

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD).No.4295 of 2013

L.Susheela

... Petitioner

vs.

E.Subramani

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal orders dated 05.07.2013 in I.A.No.1166 of 2010 in I.A.No.12315 of 2007 in O.S.No.7746 of 2005 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.S.Sivasundaram

For Respondent : No appearance

सत्यमेव जयते

ORDER

The civil revision petitioner is the plaintiff in OS.No.7746 of 2005 on the file of the II Assistant Judge, City Civil Court, Chennai. A preliminary decree for partition was passed in the above suit on 23.02.2007 allotting 3/4 share in 'A' schedule property and 1/4 share in 'B' schedule property to the

plaintiff. Thereafter, the plaintiff filed a petition under Order XX Rule 18 of Civil Procedure Code in IA.No.1166 of 2010 in OS.No.7746 of 2005 on the file of the II Assistant Judge, City Civil Court, Chennai for passing of final decree for partition.

2. An Advocate Commissioner was appointed by the trial court for dividing the suit properties as per the preliminary decree. The learned Advocate Commissioner in his report dated 30.07.2008 had contended that 'A' schedule property is indivisible. Subsequently, the civil revision petitioner / plaintiff filed a petition under Section 3 of the Partition Act, 1893 to grant her leave to buy the 1/4th share in the 'A' schedule property. The respondent / first defendant filed his counter and the learned II Assistant Judge, City Civil Court, Chennai dismissed the application by concluding that the respondent / first defendant cannot be compelled to sell his share to the plaintiff. Aggrieved over the orders passed by the learned II Assistant Judge, City Civil Court, Chennai, the plaintiff has filed the present Civil Revision Petition under Section 115 of Civil Procedure Code.

3. Mr.V.S.Sivasundaram, learned counsel appearing for the civil revision petitioner / plaintiff contended that the civil revision petitioner has

expressed his willingness to purchase 1/4th share in the 'A' Schedule property and the respondent / first defendant filed a memo contending that he is ready to sell his share of the property for a sum of Rs.13,71,000/- (Rupees Thirteen Lakhs Seventy One Thousand only). However, the trial court without considering the same had dismissed the application by concluding that the respondent / first defendant cannot be compelled to sell his share of property. He also relied on the decision in **M.Nandagopal vs. R.Thangarasu** and 21 others reported in 2009 (3) CTC 685 wherein it has been held thus:

"8. When the Court takes a decision to sell the property as provided under Section 2, it would enable any of the shareholders to apply for permission to purchase the property at a valuation, the share or shares of the party requesting for such sale. In such an event, the Court was obliged to value the share and to make an offer to the party at such price duly determined. A conjoint reading of Sections 2 and 3 would show that the right to approach the Court to purchase the property at a value to be fixed by Court under Section 3 arises only in case of a request made by a sharer to sell the property in public sale. Section 3 further provides that in the event of a claim made by two or more shareholders to purchase the

property, the Court shall order sale of the share to the shareholder who offers to pay the highest price, which should be above the valuation determined by the Court.

4. No appearance on behalf of the respondent.

5. It is seen from the records that the respondent / first defendant has filed a memo contending that he is ready to sell the property for a specific sum of rupees and this memo has not been taken into consideration by the learned II Assistant Judge, City Civil Court, Chennai. In fact, there is no reference of the memo in the orders passed by the learned II Assistant Judge, City Civil Court, Chennai. In the facts and circumstance of the present case, the learned II Assistant Judge, City Civil Court, Chennai is directed to reopen IA.No.1166 of 2010 in I.A.No.12315 of 2007 in O.S.No.7746 of 2005 and pass orders after giving sufficient opportunity to both parties. The learned II Assistant Judge, City Civil Court, Chennai is directed to consider the memo filed by the respondent / first defendant and also keep in mind the Judgment in **M.Nandagopal vs. R.Thangarasu and 21 others** reported in **2009 (3) CTC 685** (*cited supra*) before passing orders.

6. With the above observations, this Civil Revision Petition is disposed of. No costs.

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Index : Yes/No

Speaking/Non-speaking order

To

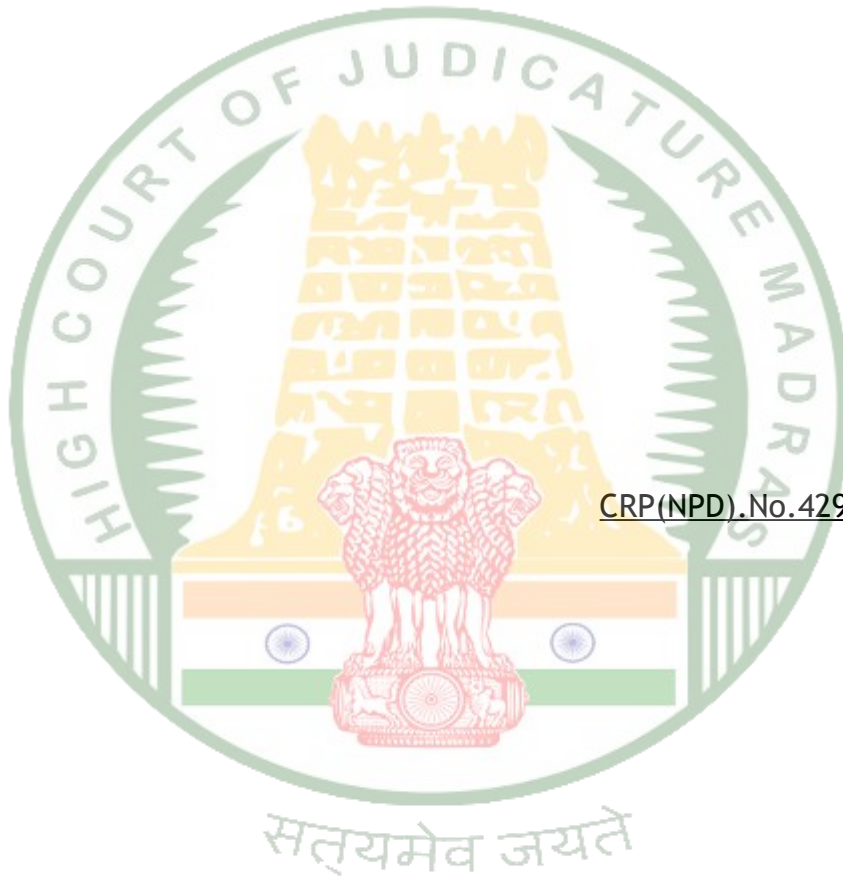
The II Assistant Judge,
City Civil Court,
Chennai.



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R.HEMALATHA, J.

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