

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.378 of 2015

and

M.P.No.1 of 2015

1. K.Indra Bai
2. P.Saraswathi
3. A.Gunavathi
4. C.Shenabagavalli

... Petitioners

Vs.

1. S.Mahadevan
2. S.Manjula

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 16.06.2014 passed in I.A.No.6450 of 2013 in O.S.No.4045 of 2012 on the file of the I Assistant City Civil Judge, Chennai.

For Petitioners : Mr.K.S.Sundar

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioners/plaintiffs against the dismissal of their application in I.A.No.6450 of 2013 in O.S.No.4045 of 2012 on the file of the I Assistant Judge, City Civil Court, Chennai dated 16.06.2014.

2. The petitioners herein had filed a suit in O.S.No.4045 of 2012 on the file of the I Assistant Judge, City Civil Court, Chennai for the relief of partition and separte possession. During pendency of the said suit, the petitioners herein have filed an application in I.A.No.6450 of 2013 under Order VI Rule 17 of CPC seeking leave of the court for amending the plaint. The learned trial court judge by the order dated 16.06.2014 has dismissed the said petition. Feeling aggrieved, the petitioners /plaintiffs have filed the present Civil Revision Petition.

3. Inspite of notices sent, for several times, to the respondents through Court and also by post, the said notices could not be served to the respondents and hence, this Court has ordered for substituted service by publishing hearing date. Accordingly, the petitioners have published

the hearing date in a newspaper and produced before the court and the name of the respondents also printed in the cause list, but, they have not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioners and perusing the materials filed along with this petition, order is being passed in this petition.

4. The learned counsel for the petitioners has submitted that the petitioners herein are sisters and the first respondent/first defendant herein is the brother and as such, all of them are entitled to get 1/5th share in the suit property. He further submitted that since the first respondent/first defendant tried to encumber the suit property through the second respondent, the second respondent also has been added as a party in the suit. He further submitted that after receipt of summons, the defendants appeared through separate counsel and filed separate written statements. He further submitted that in the written statement filed by the second respondent/second defendant, she has stated that the first respondent/first defendant has executed a power of attorney dated 19.03.1989 in favour of her husband namely Sukumaran and based on the said Power of Attorney, the said Sukumaran had sold the suit

property to her under the registered sale deed dated 10.06.1999 and only thereafter, the petitioners came to know about the said sale deed and hence immediately the petitioners have filed an application in I.A.No.64 of 2013 seeking permission of the Court to amend the plaint to incorporate the prayer to set aside the said sale deed and patta which was granted in favour of the second defendant, but, the trial court judge has erroneously dismissed the said petition as the said petition is barred by limitation. He further submitted that since the petitioners got knowledge about the said document only through the written statement filed by the second respondent/second defendant, the limitation will run only from that date, but the trial court has erroneously dismissed the said petition and therefore he prayed to allow this Civil Revision Petition and set aside the order passed by the learned trial court Judge in I.A.No.64 of 2013 and allow the said application.

5. A perusal of the typed set of papers filed by the petitioners would show that the petitioners have filed a suit in O.S.No.4045 of 2012 on the file of the I Assistant Judge, City Civil Court for the relief of partition and separate possession. In the plaint, the petitioners have averred that the suit properties originally belonged to their father Viz.,

S.Sivaprakasam and he died intestate leaving behind the petitioners and the first defendant as his legal heirs and hence, the plaintiffs and the first defendant are entitled each to 1/5th share in the suit properties. They also averred that the first defendant is making efforts through the second defendant to make encumbrance in order to defeat the rights of the plaintiffs. Hence the second defendant has also been added as a party. The respondents/defendants after receipt of summons, appeared through separate counsel and filed separate written statements. The second respondent/second defendant in her written statement has pleaded that the first defendant/second defendant has executed a power of attorney in favour of her husband namely Sukumaran on 19.03.1989 and in pursuance of the said power of attorney, the said Sukumaran had executed a registered sale deed dated 10.06.1999 for valuable consideration of Rs.1,50,000/- in favour of her. The said written statement was filed on 03.01.2013.

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6. It is seen from the impugned order that the second defendant has filed the written statement on 11.02.2013 and thereafter, the petitioners herein have filed the application in I.A.No.6450 of 2013. The trial Court has dismissed the said application on the ground that the petitioners have

