

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.02.2020

Judgment Pronounced on : 01.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No.151 of 2010

and

M.P.No.1 of 2010

P.Kanniappan (deceased) .. Petitioner/Defendant No.2

1.K.Malliga

2.K.Babu

3.K.Kumar

4.Shanthi

5. Sumathi

.. Petitioners

Vs.

1.J.Nadanavel

.. Respondent/Petitioner

2.Saraswathi

.. Respondent/Defendant No.1

[Petitioners 1 to 5 are impleaded as

Legal

Representatives of the deceased sole
petitioner vide order dated 08.01.2020
made in M.P.No.1 of 2011]

Prayer: This Civil Revision Petition is filed under Section 115 of the Code
of Civil Procedure, 1906, against the order and decretal order dated

C.M.P.No.24 of 2008 in A.S.No.19 of 2000 filed against the suit in O.S.No.9091 of 1994 before the Additional District and Sessions Judge (Fast Tract Court No.I), Chennai.

For Petitioner : Mr.O.Padmaprakash

For Respondent No.1 : Mr.T.A.Srinivasan

For M/s.Sree Associates

Respondent No.2 : No appearance

ORDER

The second defendant in the suit is the revision petitioner herein. Pending CRP, he died and his legal heirs are brought on record as per order dated 08.01.2020 made in M.P.No.1 of 2011. This Civil Revision Petition has been filed by the revision petitioner, who seeking to set aside the order made in C.M.P.No.24 of 2008 in A.S.No.19 of 2000 filed against the suit in O.S.No.9091 of 1994 before the Additional District and Sessions Judge (Fast Tract Court No.I), Chennai.

2.One Rajeswari filed the suit in O.S.No.5478 of 1995 claiming that she is the second wife of one Balasundaram and the said Balasundaram

through her first wife had one son namely, Thandavamoorthy and one Saraswathi is the wife of the said Thandavamoorthy. After the death of her husband-Thandavamoorthy, the said Saraswathi has left to her parent's house and hence she claimed that the said Saraswathi has hold the property by a sale deed dated 20.05.1994 in favour of one Kanniappan, the original petitioner herein. However, the said Rajeswari Ammal pleading herself as second wife of the said Balasundaram claimed undivided $\frac{1}{2}$ share in the suit and also sought declaration to declare the sale deed executed by the Saraswathi, the daughter-in-law of Balasundaram as null and void. The suit was decreed against which the said Kanniappan the original revision petitioner filed A.S.No.19 of 2020. Pending Appeal Suit, the said Rajeswari Ammal died. At this point of time, one Nadanavel, S/o. Jegadeesan who is the brother's son of Balasundaram has come forward with an application in C.M.P.No.24 of 2008 before the Fast Track Court claiming to be the legal heir of the deceased Rajeswari Ammal and wanted to implead himself in the appeal suit.

3. In the CMP, Ex.P1 to Ex.P6 were marked. The Lower Appellate Court was allowed the application and hence CRP has been filed by the said

Kanniappan and since he died pending Civil Revision Petition, his legal heirs are now impleaded.

4. Heard both side and perused the records.

5.The second respondent herein Saraswathi is the wife of Thandavamoorthy, son born to the first wife of Balasundaram. The said Balasundaram died on 25.09.1975 and Thadavamoorthy died on 25.09.1993. The sale deed in favour of the original revision petitioner Kanniappan was on 20.5.1994. The suit in O.S.No.9091 of 1994 is filed before the trial Court to set aside the sale deed on the ground that Rajeswari Ammal is the second wife of the said Balasundaram and hence she is claimed ½ share. The suit had decreed. Pending appeal, the said Rajeswari Ammal died. One Nadanavelu claims to be the son of Rajeswari Ammal as if he has taken care of the said Rajeswari Ammal during her old age and wanted to implead himself and to continue the case, he filed the above said CMP.

6. On perusal of the lower Court records and order, it is found that the

said claim of the said Nadanavelu was hotly disputed by the said Kanniappan on the ground that the deceased Rajeswari Ammal had no issues and also the ground that the marriage between the said Rajeswari Ammal and Balasundaram is also under cloud. After the death of the said Rajeswari Ammal, the present petitioner, who is utter stranger to the property is claiming and projecting himself as he is son of the said Rajeswari Ammal wanted to implead himself as a party. The said MP was allowed without going into the rival contentions of both the parties.

7. On perusal of the order passed by the trial Court and the lower Appellate Court, I find that the lower Appellate Court has committed a blunder in allowing the application when the legalheirship was strongly disputed, the Court has to conduct enquiry under Order 22 Rule 5(4) of CPC., to prove the legalheirship and also whether right to sue continues or not is to be determined. The approach adopted by the lower Appellate Court is unsustainable in law and hence warranting interference by this Court.

8. The order dated 14.10.2009 passed in CMP.No.24 of 2008 in A.S.No.19 of 2000 is hereby set aside and the matter is remanded back to

the I-Additional District Judge, Fast Track Court No-I, Chennai, to consider the application in the light of the provision contained in Order 22 Rule 4(5) of CPC., and to pass necessary orders on merits.

9. Accordingly this Civil Revision Petition is allowed as to the extent indicated above. No Costs. Consequently, connected M.P is closed.

