

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.799 of 2012 and
M.P.No.1 of 2012

1. Muthukumaran
2. Selvakumar

... Petitioners

..Vs..

1.Palanivel
2.Murugavel
3.Jothi
4.Suseela Ammal
5.Packiam
6.Krishnamoorthi
7.Saraswathi

(Respondents 1 to 3 were given up
as they remained exparte)

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order dated 22.11.2011 passed in E.A.No.386/2008 in E.P.No.191 of 2008 in O.S.No.393/2005 on the file of the District Munsif's Court, Panruti.

For Petitioners : Ms.Hema Sampath
Senior Counsel
for Ms.R.Meenal

For Respondents : R1 to R3 (given up)
R4 to R7 (no appearance)

ORDER

This Civil Revision Petition has been filed against the order dated 22.11.2011 passed in E.A.No.386/2008 in E.P.No.191 of 2008 in O.S.No.393/2005 on the file of learned District Munsif, Panruti.

2. The petitioners herein are the petitioners in E.A.No.386 of 2008 in E.P.No.191 of 2008 in O.S.No.393 of 2005 and the respondents herein are also the respondents in the said E.A.No.386 of 2008.

3. Originally the respondents 4 to 7 herein filed a suit in O.S.No.393 of 2005 against the respondents 1 to 3 herein on the file of learned District Munsif, Panruti for partition. The said suit was decreed on 27.06.2006 and subsequently the respondents 4 to 7 filed final decree application and the said application was allowed and the final decree order was passed on 05.08.2008. Thereafter, the respondents 4 to 7 herein filed Execution Petition in E.P.No.191 of 2008 for executing the final decree before the learned District Munsif, Panruti. During the pendency of the said Execution Petition, the

petitioners herein who are third parties and not the parties in the said suit, filed application in E.A.No.386 of 2008 under Section 47 of the Civil Procedure Code on the file of learned District Munsif, Panruti seeking to enquire into the matter and determine the title of the petitioners and adjudicate upon the claim and allow the application with cost. In the said application, though the respondents 4 to 7 have not filed any counter, the learned District Munsif after recording the evidence of the petitioners and documents filed by the petitioners, dismissed the said application on 22.11.2011. Challenging the said order, the petitioners are before this Court.

4. The learned Senior counsel appearing for the petitioner would submit that the suit property originally belongs to the first respondent and the first respondent purchased 0.48 cents under registered Sale Deed dated 17.08.1977 and subsequently he sold 0.05 cents to his son, Murugavel, the second respondent herein and his daughter-in-law Jayamani Ammal on 18.02.1991 under registered Sale Deed-Ex.P2 and also sold another 0.21 cents to daughter-in-law Jayamani Ammal under Sale Deed dated 14.05.2001 -Ex.P3. Subsequently, the second respondent and Jayamani Ammal executed Sale Deed in favour of the petitioners under Sale Deed dated 23.11.2005-Ex.P4 and therefore, the petitioners are owners of 0.26 cents. She would

further submit that the respondents who are fathers, sons and daughters colluding with each other and also to defeat the rights of the petitioners, have filed the suit for partition, even without impleading the said Jayamani Ammal, who is the vendor of the petitioners. She would further contend that they also filed three suits against the petitioners in O.S.Nos.212 of 2006, 325 of 2006 and 4 of 2007 and the same are pending. The first respondent sold the 0.05 cents to his son Murugavel, the second respondent and his daughter-in-law Jayamani and also first respondent sold the another 0.21 cents to his daughter-in-law Jayamani Ammal and based on that sale, the petitioners purchased the property from the said Jeyamani Ammal and the second respondent, but suppressing the said fact, the respondents 4 to 7 filed collusive suit in O.S.No.393 of 2005 and obtained preliminary decree and final decree. It is further contended that they filed Execution Petition and tried to take possession of the petitioners property covered under Sale Deed-Ex.P4. Therefore, when they tried to dispossess, the petitioners filed the application under Order 47 of the Civil Procedure Code, but the learned District Munsif failed to consider the Sale Deeds and rights of the petitioners and dismissed the petitions on the ground that the Jayamani Ammal as well as the petitioners are not in the parties in the said suit. She further submitted that the learned District Munsif was confused with the original suits filed by

the respondents 4 to 7 and dismissed the application filed by the petitioners and therefore, the same warrants interference.

