

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.08.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD)No.4622 of 2014
and M.P.No.1 of 2014

RCN.Shanmugavadivel
Rep. by P.A. Holder Mr.S.V.Shanmugam,
4/7 Part, Soundararajan Layout,
Pillaiyar Koil Street,
State Bank Colony,
Dharapuram Road,
Udumalpet.

...Petitioner

vs.

1.Smt.Sathyabama

2.Bakkiyalakshmi

3.R.Pangajavalli

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal orders dt. 1.8.2014 in I.A.No.143 of 2014 in I.A.No.1020 of 2013 in O.S.No.91 of 2013 on the file of the Principal District Judge, Tiruppur.

For Petitioner : Mr.C.R.Prasanan

For Respondents : Mr.B.Ramamoorthy for R1 to R3

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 01.08.2014, passed by the learned Principal District Judge, Tiruppur, in I.A.No.143 of 2014 in I.A.No.1020 of 2013 in O.S.No.91 of 2013.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the second defendant in the suit O.S.No.91 of 2013 pending on the file of the learned Principal District Judge, Tiruppur. The said suit was filed by the respondents against the defendants for partition to divide the suit A & B schedule properties into 8 equal shares by metes and bounds allotting three such shares to the respondents and on failure to divide the suit A & B schedule properties through Court Commissioner in equal shares and allot three such shares to the respondents/plaintiffs and put them in possession of the same. I.A.No.1020 of 2013 was filed by the petitioner, who is the second defendant in the suit to reject the plaint filed in O.S.No.91 of 2013 under Order 7 Rule 11 CPC on the grounds of (a) resjudicata (b) abuse of process of Court and (c)estoppel.

3.It is the case of the petitioner that even during the lifetime of his father late R.C.Natarajan, by virtue of family arrangement, the suit schedule properties and other properties were partitioned and hence, the respondents/plaintiffs cannot seek for partition of the same property once again. Further, according to the petitioner, the family arrangement between late R.C.Natarajan and his children was also accepted by R.C.Natarajan in his pleadings filed in O.S.No.460 of 1994 pending on the file of the Subordinate Court, Udumalpet. With these averments, the application under Order 7 Rule 11 CPC was filed by the petitioner.

4.Pending adjudication of I.A.No.1020 of 2013, another interlocutory application, namely, I.A.No.143 of 2014 was filed by the petitioner under Rule 75 of the Civil Rules of Practice, seeking for direction to direct the District Collector of Tirupur, to call for production of the entire records relating to the various proceedings under S.R.No.1108, 1107, 1202, under M.T.R.No.102/1994 A5, dated 24.08.1994 vide proceedings of the Tahsildar, Udumalpet, No.8A/34/1404 dated 22.09.1994 and also sought for a direction to the Tahsildar, Udumalpet, to give evidence relating to the aforesaid

records.

5.It is his case that even during the lifetime of R.C.Natarajan, the properties were divided between his sons by way of family arrangement and this being the case, according to him, the sisters namely, the respondents/plaintiffs herein do not have any right over the suit schedule property. A counter statement was filed by the respondents/plaintiffs in I.A.No.143 of 2014 in I.A.No.1020 of 2013 in O.S.No.91 of 2013 disputing the existence of any family arrangement. Further, they have stated that only to protract the proceedings, I.A.No.143 of 2014 has been filed by the petitioner.

6.By order dated 01.08.2014, I.A.No.143 of 2014 in I.A.No.1020 of 2013 in O.S.No.91 of 2013 was dismissed by the District Court, Tiruppur.

7.Aggrieved by the same, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

8.Heard Mr.C.R.Prasanan, learned counsel for the petitioner and Mr.B.Ramamoorthy, learned counsel for the respondents.

9. Admittedly, I.A.No.143 of 2014 has been filed only in the rejection of plaint application filed by the petitioner in I.A.No.1020 of 2013. The rejection of plaint application has been filed by the petitioner under Order 7 Rule 11 CPC on the grounds of (a) resjudicata (b) abuse of process of Court and (c) estoppel.

10. It is his case that there was already a family arrangement entered into between family members even when his father R.C.Natarajan was alive and he was also a party to the family arrangement. But, it is the categorical stand as seen from the plaint averments in O.S.No.91 of 2013 that R.C.Natarajan died intestate on 29.06.2002 leaving behind the respondents/ plaintiffs as well as the defendants in the suit as his legal heirs.

11. The application filed under Rule 75 of the Civil Rules of Practice seeks for a direction to the District Collector, to produce certain records sought for by the petitioner and give evidence regarding the same. The said application has been admittedly, filed by the petitioner only in I.A.No.1020 of 2013, which has been filed by the petitioner under Order 7 Rule 11 CPC. The trial Court has

rejected the application on the ground that such an application is not maintainable as it has been filed in an application filed under Order 7 Rule 11 CPC.

12.This Court does not find any infirmity in the reasoning given by the trial Court for rejection of the application I.A.No.143 of 2014 filed under Rule 75 of the Civil Rules of Practice.

