

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.No.4752 of 2011

and M.P.No.1 of 2011

1.Lakshmi

2.Kamala

...Petitioners 1 & 2/

Plaintiffs 1 & 2

Vs

1.Sundararajan

2.Parimala

3.Mani @ Saratha

4. Saroja

5.Chinnathayee

6.Kondri

7.Sekar

8.The Commissioner,
Panchayat Union,
Nangavalli,
Salem District.

9.Munusamy

... Respondents 1 to 9/

Defendants 1 to 9

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.09.2011 passed in I.A.No.677 of 2011 in O.S.No.83 of 2008 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani

For Respondents: R1 and R2 died

Mr.Saraswathi Muthaih for R3 and R7

Mr. Durai Solaimalai for R8-NA

No Appearance for R4, R6 and R9

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 27.09.2011 passed in I.A.No.677 of 2011 in O.S.No.83 of 2008 on the file of the District Munsif Court.

2. The I.A.No.677 of 2011 was filed for the purpose of amending the plaint. The Court below after hearing both the parties dismissed the application on the ground that the application was filed unnecessarily to drag on the proceedings and the Court below stated as follows:

"First of all, the plaintiffs have to establish their case that their mother Kandammal has no right to alienate the properties. If they establish this single fact, all the alienations made by the Kandammal would be nullified. Since the alleged purchasers were already made as parties, the judgment in this suit would bind on them."

Against the said order the revision petitioner herein preferred the present Civil Revision petition.

3. The learned counsel for the revision petitioner submitted that the petitioners initially filed the application in A.No.162 of 2010 to implead the buyer of the property and the Court below allowed that application. Subsequently, I.A.No.677 of 2011 has been filed to incorporate the appropriate pleadings and prayed to set aside the alienations made by Kandammal in favour of the newly impleaded parties in I.A.No.162 of 2010. He would further contend that the Court below wrongly came to the conclusion that petitioner should establish the facts that Kandammal has no right to alienate the property and he would contend that all those facts should be decided after conducting full fledged trial and he is ready to co-operate and dispose of the suit at the earliest time.

4. The counsel appearing for the contesting respondent contended that the Court below has rightly dismissed the application because revision petitioner herein filing application after application to delay the proceedings and disposal of the suit. Therefore he contended that there is no merits in the civil revision petition and the same is liable to be dismissed.

5. Heard the learned counsel submissions of both sides and perused the material available on record.

6. Originally the Court below allowed I.A.No.162 of 2010 filed by the petitioner herein to implead the buyer of the property. Subsequently, the revision petitioner has filed the application to amend the pleadings. The Court below has given findings that the revision petitioner herein has failed to establish all the facts with regard to the non availability of the right for Kandammal and since he failed to establish all these facts the application was dismissed.

7. The suit was filed by the revision petitioner herein for partition and to set aside the sale deed executed by the petitioner's deceased mother Kandammal. According to the revision petitioner the subject property under the dispute is a joint family property. Therefore, the said Kandammal has no right to alienate the property. The issue is relating to whether the schedule mentioned property is a joint family property or the self acquired property of Kandammal can be decided only by conducting full fledged trial and the same cannot be decided in an application filed for amending the plaint. Therefore the reason provided by the court below that the revision petitioner failed to establish that the Kandammal does not have any right to alienate the property is not correct. The final right of the parties in the property can be decided by way of examining the parties by conducting the trial but in the present case the application was filed to amend the plaint. It is not possible to determine the rights of the parties in the property in the application filed for amending the plaint. The fact remains that no one was examined in this regard before arriving at such conclusion by the lower court. At any costs the lower court ought not to have come to the conclusion without examine the parties. Therefore, the court below without appreciating all these facts came to the conclusion that the revision petitioner failed to prove that Kandammal does not have any right to alienate the property. Hence, the order passed in I.A.No.677 of 2011 dated 27.09.2011 is suffered with infirmities and the same is liable to be set aside. Accordingly, the order of the Court below dated 27.09.2011 is set aside.

8. Since the suit is pending from the year 2008, this Court is of the view that the same shall be disposed off within the period of four months from the date of receipt of copy of this order.

9. With the above direction, the civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

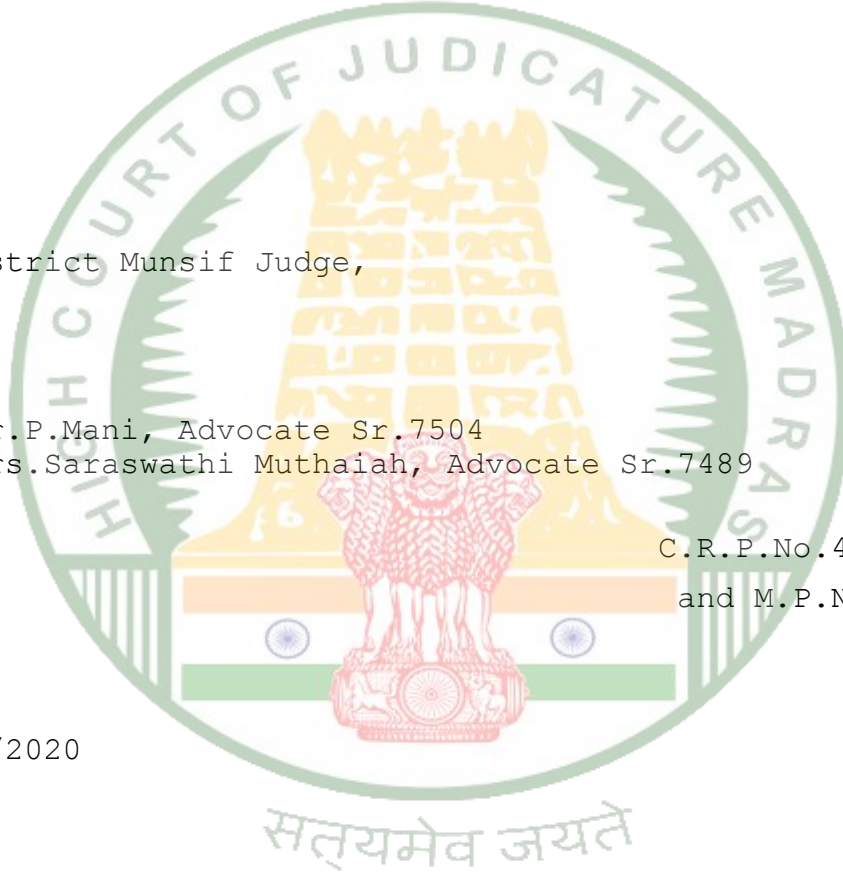
The District Munsif Judge,
Mettur.

+1cc to Mr.P.Mani, Advocate Sr.7504

+2cc to Mrs.Saraswathi Muthaiah, Advocate Sr.7489

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