filed the said application after 14 years of the execution of the sale deed and as such, the relief sought for is beyond the period of limitation. Since the issue of limitation is a mixed question of facts and law, this Court is of the view that the question of limitation need not be decided at the stage of considering the application for amending the plaint. The said question can be decided in the main suit by framing separate issue. Therefore, this Court is of the view that the impugned order passed by the learned trial Court is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order passed by the I Assistant Judge, City Civil Court, Chennai, in I.A.No.6450 of 2013 dated 16.06.2014 is set aside. Application in I.A.No.6450 of 2013 is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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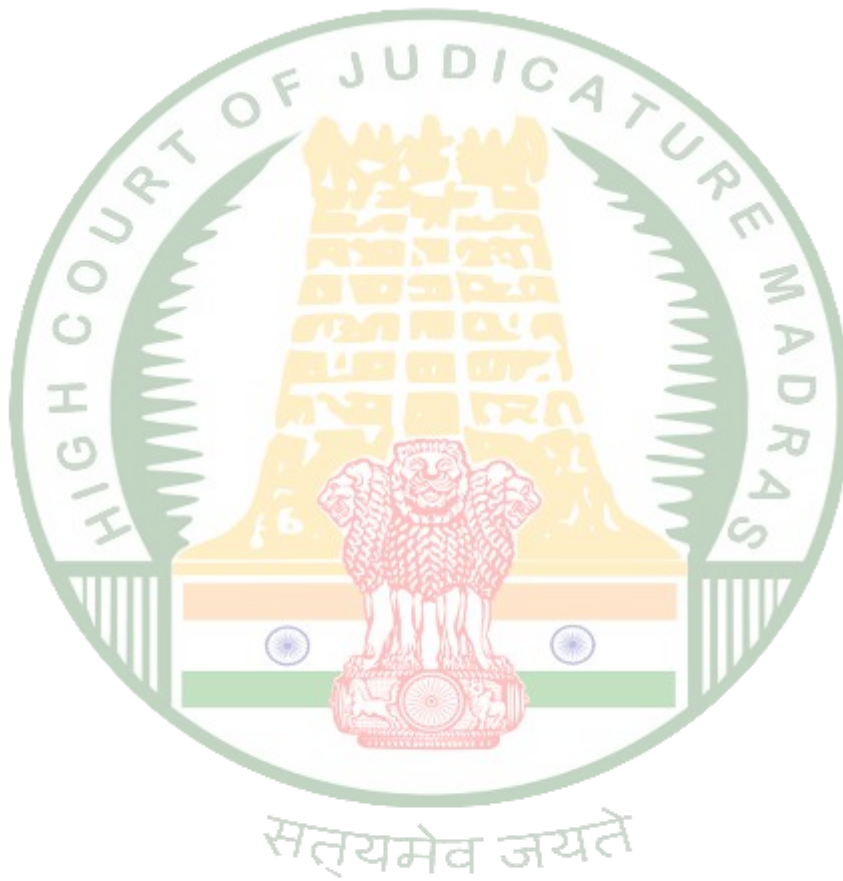
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Index : Yes/No

Internet : Yes/No

To

The I Assistant City Civil Judge,
Chennai.

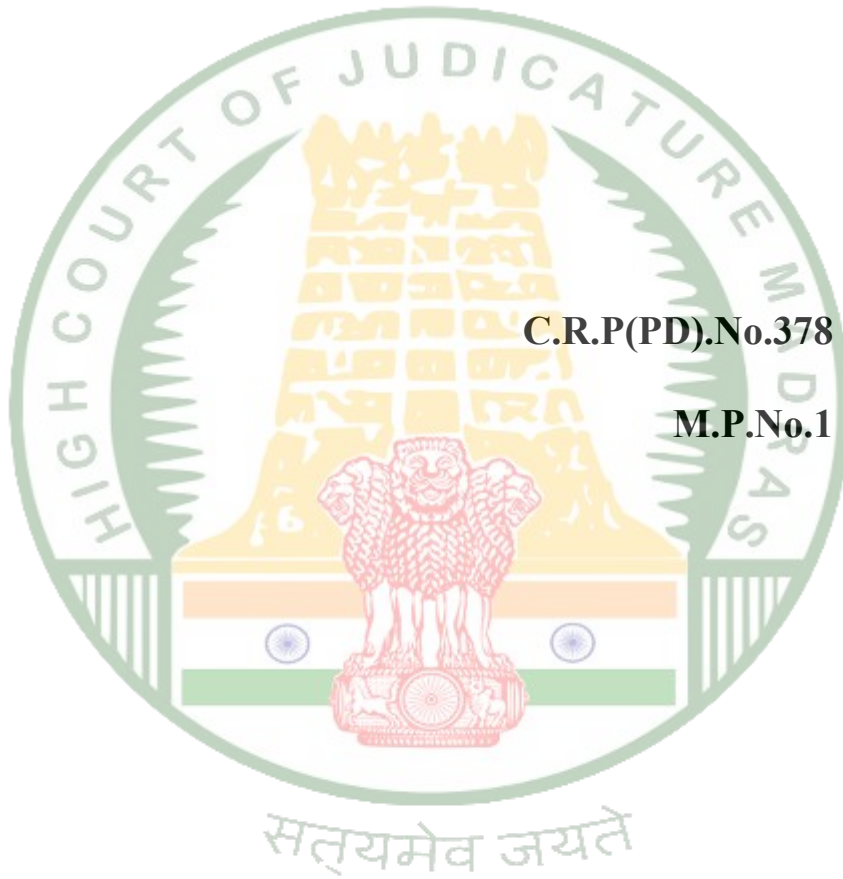


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