

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.2177 of 2013
and M.P.No.1 of 2013

1.K.Varalakshmi
 2.K.Saraswathi
 3.K.Hemalatha
 4.K.Saiprabha

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Petitioners

versus

1.Somasekara Babu
 2.K.Nageshwara Rao
 3.K.Ammulu
 4.Mahanudu Narasimhan Rao
 Both 3 and 4 are minors and
 represented by natural guardian
 Plot No.198, No.1, Valaiyapathi Street,
 Ganesh Nagar, Selaiyur Post,
 Chennai - 600 073.

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Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.01.2013 made in I.A.No.845 of 2012 in O.S.No.97 of 2011 on the file of the learned District Munsif, Tambaram.

For Petitioners

: Mr.Anthony Ilangovan Raj
 for Mr.G.Justin

For Respondents

: Ms.T.Jayalakshmi
 for M/s.Paul and Paul

ORDER

This Civil Revision Petition has been filed against the order dated 04.01.2013 made in I.A.No.845 of 2012 in O.S.No.97 of 2011 on the file of the learned District Munsif, Tambaram.

2. The Interlocutory Application in I.A.No.845 of 2012 was filed by the revision petitioners, under 6 Rule 17 of the Code of Civil Procedure, seeking an order to amend the plaint by incorporating the prayer as claimed by the revision petitioners herein.

3. The suit has been laid by the daughters of one K.A.Swamy against his brothers, who are defendants 1 and 2, defendants 3 and 4 are the children of the second defendant. The suit property was originally belonged to K.A.Swamy. The suit has been filed to cancel the settlement deed said to have been executed by K.A.Swamy and also for consequential injunction not to transfer the revenue records. When the suit is posted for hearing, the plaintiffs have filed the application to amend the prayer for partition and separate possession of 1/6th share in the suit property. Without considering the same, the trial Court has dismissed the said application.

4. Aggrieved over the above said order dated 04.01.2013, the revision petitioners are before this Court with the present Civil Revision Petition.

5. Heard the learned counsel appearing for the revision petitioners as well as the learned counsel appearing for the respondents.

6. The relationship between the parties are not in dispute. The suit itself originally filed to cancel the settlement deed said to have been executed by the father of the plaintiffs in favour of the defendants 1 and 2 on the ground that they had fraudulently obtained the settlement deed. When the settlement deed is a question, mere including the relief of partition will not change the nature of suit. The question of any entitlement of share will always depend upon the issue framed with regard to the settlement deed. Therefore, this Court is of the view that the amendment will not change the cause of action and in fact, the entire issues will enable the Court to give a finding in all respects.

7. In the result, the Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.845 of 2012 in O.S.No.97 of 2011 dated 04.01.2013 is hereby set aside. The revision petitioners shall take steps to amend the plaint before the trial Court, within a period of two weeks from the date of receipt of a copy of this order and thereafter, the trial Court is directed to dispose of the same within a period of six months. Consequently, connected Miscellaneous Petition is closed. No costs.

