

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.414 of 2018
and CMP No.2242 of 2018

1. Elamathi
2. Pandiyan @ Paramanathan ..Petitioners

Vs.

1. Dhavamani
Arumpu Ammal (Deceased) ... Respondent

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal orders passed in I.A.No.121 of 2017 in O.S.No.152 of 2013 dated 24.11.2017 on the file of the Court of Additional Subordinate Judge, Mayiladuthurai.

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

ORDER

The defendants 2 and 3 in O.S.No.152 of 2013 have come up with this Civil Revision, challenging an order of the trial Court, dismissing an application in I.A.No.121 of 2017 seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure on the ground that the suit is barred by the principles of *res judicata* and it amounts to an abuse of process of Court.

2. The suit was laid by the plaintiff seeking partition and separate possession of her ½ share in the suit property. According to the plaintiff, the suit property was allotted to her paternal uncles Natesan and Thiagarajan, at a partition that took place in the year 1966. The said Natesan filed a suit for partition in O.S.No.270 of 1982 against the heirs of Thiagarajan. A preliminary decree was passed granting half share in the suit property. Subsequent to the preliminary decree, the suit was transferred to the Sub Court, Mayiladudurai and renumbered as O.S.No.425 of 2001. Natesan being the plaintiff in the suit filed I.A.No.485 of 2001 for passing of the final decree. Pending suit, Natesan died issue less and his wife had

predeceased him. In such situation I.A.No.934 of 2003 was filed by the plaintiff to bring on record the her self as the legal representative of the said Natesan and another I.A.No.149 of 2004 was filed by the defendants namely the heirs of Thiagarajan seeking to bring themselves on record as legal representatives of Natesan. Both the applications were allowed. Thereafter, the plaintiff filed I.A.No.657 of 2006 seeking sale of the property under Section 3 of the partition Act. The said application came to be allowed by the trial Court. Aggrieved, the defendants preferred an appeal in A.S.No.6 of 2007 which came to be allowed directing the parties to file a petition for passing a supplementary preliminary decree. Despite the said direction, the plaintiff herein filed I.A.No.213 of 2010 seeking final decree claiming that she is the legatee under the Will said to have been executed by Natesan dated 14.08.1999. The said application came to be dismissed as the Court disbelieved the Will. It is thereafter, the plaintiff has come up with the present suit for partition.

3. In the present suit, her contention is that she is the sole heir of Natesan. She had claimed that the defendants would not be entitled to claim

as class II heirs of Natesan for some reason. She places an interpretation on Section 16 of the Hindu Marriage Act to contend that the 2nd defendant being the 2nd wife and 3rd defendant being an illegitimate son of Thiagarajan, would not be entitled to claim as heirs of Natesan. It is this claim which is sought to be rejected on the ground of *res judicata* and the abuse of process of the Court.

4. I have heard Mr.A.Muthukumar, learned counsel appearing for the petitioners and Mr.S.Sounthar, learned counsel appearing for the respondent.

5. Mr.A.Muthukumar, learned counsel appearing for the petitioners would vehemently contend that the suit is barred by the principles of *res judicata*. He would submit that the present plea that the plaintiff would be the sole heir of Natesan to the exclusion of the defendants must have been raised by the plaintiff even in her application in I.A No.213 of 2010 or in the application in I.A No.657 of 2006 which is one under Section 3 of the Partition Act. Having not raised these pleadings at the

earlier point of time, the suit is barred in view of Explanation 4 to Section 11 of the Code of Civil Procedure. Mr.A.Muthukumar, learned counsel appearing for the petitioners would specifically refer to the findings rendered in I.A.No.213 of 2010 to contend that the suit is barred by the principles of *res judicata*.

6. I am unable to agree with the learned counsel for the petitioners. In I.A.No.213 of 2010, the plaintiff claimed under the Will said to have been executed by Natesan on 14.08.1999. Having found that the Will has not been proved, her as the legatee under the Will was rejected by the Court. No doubt, the plaintiff has not raised the present plea that she is the sole heir of Natesan under law in earlier applications. But that by itself would not be a bar to file a present suit for partition. The questions as to whether she could have raised these issues earlier or the present suit would be barred by the principles of *res judicata* are all matters to be decided on evidence after trial. I do not think on the peculiar facts of the case on hand principles of *res judicate* could form the basis for rejection of the plaint. I am therefore of the opinion that the trial Court was justified in dismissing

the application. The Civil Revision therefore fails and it is accordingly dismissed. No costs. It is made clear that it will be open to the defendants to raise all the contentions that are raised in I.A.No.121 of 2017 at trial in the suit. Consequently, connected miscellaneous petition is closed.

27.11.2020

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Index: Yes/No
Speaking order / Non speaking order

To:

The Additional Subordinate Judge,
Mayiladuthurai.

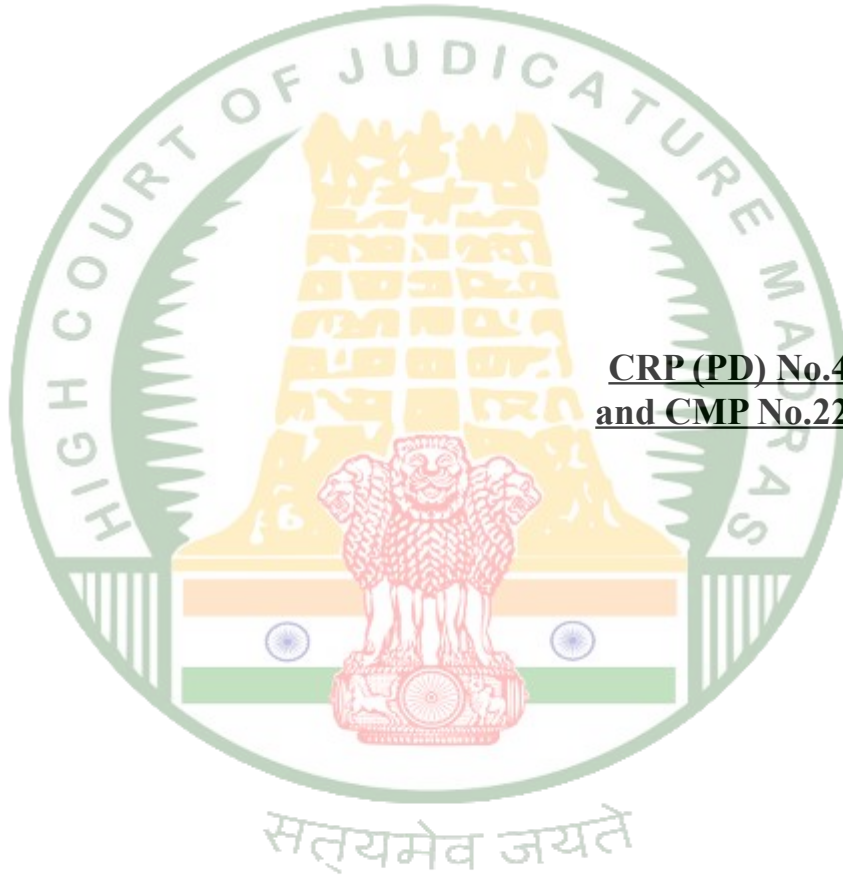


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R.SUBRAMANIAN, J.

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