

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD).No.4725 of 2011

and

M.P.No.1 of 2011

M.Samathal

... Petitioner

Vs.

Karuppa Gounder (Died)
Pacha Gounder (Died)

1.Muthusamy
2.Thangavel
3.Govindammal
4.Subbathal
5.Ponnammal
6.Vadivel
7.Dhanalakshmi
8.Murugasamy Gounder
9.Rangasamy
10.Palanisamy
11.Natarajan
12.Shanmugasundaram
13.Pacha Gounder
14.Puniawathy

... Respondents

PRAYER :This Civil Revision Petition has been filed under Section 227 of Constitution of India, against the fair and decretal order dated 23.08.2011 made in E.A.CFR.No.3219 of 2011 in E.P.No.112 of 2011 in O.S.No.728 of 1994 on the file of the District Munsif Court, Tiruppur.

For Petitioner

::Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against an order rejecting the application filed under Order 21 Rules 97 and 101 read with Section 151 of C.P.C, and the same was returned as not maintainable in E.A.C.E.R.No.3219 of 2011.

2. The learned counsel for the petitioner would submit that the petitioner is the wife of one Murugasamy Gounder. Murugasamy Gounder died on 05.01.1990, leaving this petitioner, wife and the daughter, who is arrayed 16th respondent in the suit as his legal heirs. Since he is not arrayed as a party, he is third party in the proceedings. As such this application is not maintainable.

3. Per contra, the learned counsel for the respondent submitted that the daughter of the said Murugasamy Gounder was duly represented the estate of the Murugasamy Gounder even according to the affidavit in the family partition dated 30.01.1959 a portion of the property Item I of the schedule of the property and other properties in Perumanallur village were allotted to Murugasamy Gounder.

4. Admittedly, the daughter was represented in the suit (O.S.No.728 of 1994) as the 10th defendant Punniyavathy, but however the petitioner herein was not arrayed as a party/defendant.

5. Taking note of the provision under Order 21 Rules 97 and 101 read with Section 151 of C.P.C it is to be stated that a non party to the decree, being in possession of the property can maintain an application under Order 21 Rule 97 for determination of the question of the right, title or interest in the subject matter property as held in 2011 (1) MWN (Civil) 132.

6. The Rule 97 to 101 of Order 21 contain the provisions enabling the execution Court to deal with a situation when a decree holder entitle to possession of the property encounter obstruction from "any person". The legislature has vested wide powers in the executing Court to deal with "all issues" relating to such property.

7. All questions including question relating to right, title or interest in the property shall be determined by the Court dealing with the application and not by a separate suit. However, the Court below has erroneously the application as if, an obstructor cannot claim adjudication of her right under Order 21 Rule 97 C.P.C.

8. In the decision reported in 2016(2) MWN (Civil) 59 (Mad) [A.Palanisamy vs.Savithiri;Chennakesavan], this Court has held that the contention that application under Section 47 alone is maintainable and separate suit is not maintainable and the Executing Court directed to take up application on file, either under Section 47 or Order 21, Rule 97 or 99 and decide on merits.

9. Accordingly, this Civil Revision Petition is allowed and it is open to the said Trial Court to take the application in the appropriate manner known to law and this Court observes that the petition is maintainable. However regarding the merits or otherwise has to be decided after filing of the counter by the daughter and dispose the said application on merits. Since the application is pending from the year 2011, the trial Court is required to dispose of the application within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P is closed.

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

The District Munsif Court, Tiruppur.

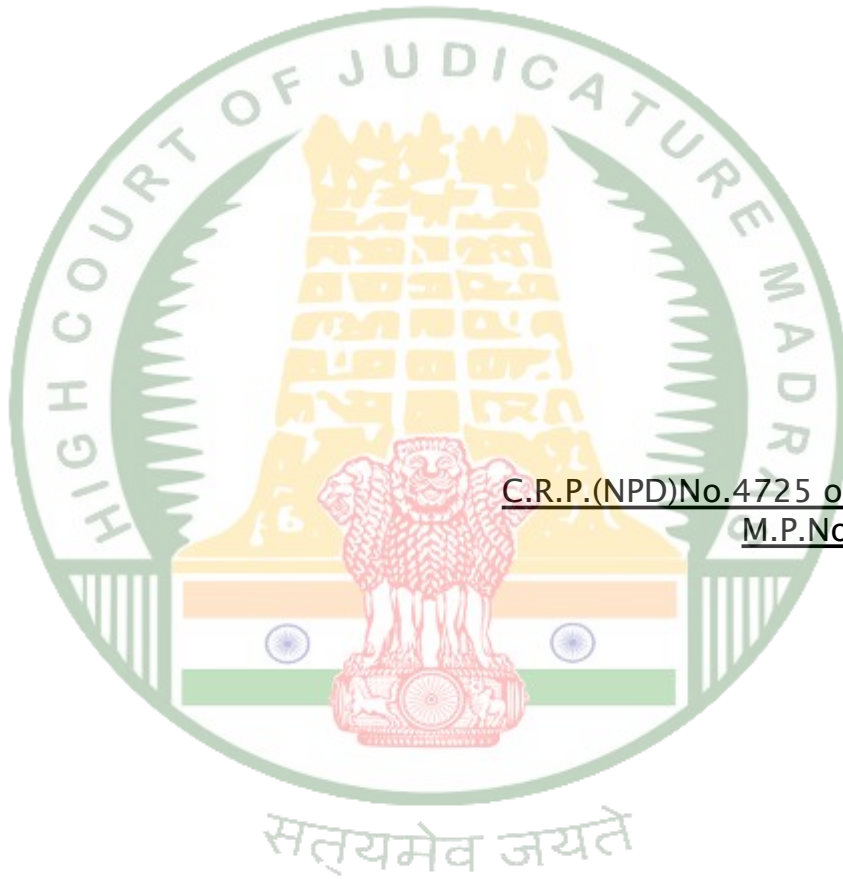


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RMT.TEEKAA RAMAN,J.,

nvi



Order in
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