01.06.2020

Index : Yes/No
Internet: Yes/No
PJJ

To

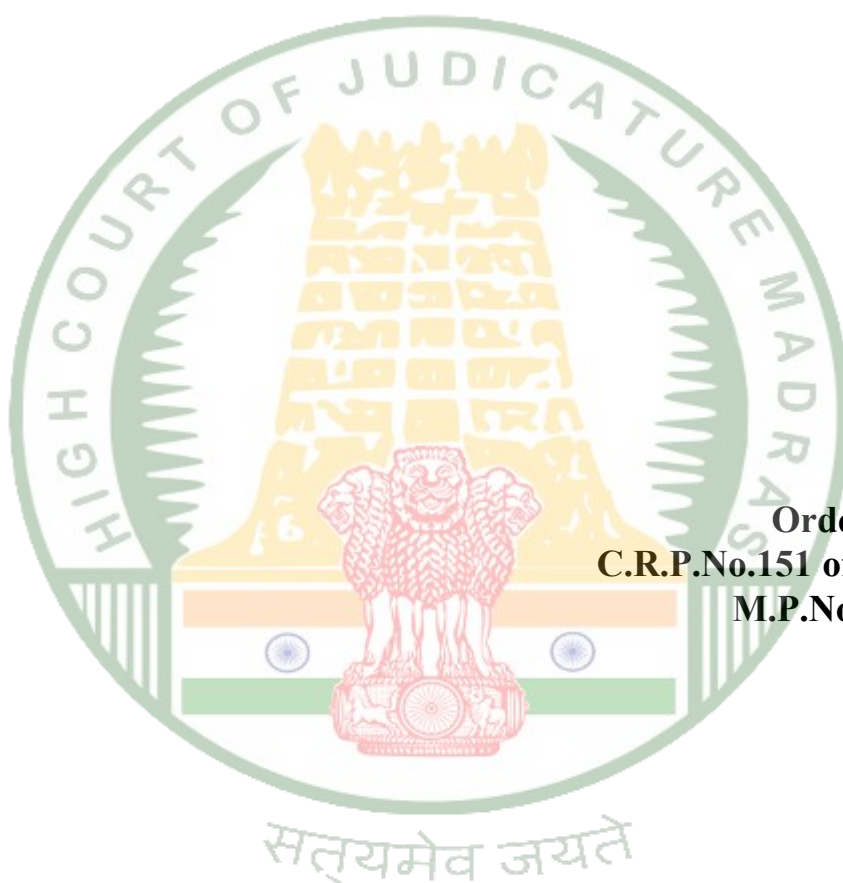
1. The Additional District and
Sessions Judge (Fast Tract Court No.I),
Chennai.
2. The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

सत्यमेव जयते
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RMT.TEEKARAMAN, J.

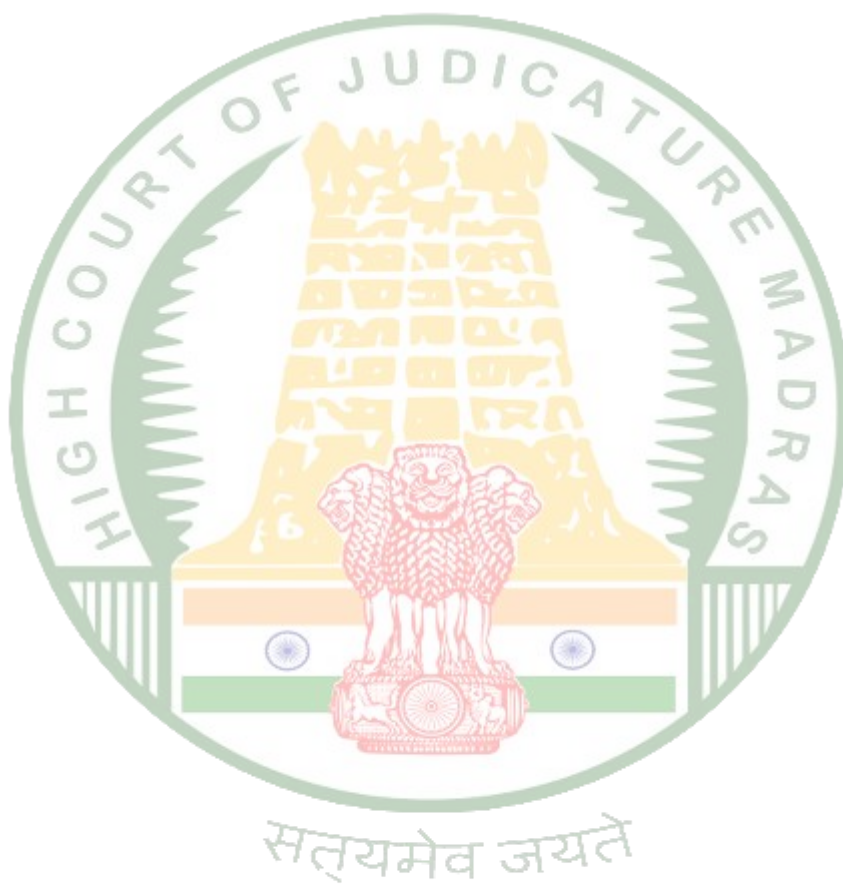
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**Order made in
C.R.P.No.151 of 2010 and
M.P.No.1 of 2010**

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01.06.2020



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