

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. PDs 450 of 2016 & 1580 of 2017

C.R.P. PD 450 of 2016

Sakunthala Ammal

... Petitioner

Versus

1. S.Navaneetha Krishnan
2. The Tahsildar,
Office at Sriperumbudur Taluk,
Sriperumbudur Taluk,
Kancheepuram District.

... Respondents

PRAYER in C.R.P. PD 450 of 2016 : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to strike off the plaint in O.S. 72 of 2015 from the file of learned District Court No.II, Kancheepuram.

C.R.P. PD 1581 of 2017

Sakunthala Ammal

... Petitioner

Versus

1. Chandra
2. Sampath
3. Ravikumari
4. Chinnaponnu
5. Elumalai

... Respondents

PRAYER in C.R.P. PD 1581 of 2017 : Civil Revision Petition is filed under Article 227 of Constitution of India, praying to strike of the plaint in O.S. 100 of 2016 from the file of learned District and Sessions Judge No.II, Kancheepuram.

For Petitioner : Mr.G.Jeremiah
in both C.R.P.s

For Respondents
C.R.P. 450 of 2016 : Mr.M.G.Jayaseelan

For Respondents
C.R.P. 1581 of 2017 : Mr.R.Anbalagan for R1 to R4

ORDER

The Civil Revision Petition in C.R.P. 450 of 2016 has been filed to strike of plaint in O.S. 72 of 2015, pending on the file of District Court No.II, Kancheepuram.

The Civil Revision Petition in C.R.P. 1581 of 2017 has been filed to strike of plaint in O.S. 100 of 2016 pending on the file of District Court No.II, Kancheepuram.

2. The brief facts leading to filing of the above Civil Revision Petitions are as follows :-

The Petitioner Sakunthalammal, has earlier filed a suit in O.S. 12 of 1982, for declaration declaring that, she is absolute owner of the suit schedule property, and also for a consequential injunction. The above suit has been filed against one Seetharaman, who was 1st defendant, and other 19 persons. The above suit has been filed on the ground that, the suit schedule property originally belong to one Perumal. The said Perumal died leaving behind his wife Pattammal, two daughters viz., Rajammal and Chinnammal, one son viz., Elumalai. The legal

heirs of Perumal has sold the property in favour of Seetharaman. Even before their purchase, the petitioner Sakunthalammal purchased the property from the son of Perumal viz., Elumalai. Based on the said sale, the above suit has been filed. Simultaneously, another suit in O.S. 52 of 1981 has been filed by one Rangasamy, on the ground that, while one Perumal was alive, he has entered into a sale agreement with the petitioner for the suit schedule property. Hence, he has filed a suit for specific performance. Both suits were tried and disposed of by a common judgment and decree, thereby partly decreeing the suit filed by the petitioner declaring that, the petitioner is entitled to 1/4th share in the suit schedule property, and also for consequential injunction in respect of 1/4th share and also permitting the 1st defendant Settharaman to file a separate suit for partition claiming 3/4th share. The suit filed by the said Rangasamy in O.S. 52 of 1981 has been dismissed. Challenging the judgment and decree passed in O.S. 12 of 1982, the petitioner filed an appeal in A.S. 84 of 1983. Likewise, the said Rangasamy also filed an appeal in A.S. 39 of 1984 against the judgment and decree passed in O.S.52 of 1981. The lower

appellate Court has allowed the appeal filed by the petitioner and given a declaration that, the petitioner is entitled to the entire extent of suit schedule property, and also confirmed the consequential injunction, and dismissed the appeal filed by the said Rangasamy. In the above appeal, Mr.Seetharaman was remain exparte.

3. Thereafter, challenging the judgment and decree, one Rangasamy has filed two Second Appeals before this Court in S.A. 343 and 344 of 1988, and this Court by a judgment dated 28.04.2000 dismissed both the appeals, thereby confirmed the judgment and decree passed by the lower appellate court. Now, the 1st respondent herein, who is a legal heir of Seetharaman since deceased, filed the present suit for partition in respect of 3/4th share of Perumal in O.S. 72 of 2015, and legal heirs of Perumal filed another suit in O.S. 100 of 2016 seeking for partition of the above properties. To strike of both suits, the present Civil Revision Petitions have been filed.

4. Mr.G.Jeremiah, learned counsel appearing for petitioner would submit that, already the relief claimed by the petitioner has been decided in the earlier round of litigations in A.S. 84 of 1983, which was confirmed in the Second Appeal. Now, it is not open for them to challenge the same, and both suits have been filed is total abuse of process of law. The father of 1st respondent/plaintiff was a party in the earlier proceedings, and suffered a decree, now, it is not open to the legal heirs to maintain another suit. Likewise, suit in O.S. 100 of 2016 has been filed by the legal heirs of Perumal is also not maintainable. Already the said Perumal has sold the property to the petitioner as well as Seetharaman and lost their right, and they cannot maintain these suits. Both suits are filed in total abuse of process of law. Hence, both the suits are liable to be rejected.