5. Heard the learned counsel for the petitioners. Perused the materials available on records. The respondents 1 to 3 were given up as they remained exparte in the suit itself. Despite notice being served on the respondents 4 to 7 there is no representation on their behalf.

6. It is seen from the records that originally the respondents 4 to 7 filed a suit against the respondents 1 to 3 in O.S.No.393 of 2005 on the file of learned District Munsif, Panruti for partition. In the said suit, preliminary decree was passed on 27.06.2008 and final decree was passed on 05.08.2008. Thereafter, the E.P. was filed in E.P.No.191 of 2008 and during the pendency of the Execution Petition, the present petitioners herein, as a third parties filed an application under Order 47 of the Civil Procedure Code to determine the rights of the petitioners in the property. The said petition was dismissed. Challenging the said dismissal order passed by the learned District Munsif, the petitioners filed the present petition.

7. According to the petitioners the first respondent Palanivel purchased 0.48 cents under registered Sale Deed- Ex.P1 dated 17.08.1977 and subsequently he sold 0.05 cents under sale deed dated 18.02.1991- Ex.P2 to his son, the second respondent herein and his daughter-in-law Jayamani Ammal and another 0.21cents to his daughter-in-law Jayamani Ammal under registered sale deed dated 14.05.2001-Ex.P2. Subsequently, the Jayamani Ammal and the second respondent jointly sold the said property to the petitioners under Ex.P4 dated 23.11.2005. Therefore, the petitioners are absolute owners of the said property. Even though they sold 0.26 cents to the petitioners but without delinking the said property, the respondents 4 to 7 filed a suit for partition for entire 0.48 cents and without impleading either Jayamani Ammal or the present petitioners and obtained the decree and therefore the said decree will not bind the petitioners. Therefore, the petitioners filed application under Section 47 of Civil Procedure Code to determine their rights. But the Executing Court dismissed the said application. A careful reading of the Complaint filed by the respondents 4 to 7 in O.S.No.393 of 2005 against the respondents 1 to 3 shows that neither the petitioners nor their vendor Jayamani Ammal are the parties. Further, it is seen from records that even the petitioners have stated in their application in E.A.No.387 of 2008 that subsequent to the filing of suit in O.S.No.393 of

2005 and during the pendency of the said application, the respondents 4 to 7 filed suit in O.S.No.212 of 2006 against the petitioners and the suit in O.S.No.325 of 2006 was filed by the first respondent against the first petitioner and the fifth and sixth respondents have filed another suit in O.S.No.4 of 2007 against the first petitioner herein. Though the respondents have filed three suits against the petitioners, the same are pending. Therefore, the petitioners can agitate their in the aforesaid suits and establish their title. Admittedly, the vendor of the petitioner viz., Jayamani Ammal was not party to any of the proceedings and the petitioners are not party in the present suit in O.S.No.393 of 2005 and therefore they cannot filed application under Section 47 of the Civil Procedure Code. Further Section 47 is very clear that all the questions arising between the parties to the suit in which the decree was passed or their representatives, relating to execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Even as per the explanation to the said Section, the petitioners are neither parties nor the vendor Jayamani Ammal are parties to the suit. Therefore the application filed by the petitioners under Section 47 is not maintainable. Therefore, the learned District Munsif rightly dismissed the application filed by the petitioners and therefore this revision is liable to be dismissed as devoid of merits.

8. Accordingly, this Civil Revision Petition is dismissed. However, the petitioners are at liberty to work out their remedy in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

04.09.2020

arr

Index: Yes/No.

