

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.2476 of 2011 and
M.P.No.1 of 2011

1. Palanisamy
2. Kanammal
3. Thulasirajan

...Petitioners

Vs

1. Pappayammal (died)
2. Chinnasami (died)
3. C.Subramani
4. Sulochana
5. Jaganathan
6. Mayilsamy
7. The Chairman
Tamil Nadu Housing Board
Tamil Nadu Government
Nandhanam
Chennai.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the Judgment and decree dated 31.05.2011 made in I.A.No.495 of 2010 in I.A.No.52 of 2005 in O.S.No.29 of 2005 on the file of District Munsif Court, Erode.

[Prayer amended vide order of the Court dated 01.11.2011 made in

M.P.No.2/2011 in CRP (NPD) No.2476/2011]

For Petitioners : Mr.M.Guruprasad

For Respondents : Mr.V.Kathirvelu (R5 and R6)

No appearance

R1 and R2 (died)

R3 and R4 (No appearance)

Mr.V.Anandamurthy (R7)

ORDER

This Civil Revision Petition has been filed against the Judgment and decree dated 31.05.2011 made in I.A.No.495 of 2010 in I.A.No.52 of 2005 in O.S.No.29 of 2005 on the file of District Munsif Court, Erode.

2. The case of the petitioners is that originally the deceased Pappayammal, the first respondent herein filed a suit for partition on the file of Subordinate Court, Erode in O.S.No.29 of 1990 for partition against the fifth respondent herein and the deceased first petitioner and a preliminary decree was passed in favour of the deceased first respondent on 13.07.1993. Admittedly, the first petitioner as well as the first respondent herein died and the legal heirs of the Pappayammal, the first respondent herein filed final decree application in I.A.No.52 of 2005 and the legal heirs of the deceased first petitioner Palanisamy i.e, the petitioners 2 and 3 filed application in

I.A.No.495/2010 to pass supplementary preliminary decree allotting 15/32 shares to the petitioners 2 and 3 and the said application was dismissed on the ground that the suit in O.S.No.468 of 2005 on the file of District Munsif, Erode was filed by the sixth respondent against the petitioners 2 and 3 for permanent injunction restraining them from interfering with the sixth respondent's peaceful possession and enjoyment of the suit property and in the said suit the Will said to have executed by Kolandiana Gounder is challenged. Therefore, the trial Court came to the conclusion that since the said suit is pending, the supplementary preliminary decree cannot be passed and dismissed the application in I.A.No.495 of 2010 vide order dated 31.05.2011. Challenging the same, the present Civil Revision has been filed.

3. The learned counsel for the petitioner would represent that originally the suit in O.S.No.29 of 2005 was filed by the sister of Palanisamy, for partition. The trial Court by accepting the case of the first respondent and disbelieving the case of the petitioners passed the preliminary decree in favour of Pappayammal, the first respondent herein. After passing of the preliminary decree, the Pappayammal died and therefore the legal heirs of the Pappayammal filed final decree application in I.A.No.52 of 2005. In the meanwhile, the Palanisamy also died and the petitioners have filed an

application in I.A.No.495/2010 seeking to pass supplementary decree allotting 15/32 shares to the petitioners 2 and 3. The learned counsel for the petitioner would submit that neither the Palanisamy nor the Jaganathan challenged the preliminary decree. The trial court disbelieved the will said to have been executed by the Kolandhaianna Gounder in favour of Mayilsamy, and the sixth respondent dismissed the Interlocutory Application. He would further submit that though on the date of passing of the said application, the suit in O.S.No.468/2005 was pending, the suit came to be dismissed on 28.11.2018. Therefore, the Palanisamy and his legal heirs are entitled to share and the shares of the Palanisamy has to go to the petitioners 2 and 3.

4. No representation for the respondents. Heard the learned counsel for the petitioners and perused the records.

5. It is to be noted that deceased first respondent Pappayammal filed a suit in O.S.No.29/2005 for partition against the fifth respondent and the first petitioner and the suit was decreed and preliminary decree was passed in favour of the Pappayammal. Subsequently, the Pappayammal died. The legal heirs of the Pappayammal filed final decree application and thereafter the petitioners filed another application in I.A.No.495/2010 seeking to pass

supplementary decree. In the mean time, the Palanisamy also died and therefore his share has to go to other petitioners 2 and 3. Therefore, their shares has to be allotted and the suit in O.S. No.468 of 2005 filed questioning the will said to have been executed by the Kolandioanna Gounder is pending at the time of passing of impugned order, subsequently, it was dismissed . The learned counsel for the petitioners would submit that as against the said Judgment Appeal is filed and the same is pending. Therefore, unless the appeal is decided, this Court cannot pass any order in this Civil Revision Petition. However, the petitioner is at liberty to approach for disposal of the Appeal arising out of the Judgment in the O.S.No.468/2005.

With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2020

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To

1. The Chairman
Tamil Nadu Housing Board
Tamil Nadu Government
Nandhanam
Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras
3. The District Munsif Court, Erode.

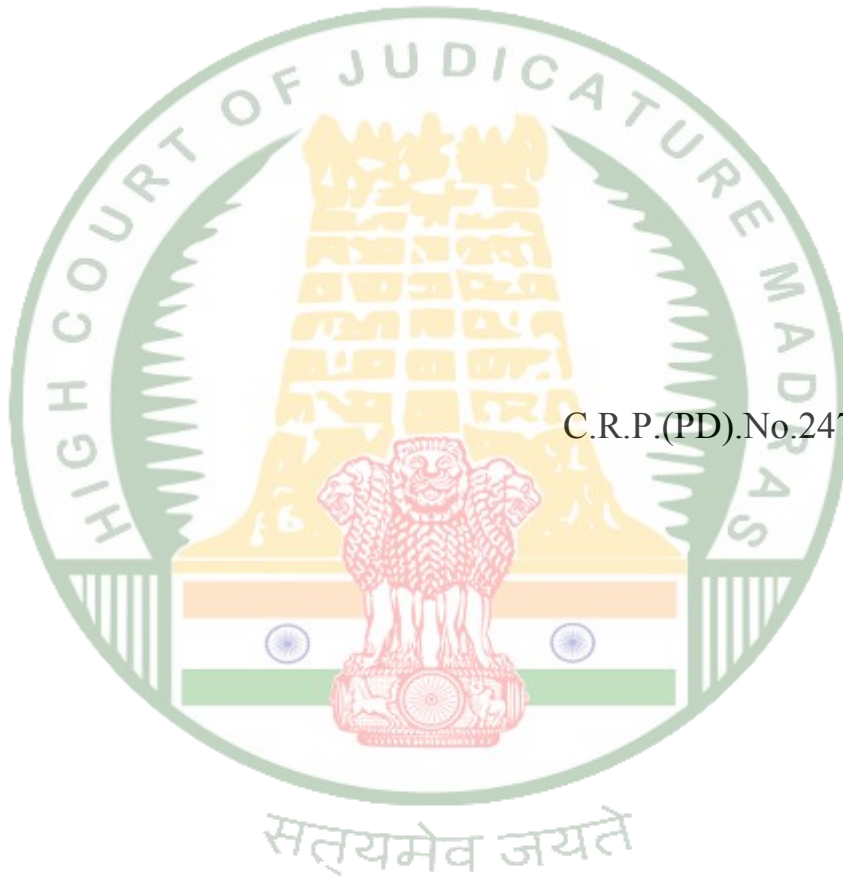


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C.R.P.(NPD).No.2476 of 2011

P.VELMURUGAN,J.

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