13.In the result, there is no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. However, the petitioner is granted liberty to file a similar application in the suit as in the case of I.A.No.143 of 2014 under Rule 75 Civil Rules of Practice. Since I.A.No.1020 of 2013 filed under Order 7 Rule 11 CPC, is still pending on the file of the District Court, a direction is given to the trial Court to dispose of I.A.No.1020 of 2013 filed by the petitioner under Order 7 Rule 11 CPC, within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

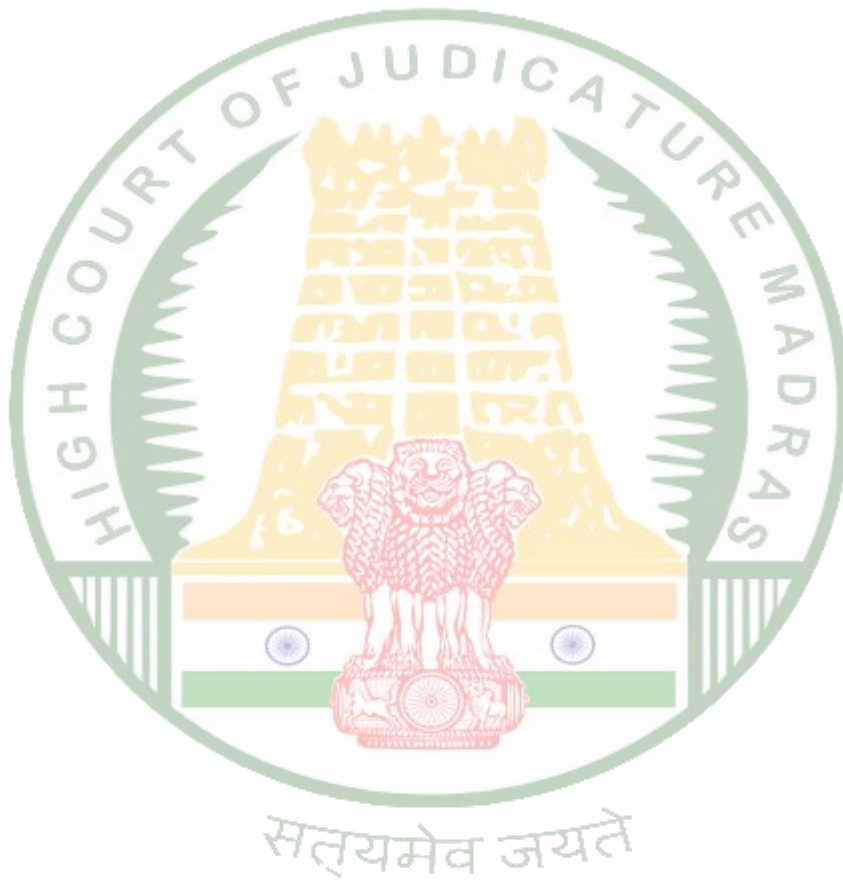
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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order

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To

The Principal District Judge, Tiruppur.

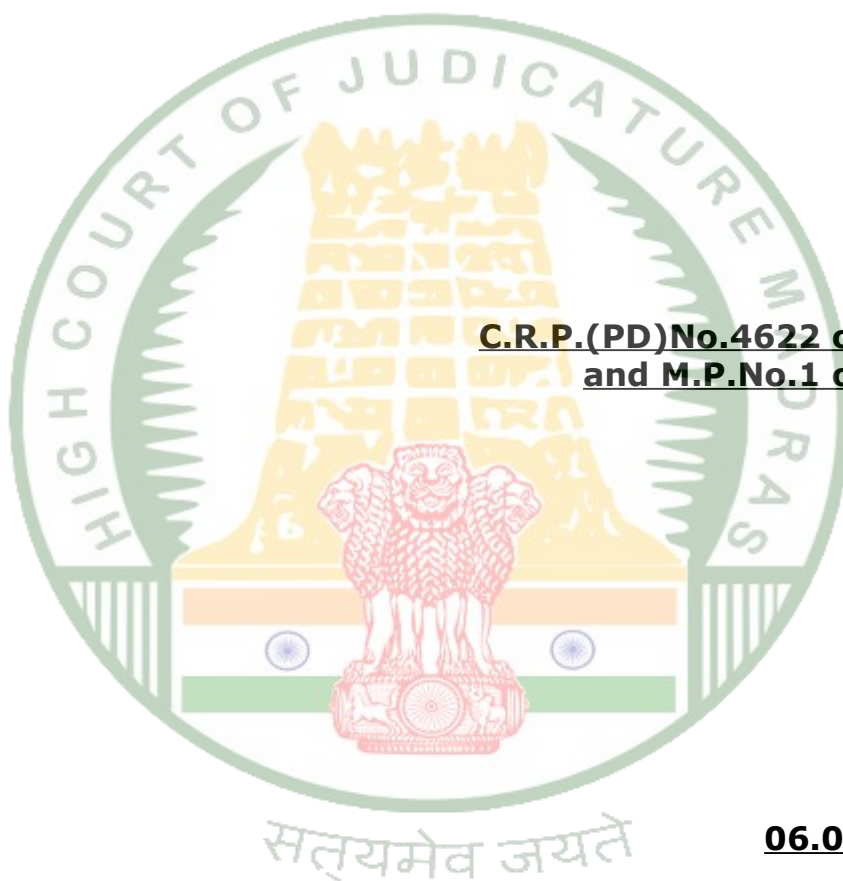


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ABDUL QUDDHOSE, J.

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