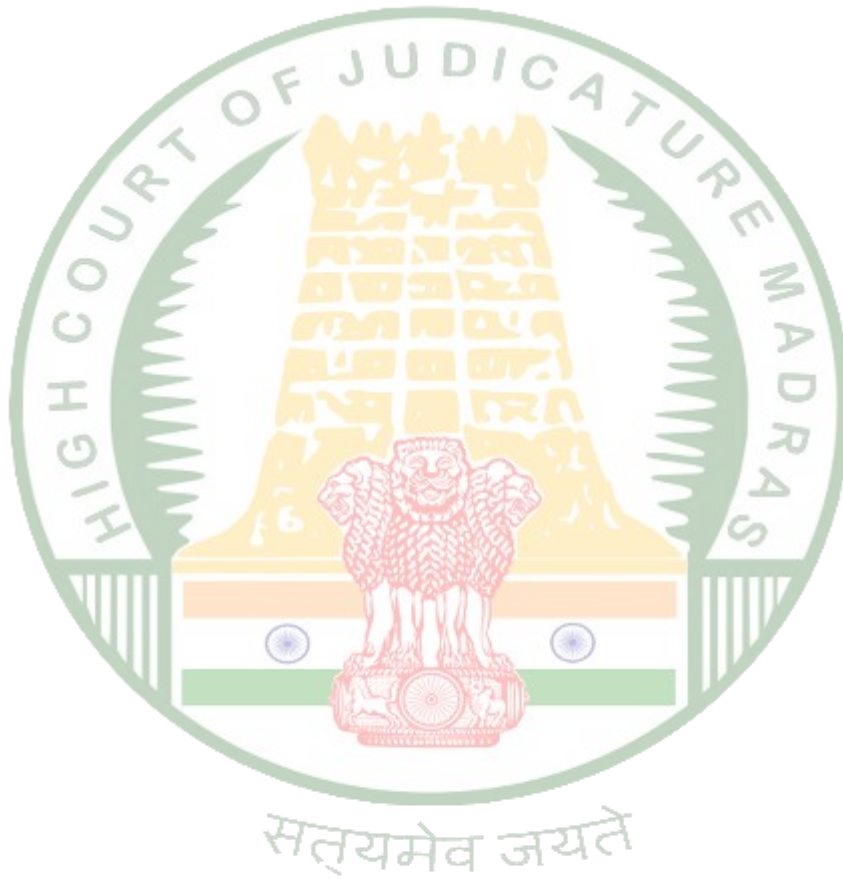
Internet: Yes



WEB COPY

To

1. The District Munsif's Court, Panruti
- 2.The Section Officer, V.R. Section, High Court, Madras



WEB COPY

C.R.P.(NPD).No.799 of 2012

P.VELMURUGAN,J.

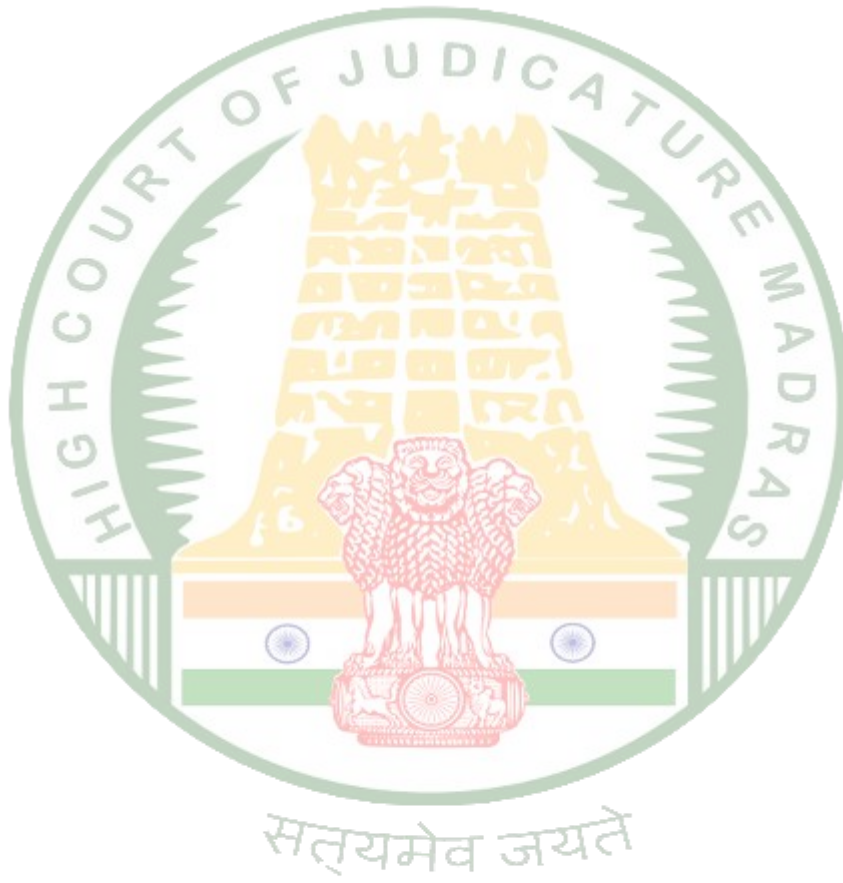
arr



C.R.P.(NPD).No.799 of 2012

WEB COPY

04.09.2020



WEB COPY