

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(PD) No. 1731 of 2011
and
M.P.No.1 of 2011

Yuvaraj

... Petitioner

Vs

1. Rajamanickam Chettiar (died)

2. Iyyappan @ Sandhanam Iyer

3. Thillairaj

4. Rangarajan

5. Gunasekaran

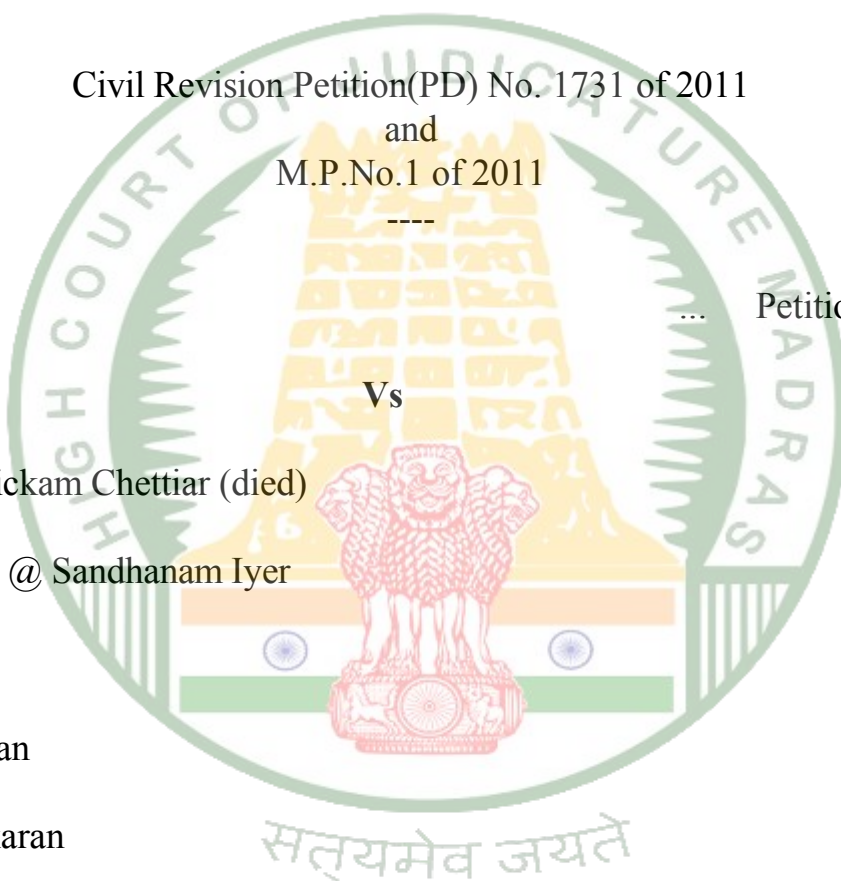
6. Radha Ammal

7. Santhamani @ Rajeswari

8. Bama

9. Indhu

10. Mannammal @ Santha



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11. Perumal
12. Krishnan
13. Ramamurthy
14. Saminathan
15. Jamunarani
16. Meenakshi
17. Jayachitra
18. Vijayalakshmi
19. Vijayakumar

(RR15 to R19 brought on record as LR's of the deceased R1, viz., Rajamanickam, vide Court order dated 29.04.2019 made in CMP 6431 and 6434 of 2019)

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 14.02.2011 passed in I.A.No.1022 of 2007 in I.A.NO.367 of 2004 in O.S.No.74 of 2004 on the file of the Additional District Munsiff, Thirukoilur.

For Petitioner : Mrs. Hema Sampath,
Sr . Counsel,
for Ms. R.Meenal

For Respondents : R1- died

R2 to R10 Notice served -NA

R11 to R14 - NA

ORDER

The petitioner herein had filed a suit in O.S.No.74 of 2004 for partition of his half share against the respondents/defendants. At the time of filing the suit, since the petitioner/plaintiff was minor, his mother was shown as guardian. In the said suit, preliminary decree was passed on 29.07.1985. Thereafter, the petitioner herein filed an application for passing of final decree in I.A.No.367 of 2004. In that application, Advocate Commissioner was appointed and he visited the property and filed his preliminary report. In that report, he has stated that in the Plaint survey number mentioned as 116 and whereas after the UDR scheme, it was changed as 118/7 and therefore, based on the Commissioner Report, the petitioner filed an application in I.A.No.1022 of 2007 to amend the plaint, preliminary decree and also the scheduled of property mentioned in the final decree application and by an order dated 14.02.2011, the said petition was dismissed. Challenging the said order, the petitioner is before this court with this revision.

2. The learned counsel for the petitioner would submit that the 12th respondent herein who was arrayed as 14th defendant in the suit and he alone

was the contesting defendant and other respondents/defendants remained exparte even before the trial Court. The trial Court, after trial, passed the preliminary decree and the petitioner herein had filed the final decree application. During the pendency of the final decree, Advocate Commissioner was appointed, and the Advocate Commissioner while visited the property, found that the survey number has been changed. Therefore, based on the Commissioner's Report, he has filed an application to amend the plaint, preliminary decree and also the schedule of property mentioned in the final decree application. The identification of the property is not in dispute. Since the petitioner was minor at the time of filing the suit, he has not aware of the current survey number of the property and after the interim report filed by the commissioner, it was noticed by the petitioner and therefore, the revision may be allowed.

3. Though except the 12th respondent herein other respondents remained exparte even before the trial Court, the names of the respondents are printed in the cause list, none appeared on behalf of the respondents.

4. Heard both sides and perused the materials available on records carefully.

5. It is seen that the petitioner has filed the suit for partition and separate

possession while he was minor. In that suit, preliminary decree was passed on 29.07.1985. Thereafter, the petitioner filed an application to pass final decree and in that application, Commissioner was appointed and he visited the property and filed a interim report. In his report, he has mentioned that the survey number 116 has been changed as 118/7 and the identification of the property is not in dispute and the Commissioner also identified the property. The Commissioner has only mentioned in the report that survey number alone has been changed. Therefore, at the time of passing final decree and taking possession, some difficulty may arise. Therefore, under the circumstances, since there is no dispute with reference to the identification of the property, mere changing the survey number no prejudice would be caused to the parties. Therefore, the order passed by the trial Court in I.A.NO.1022 of 2007 is liable set aside.

6. Accordingly, the Civil Revision Petition is allowed and the order passed by the trial Court in I.A.No.1022 of 2007 is set aside. The petitioner is directed to carryout the amendment in the plaint and in the schedule of property in the final decree application and the trial Court is directed to amend the preliminary decree and issue fresh order copy.

01.09.2020

mrp

To

1. The I Additional District Court, Thirukovilur.
2. The Section Officer, V.R. Section, High Court, Madras

P.VELMURUGAN,J.

mrp



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