

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.02.2019
Pronounced On	26.02.2019

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

**C.R.P.(PD).Nos.2632 & 2633 of 2014
and
M.P.Nos.1 & 1 of 2014**

1.Dhanalakshmi

2.Padmavathy

3.Saroja

... Petitioners
in both C.R.Ps.

Vs.

1.Sakthivel

2.Muthuvel

... Respondents
in both C.R.Ps.

Prayer in C.R.P.(PD)No.2632 of 2014: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 20.02.2014 made in I.A.No.56 of 2012 in A.S.No.27 of 2011 on the file of the Subordinate Judge, Panrutti.

Prayer in C.R.P.(PD)No.2633 of 2014: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 20.02.2014 made in I.A.No.57 of 2012 in A.S.No.26 of 2011 on the file of the Subordinate Judge, Panrutti.

For Petitioners : Mr.Vedavallikumar in both C.R.Ps.

For Respondents : Mrs.Hema Sampath, Senior Counsel
for Ms.Meenal for R2 in both C.R.Ps.

R1- No appearance in both C.R.Ps.

COMMON ORDER

Petitioners have filed the present Civil Revision Petition against the fair and decreetal order in I.A.Nos.56 & 57 of 2012 in A.S.Nos.26 & 27 of 2011.

2.By the impugned fair and decreetal orders, the Lower Appellate Court has dismissed the said I.As filed by the petitioners under Order 1 Rule 10 of CPC to implead themselves as respondents in the respective Appeals filed by the first respondent.

3.Originally the second respondent herein had filed O.S.No.257

of 2007 against the first respondent before the District Munsif, Panrutti.

4.The first respondent had also filed a seperate suit in O.S.No.317 of 2007. The trial was conducted jointly in both these suits. Ultimately, the suit filed by the first respondent vide O.S.No.317 of 2007 was dismissed while O.S.No.257 of 2007 filed by the second respondent was decreed.

5.Aggrieved by the judgment and decree in the aforesaid suits, the first respondent herein has preferred appeals in A.S.No.26 & 27 of 2011 before the Subordinate Judge at Panrutti. The petitioners herein are the mother and two sisters of the first respondent, who was unsuccessful in the respective suits at whose behest the respective appeals were filed.

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6.In the two suits filed by the respondents herein, the Court had concluded that the property originally belonged to one Muthukannu Kounder. After his death, the property devolved on his two sons Ranganatha Kounder and Radha Kounder who effected oral partition between themselves and therefore the second respondent was having

exclusive possession over the lands and the suit schedule property in O.S.No.257 of 2007. The petitioners and the first respondent are the legal heirs of Late Radha Kounder while second respondent is the son of the Late Ranganatha Kounder.

7.After the filing of the applications to implead in the appellate stage, the petitioners herein have also filed O.S.No.190 of 2012 before the Principal District Court wherein they have made the respondents herein as a party defendants who are the descendants of Late Muthukannu Kounder through Late Ranga Kounder and Late Radha Kounder.

8.In the said suit, they have sought to partition several properties including properties at serial Nos.17,18,19 in Schedule A, in respect of which the suit has been already decreed in O.S.No.257 of 2007 in favour of the second respondent and dismissed against the first respondent.

9.The learned Senior Counsel Mr.Hema Sampath, appearing for the second respondent opposed the Civil Revision Petition saying that entire proceeding was a collusive proceeding and it cannot be

countenanced that persons belonging to the same family were unaware of the proceedings. The attempt of the petitioners are only to prolong the proceedings in the appeal which has been filed by the first respondent. The learned Senior Counsel submitted that there is no justification of entertaining the present Civil Revision Petitions.

10.The learned Senior Counsel for the second respondent further submitted that even if the petitioners were not parties in the respective suits, they have nevertheless filed O.S.No.190 of 2012 for partition, and therefore, even if preliminary decree is passed in the said suit, equity can be worked out at the time of passing of final decree and therefore there would be no prejudice to the petitioner.

11.Per contra, the learned counsel for the petitioners would submit that the relief in O.S.No.257 of 2017 was vide as the title has been declared in favour of the second respondent and therefore it would come in the way of partitioning the property at serial Nos.17,18 and 19.

12.The fact that the respective suits of the year 2007, were filed without making the petitioners as defendants is not in dispute. Therefore, the findings of the Lower Court there that there was an oral partition between the Radha Kounder and Ranganatha Kounder during their life time can neither be binding on the petitioner nor a justifiable reason to dismiss the application filed to implead themselves as respondents in the respective Appeal Suits.

