

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD)No.2230 of 2013 and
M.P.No.1 of 2013

1. Gowri
2. G.Dhanam

... Petitioners

V.

1. D.Venkatachala Gounder
2. R. Janaki
3. V.Balakrishnan
(R-3 Given up in view of the endorsement
made in C.R.P.No.2230/2013)
4. V.Venugopal
5. V. Dhanushkodi

(R-1 died. As per the memo dated 25.09.2019
produced in Court, vide Court order dated 25.09.2019
made in C.R.P.No.2230/2013, R3 to R5 are
recorded as LR's of the deceased R1)

6. M/s. Kalyan Spinning Mills,
Rep. By its Managing Director,
R.Kalyana Sudharm,
No.123-A, Cross Road, Coimbatore
7. R.Kalyana Sundaram

8. T.P. Chnnasamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.02.2013 made in I.A.No.98 of 2012 in O.S.No.1149 of 2010 on the file of the III Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr. A.R. Ravichandran

For Respondents : Mr. V.Sivakumar - for R4
Mr. A. Thiyagarajan – for R6, R7 & R8
R1 – Died (steps taken)
No Appearance – for R2 & R5
R3 Given up (Vide order dt.26.9..2019)

ORDER

Challenging the fair and final order passed in I.A.No.98 of 2012 in O.S.No.1149 of 2010 on the file of the III Additional Judge, Sub Court, Coimbatore, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.1149 of 2010 for partition and for other reliefs. The defendants filed their written

statement and are contesting the suit.

3. Subsequently, the plaintiffs filed an application in I.A.No.98 of 2012 under Order VI, Rule 17 of CPC to amend the plaint by amending the description of the properties and by adding some other properties as item Nos. 2 to 4 and also to declare four documents executed in the years 1972, 2005 and 2006 as null and void.

4. In the affidavit filed in support of the application, the plaintiffs have stated that they got the records of the omitted properties only prior to the filing of the application and that they are the co-sharers of all the properties.

5. The application filed by the plaintiffs was opposed by the defendants stating that the 1st plaintiff has already filed another suit in O.S.No.346 of 2011 on the file of the III Additional Judge, City Civil Court, Coimbatore, for the relief of partition with respect to the other property. Further, the 4th defendant has stated that the properties sought to be included in the suit were already sold to some third parties, however, they were not added as parties in the suit. According to the 4th defendant, the

petitioners' properties were sold in the year 1979, 2003, 2005 and 2006. That apart, the 4th defendant has also stated that the proposed amendment would alter the character of the suit and the relief sought for by way of amendment is barred by limitation.

6. The Trial Court, taking into consideration the case of both the parties, dismissed the application finding that the properties were already sold to third parties and that the petitioners have also filed another suit in O.S.No.346 of 2011.

7. On a perusal of the materials available on record, it could be seen that if the properties are added and the description of the properties are amended, it would change the character of the suit. In the plaint, the plaintiffs have stated that the properties were sold by the 1st defendant to the 7th defendant in the year 1979 and therefore, the prayer to set aside the sale deeds cannot be filed after a lapse of so many years.

8. When the plaintiffs are seeking to amend the prayer by incorporating a prayer to set aside the sale deeds, the said prayer should be within the prescribed period of limitation. That apart, the plaintiffs

have not established that the properties sought to be included are the joint family properties and that it would not change the character of the suit. In the absence of any *prima facie* evidence produced by the plaintiffs, the Trial Court has rightly dismissed the application.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. It is open to the petitioners to file a separate suit with regard to the properties sought to be amended in the application in I. A.No.98 of 2012 in O.S.No.1149 of 2010.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

