

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 1187 of 2018

and

C.M.P.No. 6152 of 2018

V.P.Shanmugam

...Petitioner

Vs.

1.A.Palanisamy
2.Lakshmi
3.Boopathi
4.Jayalakshmi
5.Palaniammal
6.Vishnupriya
7.Bhuvaneswari
8.Selvaraj

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No. 753 of 2016 in O.S.No. 110 of 2011 dated 03.06.2017 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

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For Petitioner : Mr.Mr.V.S.Kesavan

For Respondents : R1 – No Appearance

R2 to R8 – Given up

ORDER

The 5th defendant in O.S.No. 110 of 2011 is on revision challenging the order of the Trial Court allowing the application in I.A.No. 753 of 2016 for reissue of the warrant to the same Commissioner with a direction to measure the property with reference to the partition deed dated 20.06.1984 with the help of the Taluk Surveyor.

2. The suit is one for permanent injunction laid by the plaintiff contending that the suit properties were allotted to the plaintiff's branch under the partition dated 20.03.1944 that took place between the predecessors in interest of the plaintiff and the defendants. Subsequently, the plaintiff and the defendants 1 to 4 had entered into a partition amongst themselves dividing the properties that were allotted to their branch in the 1944 partition deed. It is not in dispute that the Commissioner was appointed in the suit and he has also filed his report and plan. The present application is for a direction to the Commissioner to measure the property with reference to the partition deed dated 20.06.1984, which is between the plaintiff and the defendants 1 to 4.

3. This application was resisted by the defendants 5 to 7 contending that since they are not parties to the said document, the same is not binding on them, therefore, the properties cannot be measured on the basis of unilateral document between the plaintiff and the defendants 1 to 4. It was also contended such measurement will adversely affect the rights of the defendants 5 to 8. The Trial court, however, over ruled the objection and reissued the warrant.

4. I have heard, Mr.V.S.Kesavan, learned counsel for the petitioner and the first respondent / plaintiff though served is not appearing either in person or through counsel, duly instructed. The respondents 2 to 8, who are the other defendants are given up.

5. I find that the order of the Trial Court cannot be sustained. The original partition was in the year 1944 between two branches. The plaintiff and the defendants 1 to 4 belong to one branch and the defendants 5 to 7 belong to the other branch. The suit is for injunction based on the partition that had taken place under the instrument of the year 1944. The partition deed dated 20.06.1984 is an instrument of partition entered into between the plaintiff and the defendants 1 to 4 with reference to the property that

were allotted to their branch in the 1944 partition. The measurements in that document cannot form the basis to decide possession of the defendants and the plaintiff of the property allotted to them in the 1944 partition. Moreover, the defendants 5 to 7 are not parties to the 1984 partition and the recitals therein cannot be binding on them. Therefore, the Trial Court was not justified in directing the measurement of the property on the basis of the measurements found in the document dated 20.06.1984.

6. In view of the above, this civil revision petition is allowed, the order of the Trial Court in I.A.No. 753 of 2016 is set aside, the said application will stand dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.12.2020

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Internet:Yes
Index:No
Speaking

To:

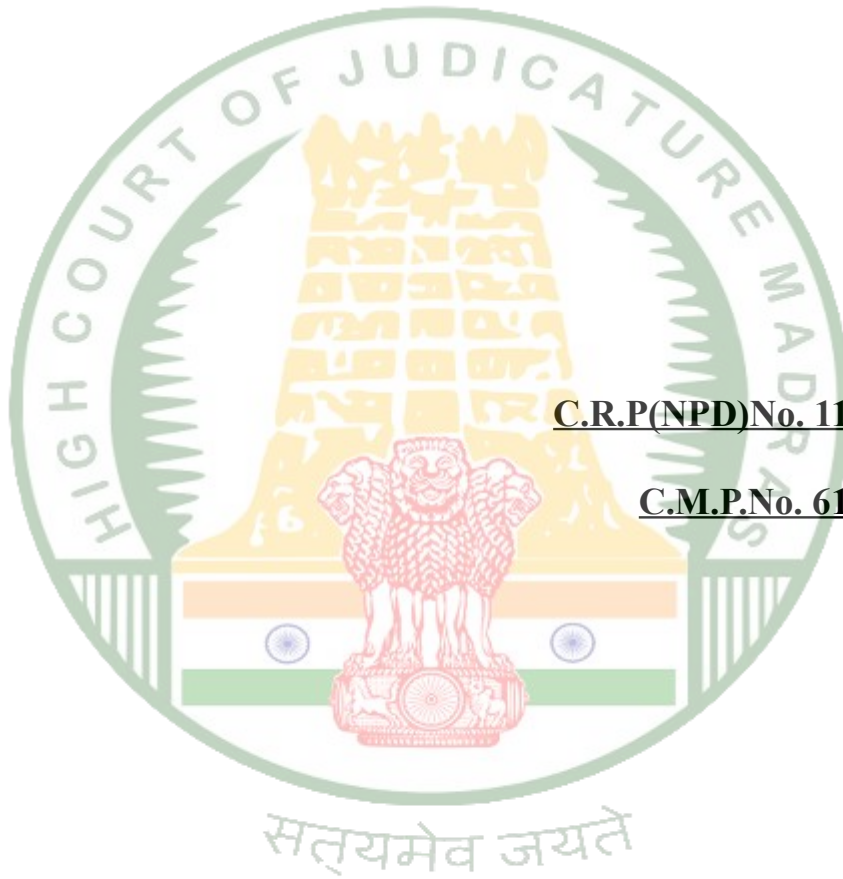
The District Munsif-cum-Judicial Magistrate,
Perundurai.

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R.SUBRAMANIAN, J.

KKN



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