

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP(PD) No.3302 of 2018 &
C.M.P.No.18660 of 2018 and
C.M.P.No.9268 of 2019**

1. Nalini
2. S. Gowtham

.. Petitioners

-vs-

1. K. Kumaraguruparan
2. K. Gowri @ Saraswathi
3. V.R.Periyasamy,
4. Saroja
5. N.S. Palanisamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order made in I.A.No.1417 of 2018 in O.S.No.38 of 2013 dated 01.08.2018 on the file of IV Addl. District Judge, Erode District at Bhavani

For Petitioners : Mr. S. Thiruvengataswamy

For Respondents : Mr. N. Manokaran for R1 & R2

R3 and R4 – No appearance

ORDER

The revision petitioners are the plaintiffs in a suit for partition. Respondents 3 to 5 are the defendants and respondents 1 and 2 are third parties. The petitioners/plaintiffs filed the suit against respondents 3 to 5. When the suit was posted for arguments, respondents 1 and 2 got impleaded as parties, filed application for impleading them as parties, which was allowed. Against which the present revision has been preferred.

2. Brief facts are as under:

Petitioners and respondents 3 to 5 are co-sharers of the suit property. The present suit came to be filed for partition. But prior to filing of the suit, there were certain transaction between the newly impleaded 1 and 2 respondents and the parties to the partition suit. The third respondent, namely Periyasamy, borrowed from 5th respondent/M.S.Palanisamy. A suit for recovery of money was decreed in favour of 5th respondent in O.S. No.64 of 2005 and the property was purchased by him in a court auction sale in E.P. No.70/2008. A sale certificate was also issued. Subsequently, on 28.3.2012, the first respondent purchased the suit property from the third respondent and constructed a concrete house and residing

there. While the matter stood thus the second respondent/Gowri @ Saraswathi w/o.Kumaraguruparan lent a sum of Rs.25,000/- to the husband of 2nd petitioner and the third respondent herein, namely Shanmugasundaram and Saroja. Since, they could not repay, on 20.3.97 both of them executed a usufructuary mortgage in favour of the 2nd respondent for a sum of Rs.65,000/- and handed over possession. Since they did not redeem the property, the second respondent/Gowri filed a suit in O.S. No.63/2005 which was also decreed in favour of her. Since possession was handed over on 20.3.1997, she was enjoying the same. Without impleading the first and second respondents, who have interest in the property, the suit for partition was filed by the petitioners. Therefore, an impleading petition was filed and ordered impleading the third parties.

3. The learned counsel for the petitioners/plaintiffs would contend that in a suit for partition between co-sharers, the third parties have no right to implead themselves. There was no transaction between the newly impleaded parties and Shanmugasundaram and Nalini. The said suit in O.S. No.63/2005 is fraudulent and when the matter is at the final stages, filing the above petition for impleading is only to protract the proceedings with ulterior motive. The trial court ought not to have allowed the

same.

4. I have considered the submissions. It is true to state that in a suit for partition, co-sharers alone have a say. The rights of their shares would be decided by way of a preliminary decree and the property will be divided by metes and bounds at the time of passing final decree. At the stage of preliminary decree, the third parties cannot interfere in the suit. But in the present suit, the so called third parties have purchased the suit property in a court auction sale and a decree in a mortgage suit. Though the petitioners claim deemed possession, the actual possession appears to be in the hands of the third parties, namely the 1st and 2nd respondents. When they claim some right title and interest in the property, they should be impleaded as parties to the suit, at least at the time of final decree proceedings. The sale made in their favour, is a court auction, and the decree passed against the co-sharers in a suit for mortgage will bind them to the extent of their right. In such circumstances, at least at the final decree proceedings, if not the preliminary decree, they are necessary parties. The trial court has rightly ordered the petition for impleading them. This court does not find any infirmity in the order passed by the trial court and decline to interfere with the same.

The civil revision petition is disposed of with the above observation. Connected miscellaneous petitions are also closed. No costs.

