective written statements and all the parties went for trial. Two witnesses were also examined on the side of the plaintiffs.

2. At that stage, the plaintiffs filed a petition in IA.No.398 of 2012 under Order VI Rule 17 of the Code of Civil Procedure praying to include the properties mentioned in the petition on the ground that they came to know about the existence of those properties only recently. The second respondent, the only contesting defendant, filed her counter and the learned Principal District Munsif, Cheyyar after analysing the evidence on record, dismissed the petition in IA.No.398 of 2012, on the ground that the plaintiffs have filed the petition subsequent to the commencement of trial and that they have not also shown sufficient cause for not including the properties at the time of presentation of the plaint in the suit in OS.No.194 of 2008. Aggrieved over the same, the present revision is filed by the plaintiffs.

3. Mr.P.Mani, learned counsel appearing for the plaintiffs

contended that when a specific averment is made in the petition that the plaintiffs came to know about the omission of certain properties only during the cross examination of PW1 and PW2, the learned Principal District Munsif, Cheyyar without considering the same, dismissed the petition mainly on the ground that the petition is filed after the commencement of the trial in OS.No.194 of 2008.

4. No appearance on behalf of the first and second respondents.

5. Mr.S.Jaganathan, learned Government Advocate appearing for the third and fourth respondents contended that as far as the present case is concerned, the third and fourth respondents are only formal parties.

6. As already observed, the first respondent remained absent in the main suit in OS.No.194 of 2008 and was set exparte. It is well settled that the amendment petitions are to be liberally considered and unless any prejudice is shown to be caused to the defendants, the petitions should be allowed. The suit filed by the plaintiffs is a suit for partition and if all the properties belonging to the family are not included, the suit would become

bad for partial partition. When the plaintiffs have specifically contended in their petition that certain properties were omitted to be included in the main suit and that they came to know about that only during the course of cross examination of PW1 and PW2, the trial court ought to have allowed the said petition.

7. Therefore, the fair and decreetal orders passed by the learned Principal District Munsif, Cheyyar is liable to be set aside. Since the suit is of the year 2008, the learned Principal District Munsif Cheyyar is directed to dispose of the suit in OS.No.194 of 2008, within a period of six months from the date of receipt of a copy of this order.

8. With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No

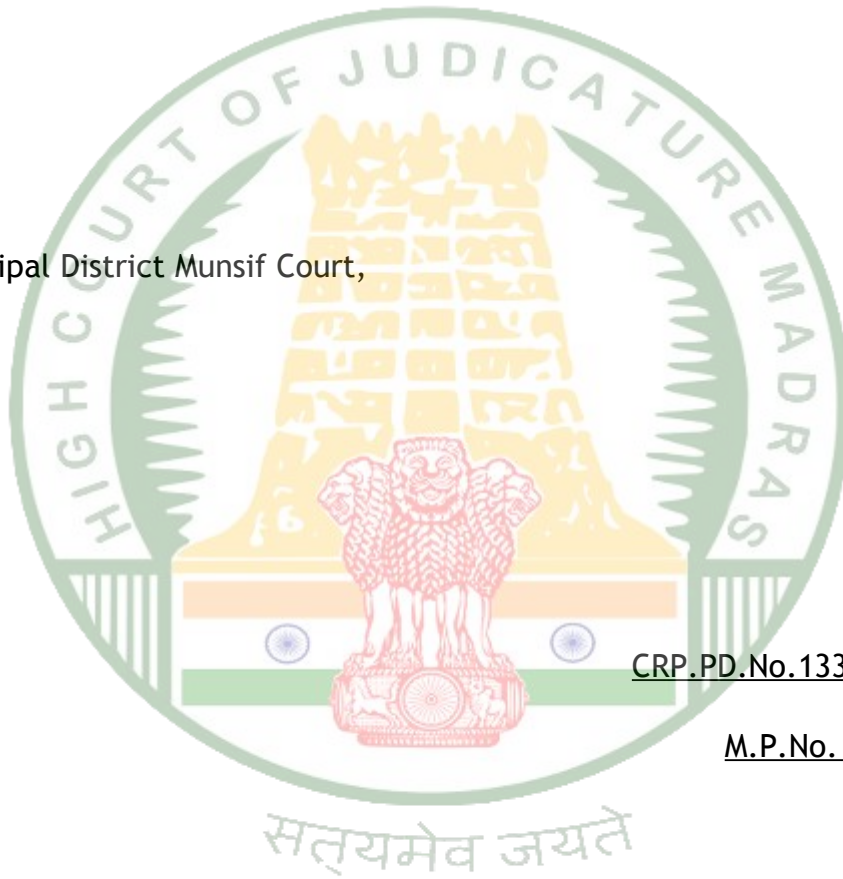
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R.HEMALATHA, J.

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To

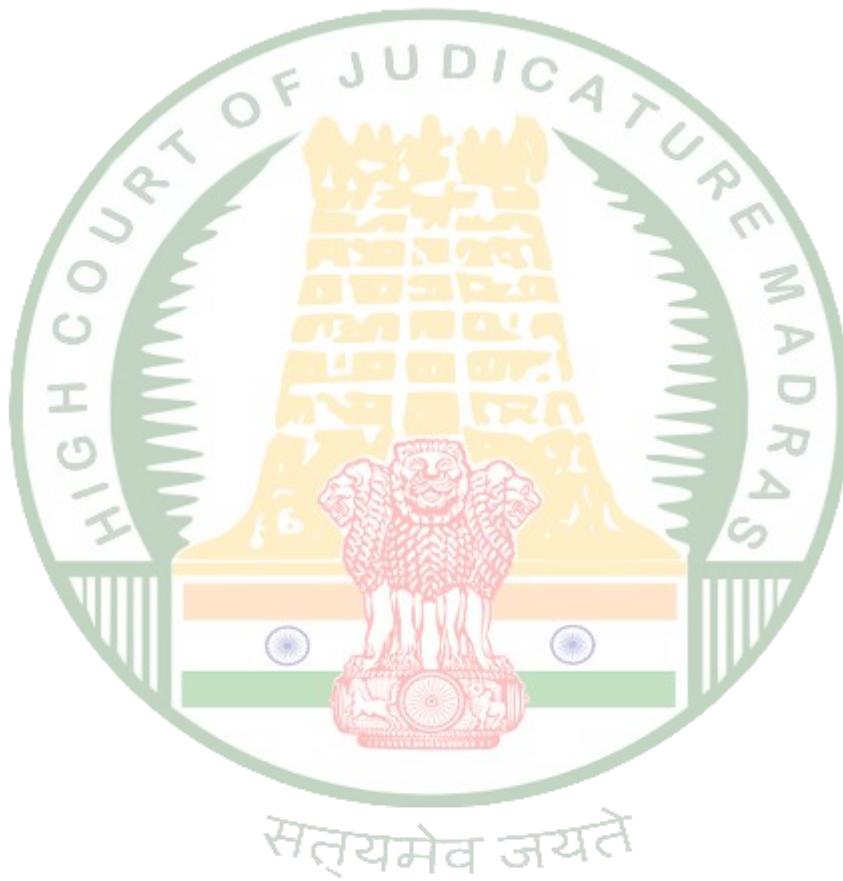
The Principal District Munsif Court,
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