5. Per contra, Mr.Jayaseelan and Mr.R.Anbalagan, learned counsel appearing for respondents would vehemently contended that, originally the suit filed by the petitioner has been decreed only for 1/4th share. In the appeal filed by them, no notice was served on them, and they were set exparte. Thereafter, in the

appeal filed by Rangasamy, the judgment and decree has been confirmed, which is not binding on them. Hence, they are entitled to maintain a suit as per the judgment and decree passed in the suit. Since the decree has been passed exparte without any notice, the decree is a nullity and the decree is not binding on the petitioner. Hence, he is entitled to file a present suit for partition. That apart, if at all, the petitioner has any grievance, it is for him to file necessary application before the trial court, and he cannot maintain a Civil Revision Petition under Art.227 of Constitution of India.

6. I have heard and considered the rival submissions made by learned counsel appearing for petitioner as well as learned counsel appearing for respondents and perused the records carefully.

7. The admitted facts are, earlier, the petitioner herein has filed a suit for declaration in respect of entire suit schedule property, which is the subject matter in the present two suits. Originally, the Trial Court has granted decree in respect of 1/4th share, however, on an appeal filed by the petitioner herein, the decree has been modified, and the petitioner was declared as

absolute owner of the entire suit schedule property, and the consequential injunction was also granted in his favour. Subsequently, in a Second Appeal, the above decree has been confirmed. Now, the only contention of respondents/plaintiffs is that, in the appeal, no notice was served on them, and they were set exparte, and the decree has been obtained by fraud and collusion, which is not binding on them. That apart, the Second Appeal was also not filed by them. That was filed by one Rangasamy, who was an agreement holder. In his appeal, the decree passed by the Lower Appellate Court was confirmed, and the decree is not binding the respondents. The above contentions cannot be countenanced for the simple reason that, even though it is an exparte decree, if at all, the respondents have any grievance over the same, the only remedy available for them is to file an application to set aside the decree in the manner known to law, until it is not open for them to content that the decree is not binding on them, especially, when the decree has been confirmed by this court. In the said circumstances, as the petitioner right over the suit schedule property has been confirmed in the earlier proceedings, the present suits filed by

the respondents are not at all maintainable. In my considered opinion, the suits have been filed in total abuse of process of law, and inclined to reject both the suits. In the result, both Civil Revision Petitions are allowed. Both the suits in O.S. Nos. 72 of 2015 and 100 of 2016 pending on the file of District and Sessions Court No.II, Kancheepuram are rejected. No costs.

17.02.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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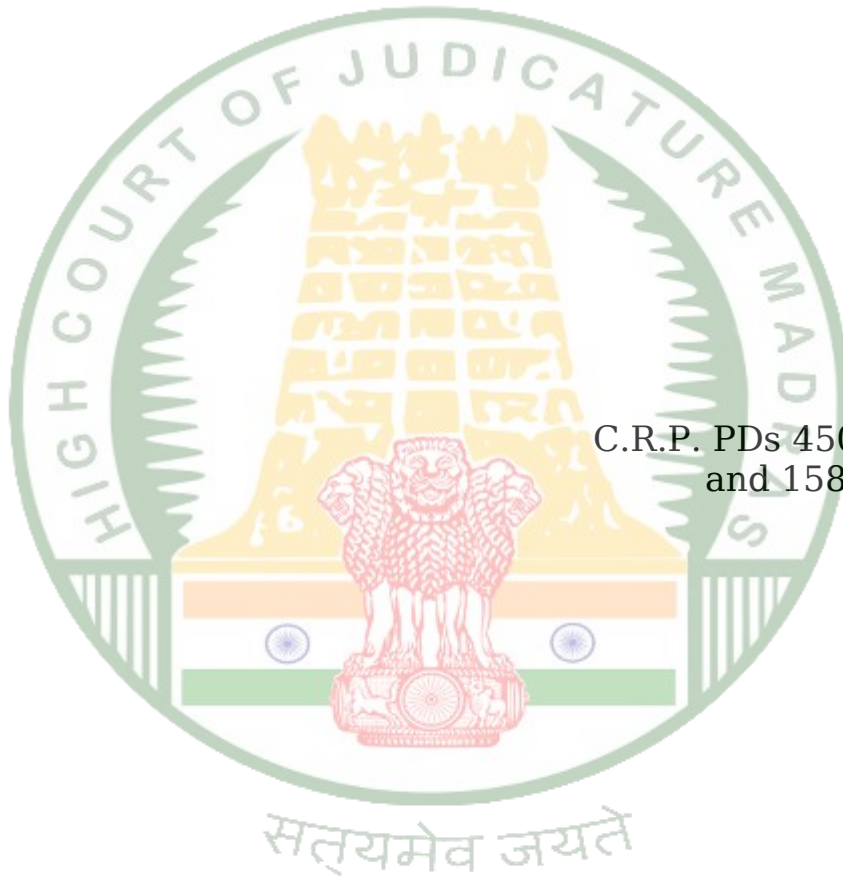
District and Sessions Judge No.II,
Kancheepuram,



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V.BHARATHIDASAN,J.

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and 1581 of 2017

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