

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.381 of 2015

and

M.P.No.1 of 2015

1.Anandan (Died)

2.R.Velmurugan

3.R.Ravi

... Petitioners

(Respondents 4 & 5 transposed to Petitioners 2 & 3
vide order dated 27.11.2020 in CMP.No.3212 of 2020
in C.R.P. (PD).No.381 of 2015)

Vs.

Arikrishnan (Deceased)

1.Jayalakshmi Alias Dhanalakshmi

2.Danammal

Krishnaveni (Died)

Ramachandiran (Died)

Thaiyanayagi (Died)

3.Rajukannu

4.D.Kalyani

5.Lakshmikantham

Ramakrishnan (Died)

Mangalakshmi (Died unmarried)

6.Susila

7.Harimadhavan

8.Muthulakshmi

9.Santhi

10.Imayavarman

11.Lakshminarayani

12.Jayavarman

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2011 made in I.A.No.1413 of 2001 in O.S.No.194 of 1974 on the file of the Principal Sub Judge, Puducherry.

For Petitioners : Mr.A.V .Arun

For Respondents : Mr.T.M.Naveenkumar
for M/s.T.P.Manoharan for R9
Mr.Tamil Murugan
for M/s.K.Subbranga Bharathi
for R6

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.1413 of 2001 in O.S.No.194 of 1974 on the file of the Principal Sub Judge, Puducherry, dated 16.12.2011.

2.The petitioners herein had filed an Application in I.A.No.1413 of 2001 in O.S.No.194 of 1974 on the file of the Principal Sub Judge, Pondicherry under Order XX Rule 18 read with Section 151 of CPC to pass a final decree by further division of 1/7th share of mother (D6) in all properties in Nos.2-6 Schedule to decree into 6 equal shares for allotment and delivery of separate possession of such 1/7th share to him. The

learned Principal Sub Judge, Puducherry by the order dated 16.12.2011, had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Heard Mr.A.V.Varun, the learned counsel for the petitioner and Mr.T.M.Naveen Kumar for M/s.T.P.Manoharan for the 9th respondent and Mr.Tamil Murugan for M/s.K.Subbranga Bharathi for 6th respondent.

4.Since this Civil Revision Petition has been filed against the dismissal of the final decree application, it would be relevant to refer to Section 2(2) of the Civil Procedure Code, which reads thus:

"2."decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final. It shall be deemed to include the rejections of a plaint and the determination of any question within (***) Section 144, but shall not include:

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation:- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final. "

5.A bare reading of the aforesaid provision of law shows that the expression "decree" includes final decree also. Since in this case, the final decree application has been dismissed, the said order has to be treated as final decree. In such a case, the petitioner has to file an appeal by invoking Section 96 of the Civil Procedure Code. When an appeal lies against the decree, revision will not lie. Therefore, this Civil Revision Petition is liable to be dismissed as not maintainable.

6.In the result, this Civil Revision Petition is dismissed as not maintainable. It is open to the petitioner/Plaintiff to file an appeal before the competent Court. No costs.

7.At this stage, the learned counsel for the petitioner has submitted that, if appeal is filed by the petitioner, the Appellate Court may be directed to exclude the period during which this Civil Revision Petition

has been prosecuted, by invoking Section 14 of the Limitation Act. If any such appeal is filed, it is open to the Appellate Court to invoke Section 14 of the Limitation Act.