09.07.2019

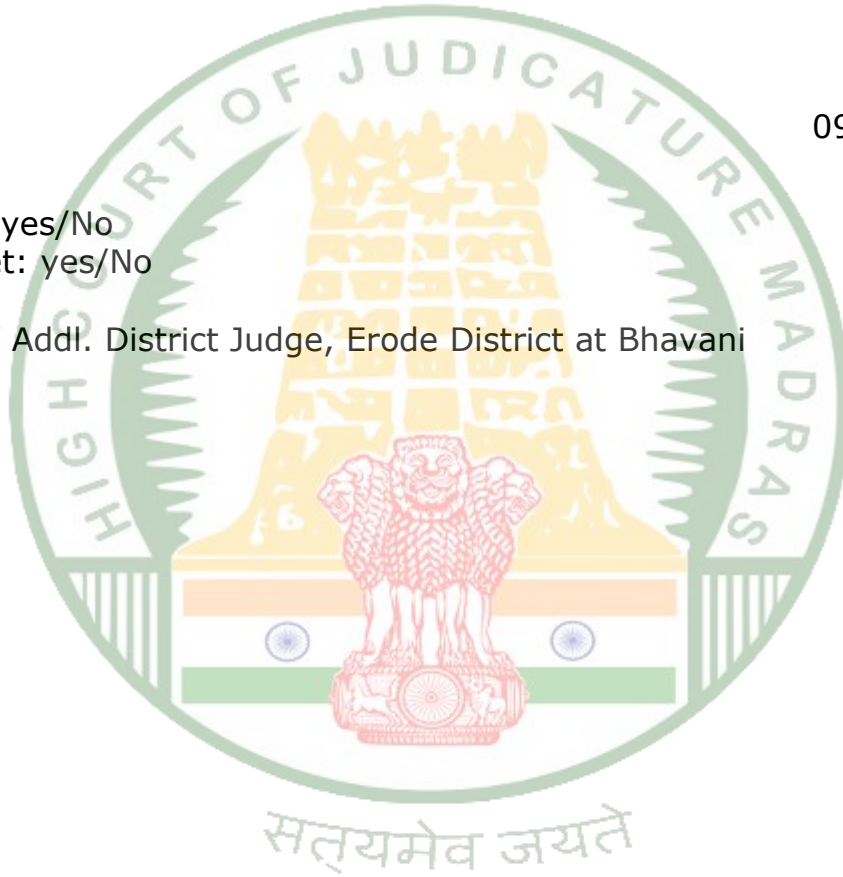
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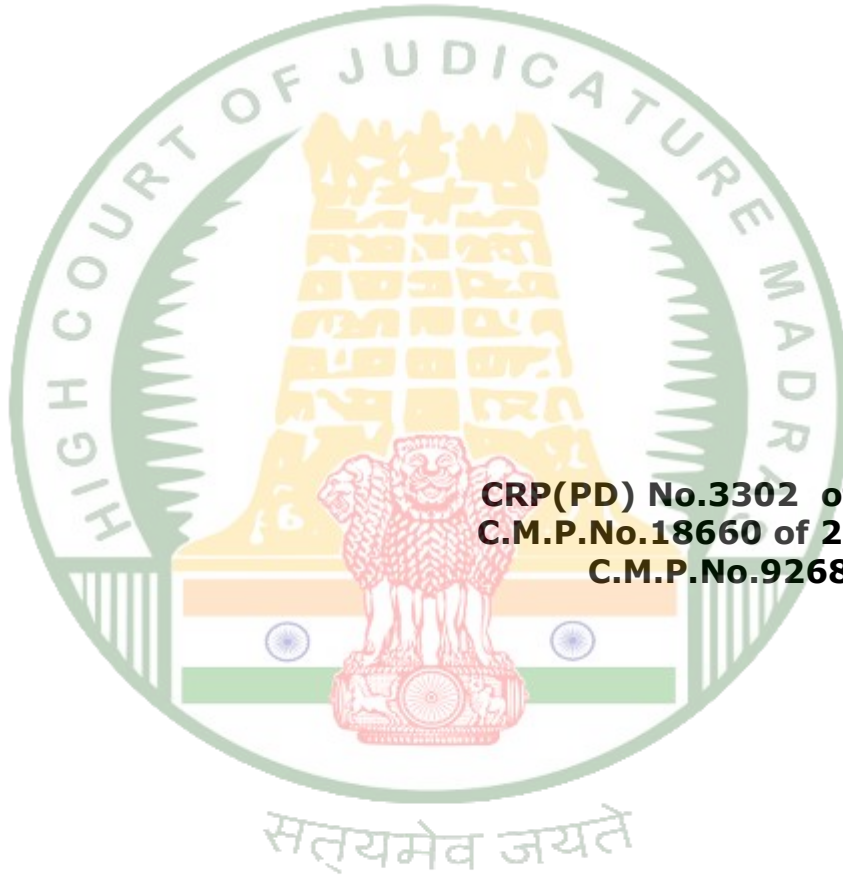
The IV Addl. District Judge, Erode District at Bhavani



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M.GOVINDARAJ, J.

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