

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12th DAY OF JUNE, 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

O.P.No.163 of 2013

In the matter of Administrator-General
Act, 1963 (Act of XXXXV of 1963)

and

In the Matter of Estate of the Deceased
K.S.Ramasamy.

1.R.Sivasubramaniyan,
Advocate,
S/o. Late K.S.Ramasamy,
45, 14th Main Road,
Anna Nagar,
Chennai - 600 040.

(*) 2.S.Hariram, (***)
S/o.R.Sivasubramaniyan,
45, 14th Main Road,
Anna Nagar,
Chennai - 600 040.

(*) **Impleaded as 2nd Petitioner of the
Order of this Hon'ble Court dated 16.09.2014
passed in A.No.5537/2014)**

(***) **The 2nd Petitioner is struck off as per Order dated
12.06.2019 in O.P.No.163 of 2013.**

(**) 3.Arulmigu Akkaraipatti Ponkaliasamman,
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam,
Hindu Religious and
Charitable Endowments Board(HR & CE),
Vengumbur Village,
Erode Taluk.

Represented by
The Executive Officer,
R.Chandiran.

(**) 4.Arulmigu Bhagavathy Amman - Diety,
 Kalvettuppalayam Village,
 Vengumbur Post,
 Unjalur Via,
 Erode District,
 Represented by Devotee,
 Mrs.S.Ramalakshmi.

..Petitioners

(**) Impleaded as 3rd and 4th Petitioners as per Order dated
 28.11.2017 in A.Nos.4749 and 4748 of 2017.

Vs.

1.R.Periasamy,
 S/o.Late K.S.Ramasamy,
 Main Street,
 Kalvettuppalayam,
 Vengumbur Post,
 Unjalur Via,
 Erode T.K.

2.G.Guhan,
 S/o.Late Dr.Ganapathy Subramanian,
 324, Sidharth Natura,
 40, Vadakkupattu Main road,
 Medavakkam,
 Chennai - 600 100.

3.Mrs.Hemalatha Mutukumar,
 W/o. V.Muthukumar,
 56, Ramanujam Nagar,
 Karur - 2.

4.Mrs.Karupyammal,
 W/o.Late K.S.Ramasamy,
 27.A, Main Street,
 Kalvettuppalayam,
 Vengumbur Post,
 Unjalur Via,
 Erode T.K.

5.Canara Bank,
 Thamaripalayam Branch,
 Karur-Erode Road,
 Thamaripalayam,
 Erode T.K.,
 Represented by its

6.State Bank of India,
Kodumudi Branch,
Erode T.K.,
Represented by its
Manager.

7.The District Collector,
Erode Periyar District,
Office of the District Collector,
Erode.

8.The District Superintendent of Police,
Erode Periyar District,
Office of the District Superintendent of Police,
Erode-1.

...Respondents.

Original Petition praying that this Hon'ble Court be pleased to direct The Administrator-General of Tamil Nadu under Section 10(1) of the Administrators General Act, 1963 to collect and take possession of the assets of the estate of K.S.Ramasamy (since deceased) situated within the State of Tamil Nadu and to hold, deposit and realize, sell or invest the same according to the provisions of the said Act and with the further direction under Section 10(2) of the Act to file and prosecute such suits or take such proceedings as the Administrator-General may deem appropriate for the recovery of any assets, bank deposits, money, movable or immovable of the estate of the deceased.

This Original Petition coming on this day before this Court for hearing, the Court made the following order:-

Mr.M.Radhakrishnan, learned counsel appearing for the second petitioner would submit that he has a right to argue.

The second petitioner is the son of the first petitioner.

2. The property that is involved in this Original Petition is the property that was allotted to Ramasamy Gounder at a partition, that had taken place between him and his sons namely, the first petitioner and the first respondent. Therefore, the property in the hands of Ramasamy Gounder is the self acquired property and it devolves under Section 8 of the Hindu Succession Act and not by survivorship under Section 6 of the said Act. This position of law has been explained by a Full Bench of this Court in **The Additional Commissioner Income Tax v. P.L.Karuppan Chettiar**, reported in **AIR 1979 Mad (1)**. The said judgment of the Full Bench of this Court has been approved by the Hon'ble Supreme Court in **The Commissioner of Wealth Tax v. Chander Sen**, reported in **1986 (3) SCC 567**.

3. As per the law laid down by the Full Bench of this Court, approved by the Hon'ble Supreme Court a Son's Son does not get a right by birth to the property which was allotted to the grandfather at a partition that had taken place between his father and his grandfather. Therefore the second petitioner has no right over the property particularly during the lifetime of the first petitioner.

4. Hence I find that the second petitioner is neither a necessary nor a proper party to this petition, since he has no right in presenting over the property. In view of the Law

declared by the Hon'ble Supreme Court, the name of the second petitioner, who has been improperly joined in the petition is struck off from the array of parties invoking the power under Order I Rule 10(2) of the Code of Civil Procedure. Therefore, Mr.M.Radhakrishnan, learned counsel is precluded from advancing arguments as the counsel for the second petitioner.

Sd/-R.S.M.J

12/06/2019

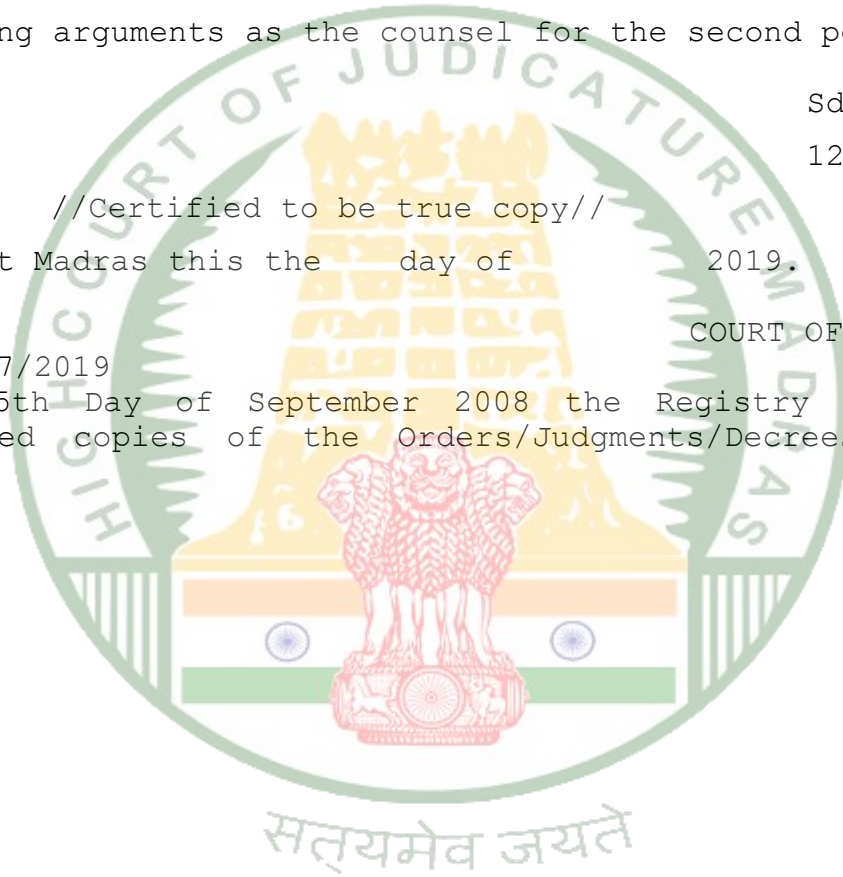
//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

jj 30/07/2019

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