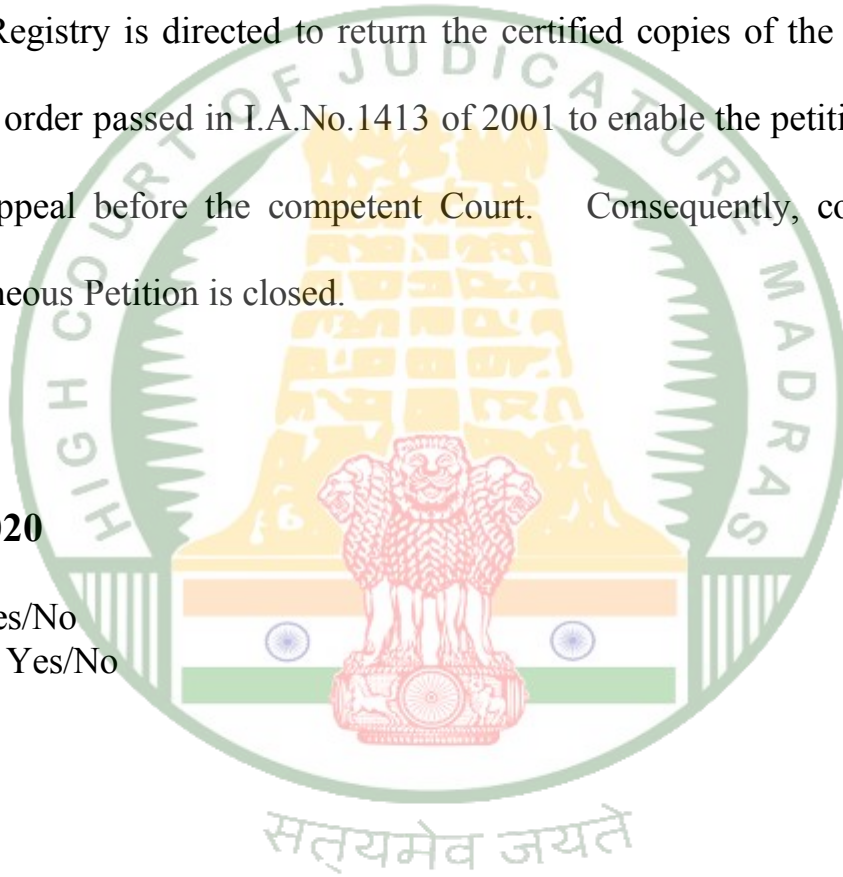
8.Registry is directed to return the certified copies of the fair and decreetal order passed in I.A.No.1413 of 2001 to enable the petitioners to file an appeal before the competent Court. Consequently, connected Miscellaneous Petition is closed.

01.12.2020

Index :Yes/No
Internet : Yes/No
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To

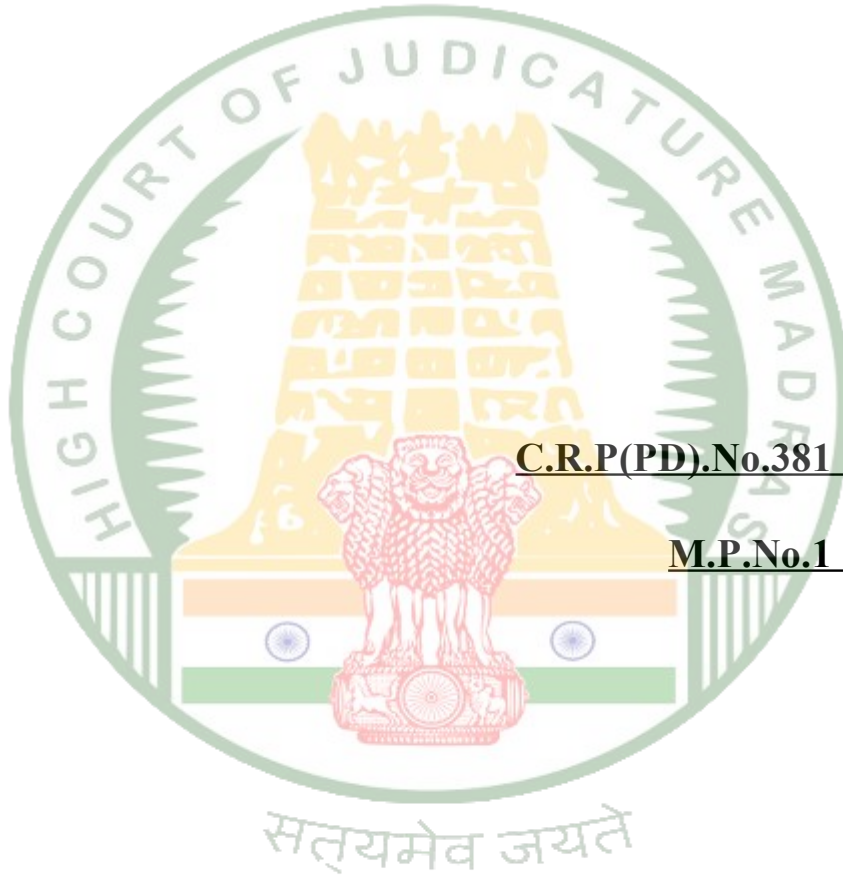
The Principal Sub Judge,
Puducherry.



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