13.02.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

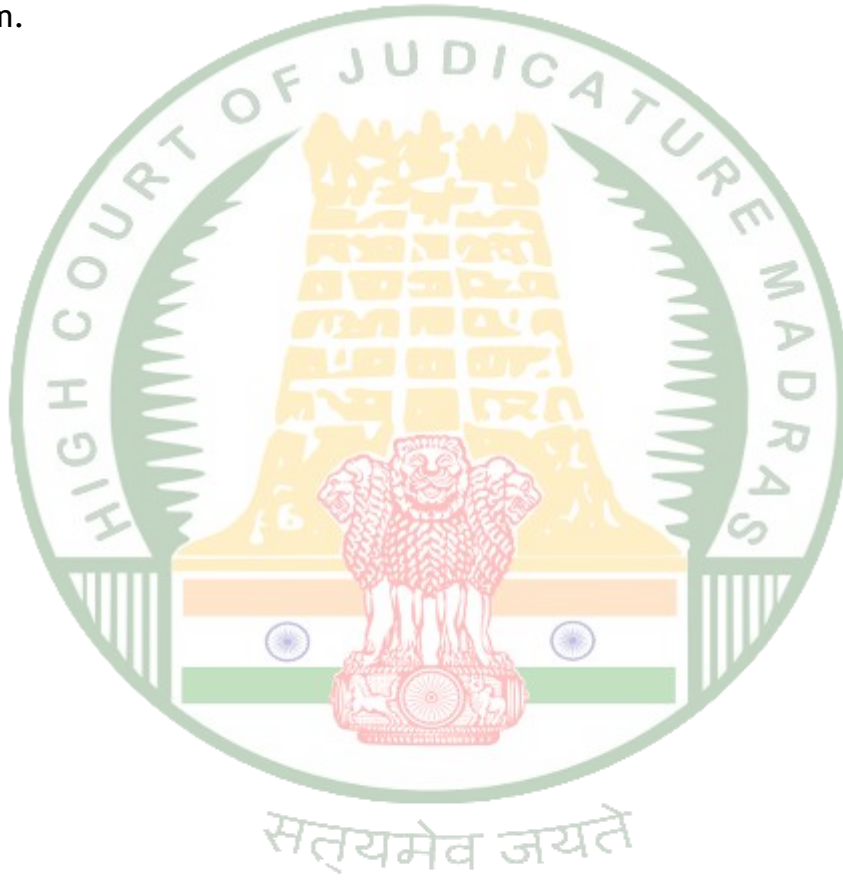
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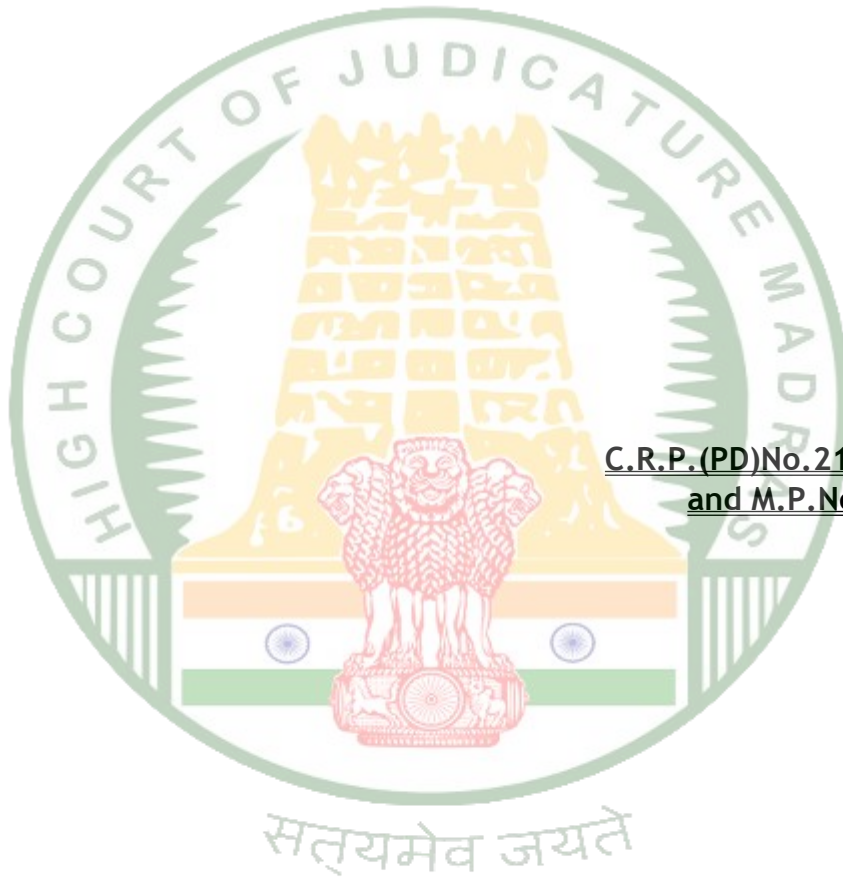
To

The District Munsif,
Tambaram.



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N.SATHISH KUMAR, J.,
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