

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM

THE HONOURABLE **MR. JUSTICE C. SARAVANAN**

C.R.P. (PD).Nos.1901 & 1902 of 2014

S.Manickam

... Petitioner/Defendant

Vs.

1.Minor Naveen

2.Minor Kamalraju

3.Minor Yasoda

... Respondents/plaintiffs in both C.R.Ps

4.Sakthivel

... Fourth Respondent/Proposed party in
C.R.P.No.1902 of 2014

Prayer in C.R.P (PD).No.1901 of 2014: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.11.2011 made in I.A.No.563 of 2011 in I.A.No.849 of 2010 in O.S.No.43 of 2002 on the file of the Principal District Munsif Court, Salem.

Prayer in C.R.P (PD).No.1902 of 2014: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and

decreetal order dated 16.11.2011 made in I.A.No.564 of 2011 in I.A.No.402 of 2011 in O.S.No.43 of 2002 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.V.R.Rajasekaran
For Respondents : No appearance

COMMON ORDER

1. By this order both the civil revision petitions are being disposed.
2. The petitioner/defendant has filed C.R.P.No.1901 of 2014, against the fair and decreetal order in I.A.No.563 of 2011 in I.A.No.849 of 2010 in O.S.No.43 of 2002 dated 16.11.2011 on the file of the Court of Principal District Munsif, Salem and prays to set aside the same.
3. The petitioner/defendant has also filed C.R.P.No.1902 of 2014, against the fair and decreetal order in I.A.No.564 of 2011 in I.A.No.402 of 2011 in I.A.No.849 of 2010 in O.S.No.43 of 2002 dated 16.11.2011 on the file of the Court of Principal District Munsif, Salem and prays to set aside the same.

4. Despite notice to the respondents No.1 to 3/plaintiffs there is no representation on their behalf. Some of them may have attained majority during the pendency of the present proceedings.

5. The petitioner/defendant is the father of the respondents No.1 to 3/plaintiffs. They were minors at the time of filing of O.S.No.43 of 2002. The suit was filed for partition of the suit property. A preliminary decree was passed by the Court on 19.07.2002 in respect of 33 cents of land.

6. It is stated by the petitioner/defendant who is the father of the respondents No.1 to 3/plaintiffs that 17 cents out of 33 cents of land was sold to a third party and therefore the balance that was physically available for being partitioned was only 16 cents. The sale according to him was for the benefit of the respondents No.1 to 3/plaintiffs who were then minors.

7. The petitioner/defendant filed I.A.No.563 of 2011 under Section

151 of C.P.C., to reopen the order passed in I.A.No.849 of 2010 I.A.No.564 of 2011 was filed to appoint an Advocate Commissioner under Order 26 Rule 9 of C.P.C. Both the applications were dismissed.

8. The learned counsel for the petitioner submits that the sale was made for the benefit of the respondents No.1 to 3/plaintiffs who were minors with a consent of his wife. However, he is not able to confirm whether any permission was obtained from the Court before sale was effected.

9. Be that as it may, a preliminary decree has been passed on 10.12.2010 in I.A.No.849 of 2010 and an Advocate Commissioner has been already appointed to divide the property. The Advocate Commissioner has also filed a report dated 04.03.2011. The petitioner/defendant has thereafter filed his objections on 21.03.2011.

10. The petitioner/defendant submits that he has further sold another part of land measuring 1882 ½ Sq.ft out of the remaining 16

cents of land on 10.12.2010.

11. Meanwhile, the petitioner/defendant had filed another interlocutory application in I.A.No.402 of 2011, to implead K.Sakthivel who purchased the land from him who has been assigned as fourth respondent herein. The petitioner/defendant thereafter filed two interlocutory applications in I.A.No.563 and 564 of 2011 in I.A.No.849 of 2010 and I.A.No.402 of 2011 respectively.

12. Both the interlocutory applications were dismissed by the Court vide the impugned order on the ground that these interlocutory applications were filed belatedly and with a view to delay in passing of final decree in the partition suit. It has been observed that though the petitioner/defendant had filed an objection to the Advocate Commissioner report dated 04.03.2011, these civil revision petitions have been filed only in the year 2014 with a delay which was condoned.

13. Prima facie it appears that these proceedings have been

orchestrated to delay the passing of Final Decree. The preliminary decree was passed in respect of 33 cents of land pursuant to which an Advocate Commissioner was appointed to inspect and file a report in I.A.No.849 of 2010. A report also has been furnished by the Advocate Commissioner thereafter.

14. The petitioner/defendant who is the father of the respondent Nos.1 to 3/plaintiffs had earlier sold 17 cents of land to a third party and thereafter another 1882 ½ Sq.ft of land out of remaining 16 cents of land on 10.12.2010 during the pendency of the suit.

15. I do not find any merits in these applications. These applications have been rightly rejected by the Court below and the petitioner/defendant has managing to derail and delay the passing of the final decree in a suit which was filed as early as in the year 2002.

