

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.No.3762 of 2019 and
C.M.P.No.24743 of 2019

V.Rajeswari

... Petitioner

Vs.

1.G.Annapoorani
2.Kasturi
3.Aravindha Lochani

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the learned XVIII Additional City Civil Judge, Chennai dated 05.07.2019 in I.A.No.2 of 2019 in O.S.No.5789 of 2015.

For Petitioner : Mr.L.Thiyagaiya

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.2 of 2019 in O.S.No.5789 of 2015 on the file of the learned XVIII Additional Judge, City Civil Court, Chennai, by order dated 05.07.2019.

2.Before the trial Court, the respondents/plaintiffs filed a suit for partition against the defendant/revision petitioner, wherein it is the

case of the defendant/revision petitioner that, the father of the defendant and the plaintiffs viz., Karthikeyan had five children, out of the five, three children are the plaintiffs in the suit, another one is the defendant/revision petitioner, apart from these four children, one more son viz., Balasubramanian is there. He is also one of the legal representatives of M.C.Karthikeyan and without impleading him as one of the party defendant in the suit, since the partition suit has been filed, the suit should be rejected on the ground of non-joinder of necessary party and that issue has to be primarily decided, requiring the same I.A.No.2 of 2019 was filed by the defendant/revision petitioner and the same since has been dismissed by the impugned order, against which, the present revision has been filed.

3.Heard Mr.L.Thiyagaiya, learned counsel appearing for the revision petitioner, who would submit that, there is one brother called Balasubramanian, who is also one of the son of late M.C.Karthikeyan, so he is also entitled for the estate of M.C.Karthikeyan and if the suit should be filed by the three children, that suit should have been filed against the revision petitioner as well as the another brother Balasubramanian, without impleading him, if the suit is proceeded, it is

hit by the principle of non-joinder of necessary party. Therefore, in order to decide the same, when the said application was filed, it was rejected by the trial Court through the impugned order, therefore, the said order is liable to be interfered with.

4.I have considered the said submission made by the learned counsel appearing for the revision petitioner and I have gone through the materials placed before this Court.

5.Before the trial Court, it was the stand taken by the respondents/plaintiffs that, even though Balasubramanian is one of the son of M.C.Karthikeyan and the suit has been filed for partition, he had not been impleaded as a party, because the said Balasubramanian disappeared 18 years back and even though he got married, whether he is alive or not, is not known as either him or his family members are nowhere residing and therefore, the said Balasubramanian has not been impleaded as the party defendant in the suit. Having accepted the said plea, the trial Court rejected the application filed by the present revision petitioner/defendant.

6.In this context, when specifically asked whether the present revision petitioner/defendant know about the disappeared brother Balasubramanian, the learned counsel would submit that, absolutely there is no clue about his whereabouts or whether he is living or not.

7.Since long years he disappeared, it can be presumed that, there can be a chance of civil death for the said brother. Assuming that, the said brother in future may come and claim his share, expecting that eventuality, now property cannot be partitioned among all the five including the disappeared brother, who, in the eye of law, is no more.

8.If at all the partition suit is decreed and shares allotted to the available parties and in that case, if ultimately the said Balasubramanian also come in later year, he can pursue his remedy in the manner known to law and for the said purpose, the present suit cannot be rejected for partition. Therefore, the prayer sought for by the revision petitioner/defendant has been rightly rejected by the trial Court. Hence, this Court feels that, the said order does not warrant any interference from this Court.

9.In that view of the matter, this Court is not inclined to entertain this revision, accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

