

C.R.P.(PD).No.2250 of 2018
and
C.M.P.No.15058 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2250 of 2018
and
C.M.P.No.15058 of 2019

C.Pasupathi (Died)

Wife of Late G.R.Chidambarasamy

1. C.Muthukumararaja

2. C.Devasenapathi

.. Petitioners

Vs.

1. Minor D.Prakul Raja

2. D.Radha

3. K.Loganayaki

4. K.Parvatham

5. R.Dakshinamoorthy

6. D.Bharathiraja

7. D.Perarasu

8. D.Dhanalakshmi

9. N.Deivasigamani

10. N.Rajamanickam

11. N.Duraisamy

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12. R.Karuppanasamy
13. N.T.Kannusamy
14. S.Anandan
15. S.Saravanan
16. K.Sivanandam
17. V.Thangavel
18. V.Palanisamy
19. C.Loganathan
20. P.Akilandam
21. K.Mythili
22. T.Nalini
23. V.Lakshmi
24. N.Lakshmi
25. N.Sukumar
26. V.Ponnusamy

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Final order dated 07.04.2018 made in I.A.No. 93 of 2018 in O.S.No. 39 of 2016 on the file of the Court of II Additional District Judge, Erode by allowing this Civil Revision Petition.

For Petitioners : M/s.Devi

For Respondents : Mr.Arun Kumar

ORDER

Ms.Devi learned counsel for the petitioners vehemently contended that the share of first defendant in the property would devolve only upon her children under Section 15 of the Hindu Marriage Act. The share of the first defendant will not devolve either the first plaintiff (the grand child) or the second plaintiff (Daughter in law). Therefore, according to her, the death of the first defendant will not result in increase in the share of the plaintiffs. Hence the amendment sought for cannot be granted.

2. Mr.Arun Kumar, learned counsel appearing for the respondent would contend that the Court need not go into the correctness of the plaintiffs' case while considering the application for amendment. Therefore, the trial Court was justified in allowing the amendment application. I am unable to accept the contention of the learned counsel appearing for the respondent.

3. The 1st defendant is the wife of late G.R. Chidambarasamy. She died pending suit and her share would devolve only under Section 15 of the Hindu Succession Act and not under Sections 6 or 8. It cannot be contended that the respondents 1 and 2 are the legal heirs of the deceased 1st defendant. Neither the first plaintiff nor the second plaintiff would get any right over the property of the first defendant so long as the third defendant is alive. Therefore, the learned trial Judge has erred in allowing the application

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for amendment on the ground that the correctness of the pleas sought to be introduced by way of amendment need not be gone into while considering the application under Order VI Rule 17. The stated principle of law would apply only to a factual plea and not a erroneous legal plea. A court should not allow a amendment which is illegal. However the order allowing the other amendment sought for namely to enhance the claim for maintainance cannot be said to be wrong.

4. Therefore, the Civil Revision Petition is partly allowed. The prayer for amendment of the shares claimed in the plaint shall stand rejected and only the prayer for enhancing the maintenance from Rs.20,000/- to Rs.50,000/- is allowed. This Civil Revision Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2020

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Internet: Yes/No

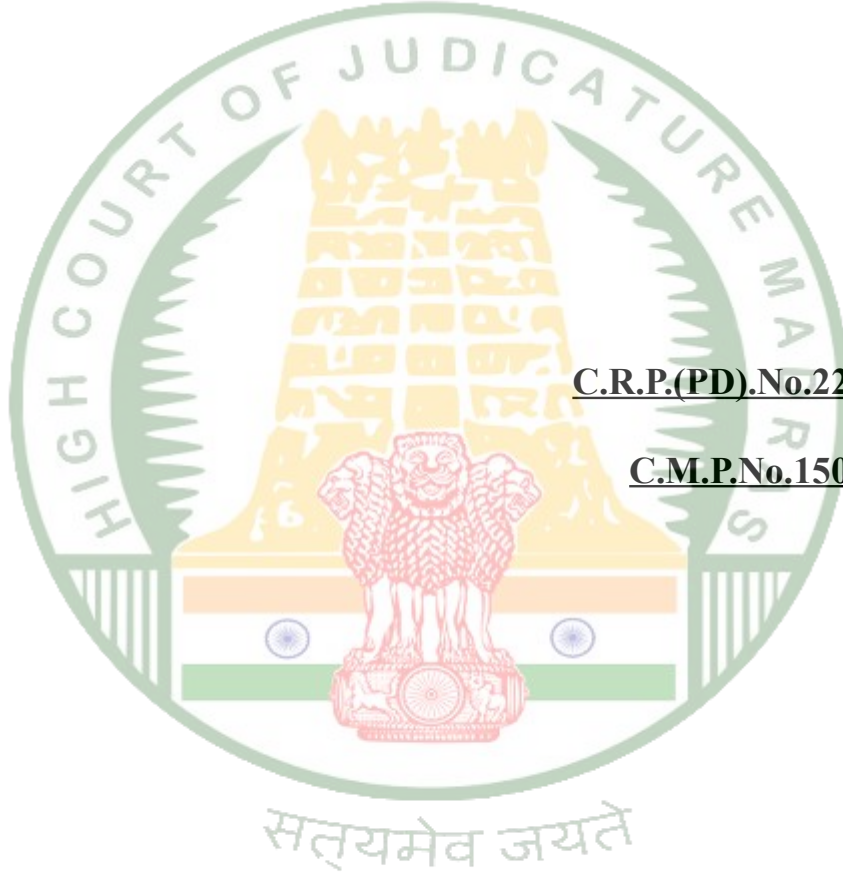
Index: Yes/No

To
The learned II Additional District Judge,
Erode.

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R.SUBRAMANIAN, J.

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