

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 2196 of 2018

and

C.M.P.No. 13846 of 2018

Dhanam

...Petitioner

Vs.

1.M.Indhumathi
2.Minor Bargavan @ Muthuramakrishnan
3.M.Sivaramakrishnan
4.M.Harikrishnan
5.Muthammal
6.The Sub-Registrar,
Pappireddipatti Taluk & Post,
Dharmapuri District.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and fair order dated 27.03.2018 passed in I.A.No. 603 of 2017 in I.A.No. 101 of 2013 in O.S.No. 67 of 2009 on the file of the Sub-Judge, Harur.

For Petitioner : Mrs.Elizabeth Ravi

For Respondents : Mr.A.K.Gopalan for R1 & R2

Mr.P.Kumanan for R3 to R5

Mr.T.M.Pappiah, Spl.G.P. For R6

ORDER

The petitioner, whose application for impleading herself in the final decree proceedings in O.S.No. 67 of 2009 in I.A.No. 101 of 2013 was dismissed by the Trial Court has come up with this civil revision petition.

2. The suit in O.S.No. 67 of 2009 was filed by the plaintiffs namely, the wife and son of one Muthumarappan seeking partition and separate possession of their 2/5th share against the other two sons and mother of Muthumarappan. The suit was decreed after contested on 13.09.2012. A perusal of the judgment shows that the parties claimed that the entire suit properties belonged to Muthumarappan and as a heirs of Muthumarappan the plaintiffs are entitled to 2/5th share. A preliminary decree was passed on 13.09.2012 granting 2/5th share to the plaintiffs.

3. It is seen that pursuant to the said preliminary decree, the plaintiffs filed an application in I.A.No. 101 of 2013 seeking final decree. A Commissioner was appointed in the said application. It is at this stage, the petitioner, who is the sister of Muthumarappan came up with the instant

application in I.A.No. 603 of 2017 seeking to implead herself in the final decree proceedings contending that the properties belonged to Poochiappa Gounder and as a daughter of Poochiyappa Gounder, she is also entitled to a share in the suit property.

4. The learned Trial Judge dismissed the application on the ground that the plaintiffs in the suit have come with the specific case that all the properties belonged to Muthumarappan and Court has adjudicated upon the rights amongst the heirs of Muthumarappan. The plaintiff, admittedly, is not a heir of Muthumarppan, she claimed as heir of father of Muthumarappan, Poochiappa Gounder. Therefore, the Trial Court concluded that since the plaintiff is projecting a claim under a different title, it is for her to launch separate proceedings to establish the title claimed by her.

5. I have heard Mrs.Elizabeth Ravi, learned counsel for the petitioner, Mr.A.K.Gopalan, learned counsel for R1 & R2, Mr.P.Kumanan for R3 to R5 and Mr.T.M.Pappiah, Special Government Pleader for R6.

6. The learned counsel for the petitioner would vehemently contend that the properties belonged to Poochiappa Gounder and there was no partition between Poochiappa Gounder and Muthumarappan. In the absence of partition between Poochiappa Gounder and Muthumarappan the estate of Poochiappa Gounder will devolve on her also. He would also point out that the grandfather of the minor first plaintiff in O.S.No. 67 of 2009 had filed a subsequent suit representing the minor plaintiff impleading all the heirs of Poochiappa Gounder including the petitioner herein. The said suit was however dismissed for default.

7. I am unable to accept the submissions of the learned counsel for the petitioner. The suit in O.S.No. 67 of 2009, according to the plaintiffs is only with reference the properties of Muthumarappan. The petitioner herein disputes the said statement and claims that the properties subject matter of the suit belonged to the father of Muthumarappan namely, Poochiappa Gounder and the petitioner being the daughter of Poochiappa Gounder is entitled to a share in the properties. This, essentially is a new claim in so far as the heirs of Muthumarappan are concerned.

8. Therefore, I do not think that the petitioner can be impleaded in the present proceedings. It is open to the petitioner to file an appropriate suit seeking relief of partition of the entire estate of Poochiappa Gounder. If the petitioner chose to file such suit, the Trial Court will examine the claim of the petitioner independent of findings rendered in the present suit to which she is not a party. This civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

16.12.2020

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Internet:Yes

Index:No

Speaking

To:

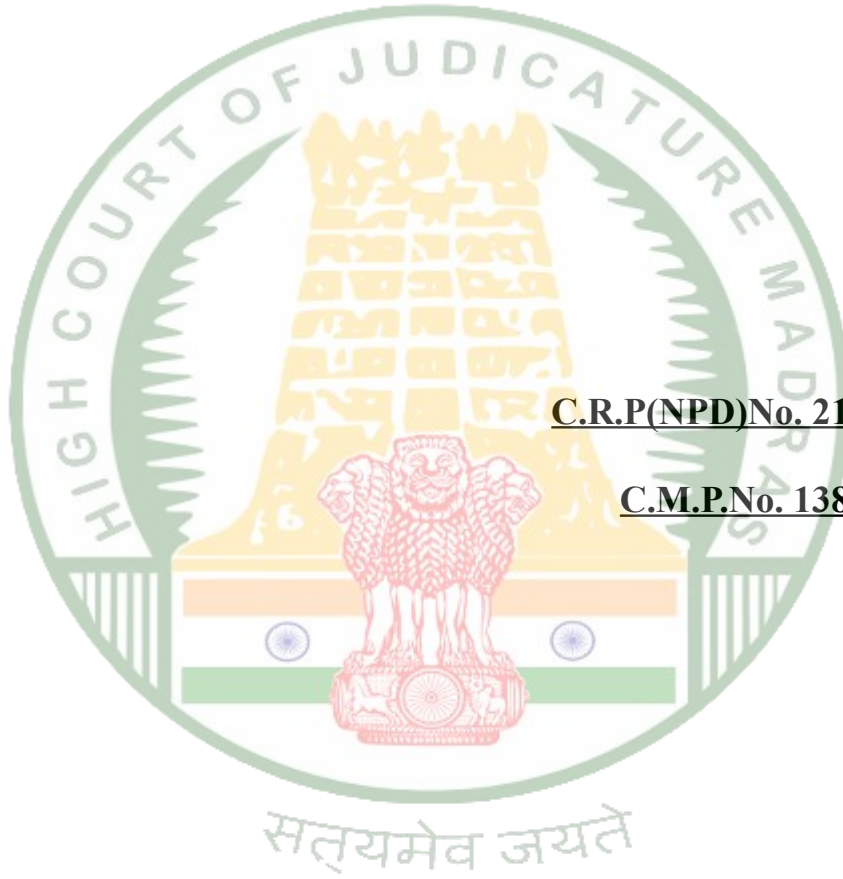
The Sub-Court,
Harur.

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R.SUBRAMANIAN, J.

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