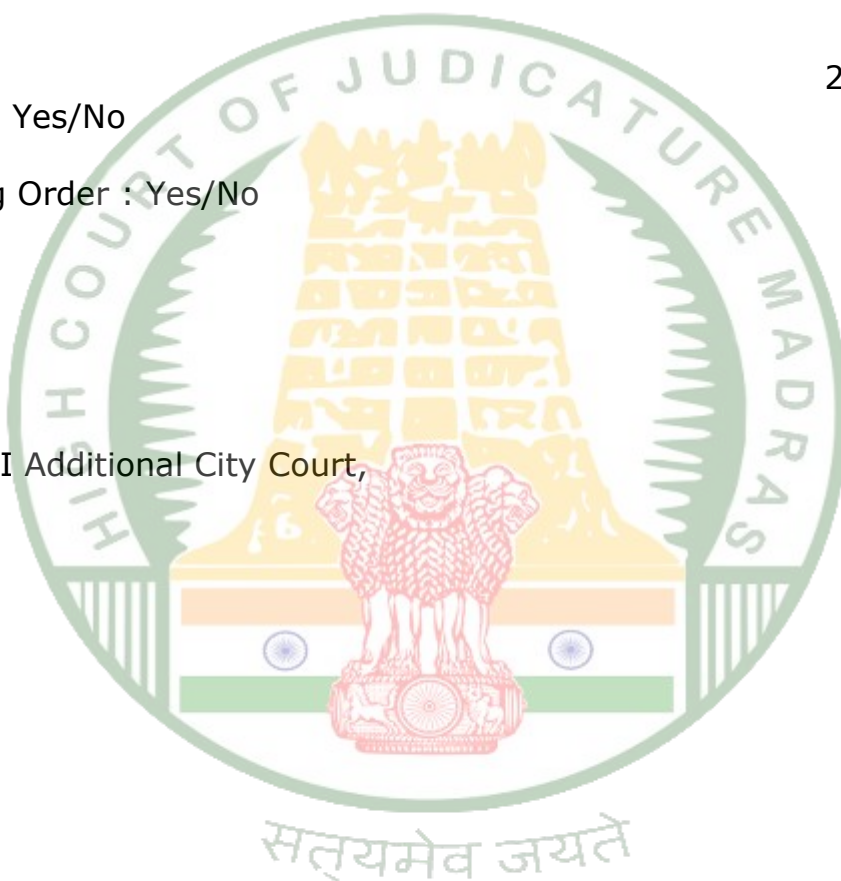
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Index : Yes/No

Speaking Order : Yes/No
Sgl

To

The XVIII Additional City Court,
Chennai.

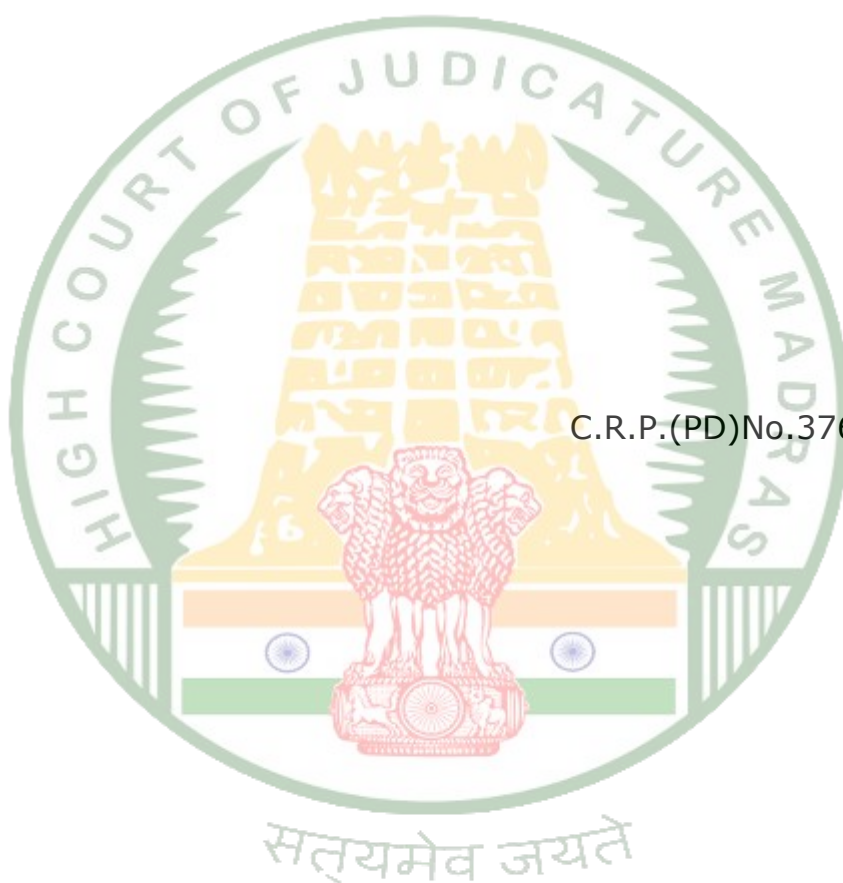


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R.SURESH KUMAR, J.

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