13.However, considering the fact that the petitioners have filed a composite suit vide O.S.No.190 of 2017 before the Principal District Judge, Cuddalore for partition all properties including the properties covered by the suit decreed in favour of the second respondent in O.S.No.257 of 2007 by the District Munsif Court, Panrutti, there was no merits in the respective I.As to implead except to delay the proceedings.

14.The petitioners have embarked on a mission to establish their rights in O.S.No.190 of 2012 independently. In case, the Court there concludes that the petitioners also have rights over the properties covered by the properties which were the subject matter of O.S.No.257 of 2007, appropriate equity can be worked out one way or the other at the time of passing of final decree.

15.It is made clear that the observation and findings in O.S.No.257 of 2007 and O.S.No.317 of 2007 are not binding on the petitioners fully were not parties to the respective proceeding.

16.Consequently, the respective Civil Revision Petitions are dismissed while preserving the rights of the petitioners to establish their rights over all the properties specified in O.S.No.190 of 2012 before the Principal District Judge, Cuddalore.

17.Since, the said suit is of the year 2012, the petitioners may place a copy of this order before Principal District Judge, Cuddalore, who shall endeavour to bring a finality to the said proceeding within a period of one year from the date of receipt of a copy of this order.

18.The learned Sub Judge before whom the respective Appeals are pending may await for the outcome of the proceedings in the O.S.No.190 of 2012 before proceeding further as it may have a bearing on the said proceedings.

19.The second respondent shall maintain status quo in respect of properties which has been decreed in the his favour in O.S.No.257 of 2007 till the disposal of O.S.No.190 of 2012 before the Principal District Judge, Cuddalore.

20.The respective Civil Revision Petitions thus stand dismissed with above observations. Consequently, connected Miscellaneous Petitions are closed. No costs.

26.02.2019

Index :Yes/No
Internet :Yes/No

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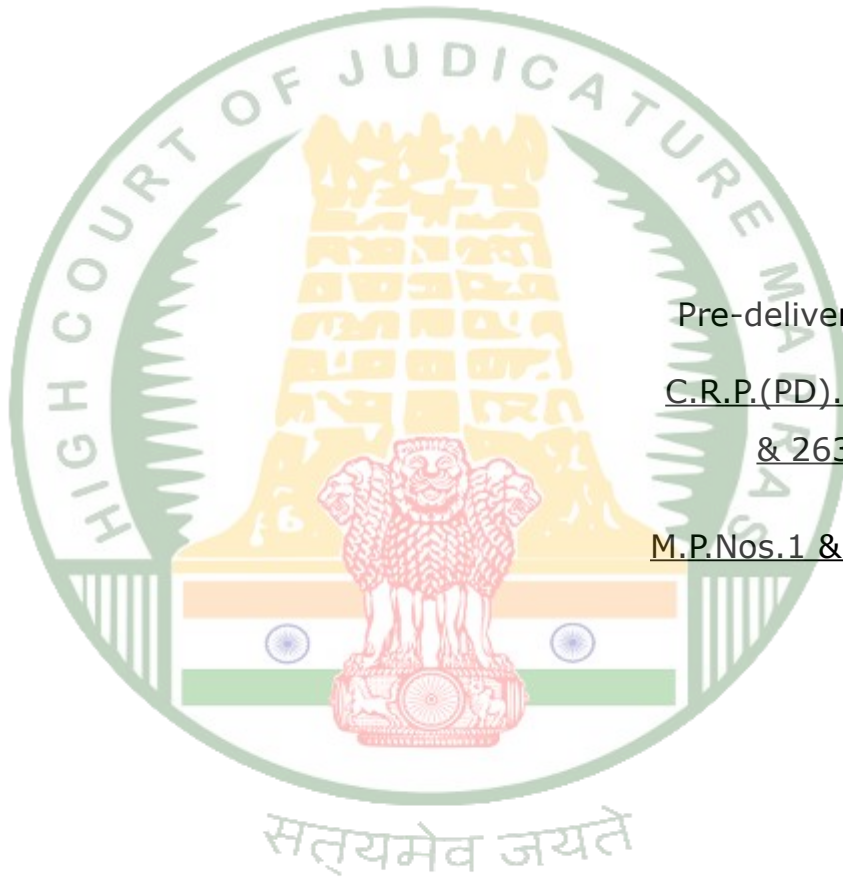
To

The Subordinate Judge,
Panrutti.

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C.SARAVANAN, J.

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Pre-delivery order in
C.R.P.(PD).Nos.2632
& 2633 of 2014
and
M.P.Nos.1 & 1 of 2014

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