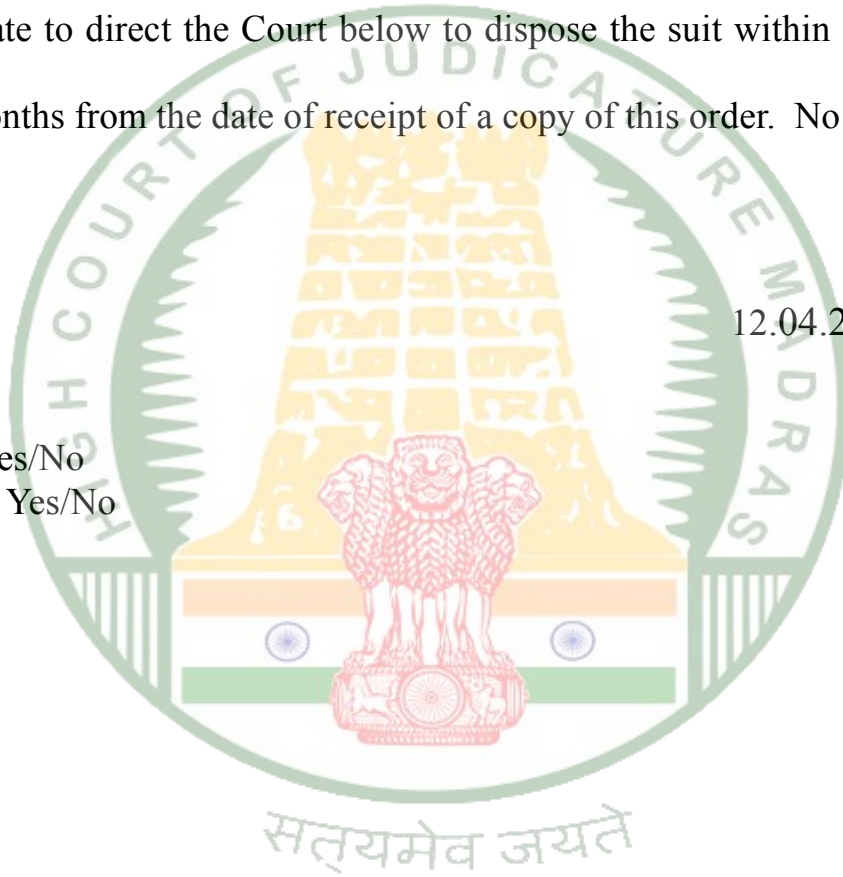
16. Hence, I am of the view that the revision petitions filed by the petitioner are devoid of merits and hence they are liable to be dismissed.

Accordingly, these Civil Revision Petitions are dismissed.

17. Since the suit is of the year 2002, this Court deem it appropriate to direct the Court below to dispose the suit within a period of six months from the date of receipt of a copy of this order. No Costs.

12.04.2019

Index : Yes/No
Internet : Yes/No
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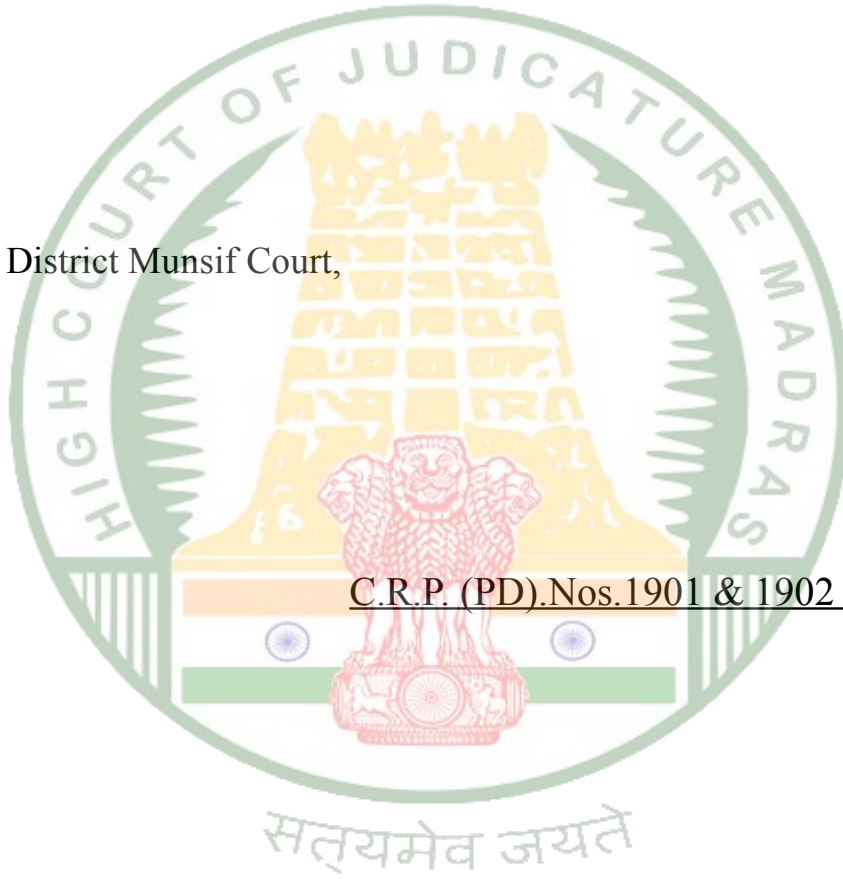
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C. SARAVANAN, J.

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To

Principal District Munsif Court,
Salem.



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