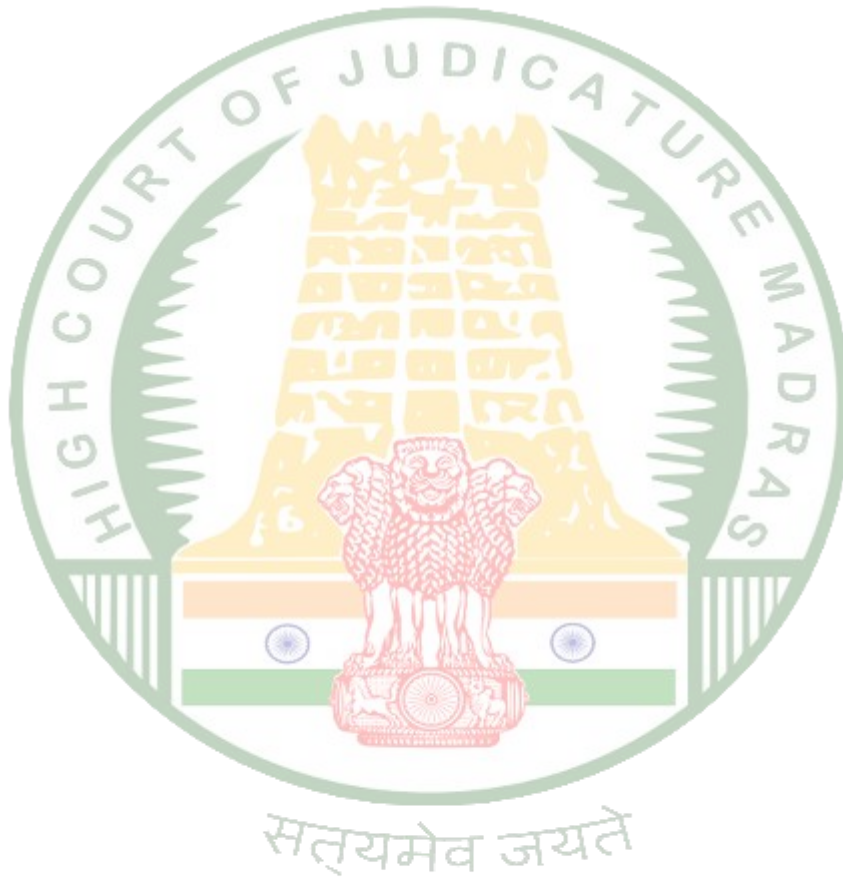
Speaking order / Non Speaking Order

Rj

To

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The III Additional Judge,
Sub Court, Coimbatore,

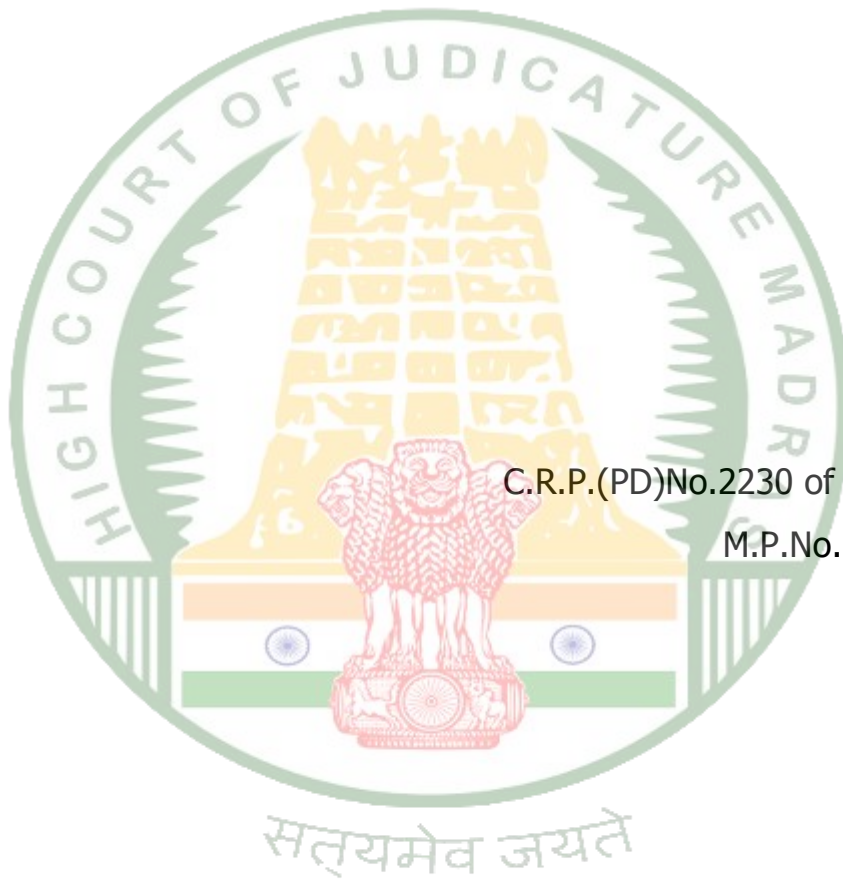


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M.DURAIWAMY, J.

Rj



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