

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) Nos.908 & 909 of 2018 and
CMP Nos.4923 & 4924 of 2018

E.H.63, Ingur Weavers' Cooperative
Production and Sales Society Limited,
Represented by its Special Officer,
Ingur, Ingur Village,
Perundurai Taluk,
Erode District. ... Petitioner in both CRPs.

M.Balasubramani ... Respondent in both CRPs.

Common Prayer: The Civil Revision petitions filed under Article 227 of
Constitution of India, against the Fair and Final order passed in I.A.Nos.474
& 475 of 2017 in O.S.No.169 of 2015 on the file of the II Additional
District Court, Erode, dated 22.12.2017 to set aside the same.

For Petitioner
in both CRPs : Mr.A.Sundaravadhanan

For Respondent
in both CRPs : Mr.N.Manokaran

COMMON ORDER

These two Revision petitions have been filed by the defendant in O.S.No.169 of 2015 on the file of the II Additional District Court, Erode, challenging the orders made in I.A.Nos.474 and 475 of 2017. The said applications were filed by the plaintiff in the said suit, seeking to reopen the suit and to appoint an Advocate Commissioner to note down the physical features of the suit property and to fix the boundaries.

2. The suit was filed by the plaintiff seeking partition and separate possession of an extent of 13 ½ cents belonging to him, out of an extent of 2 hectares in various Survey numbers in Ingur Village of Perundurai Taluk.

3. According to the plaintiff, his father owned an extent of 1 acre and 37 ½ cents in Survey Nos.349 and 350. Out of the said extent of 1 acre 37 ½ cents, he sold an extent of 1 acre 24 cents to the defendant society under a Sale Deed dated 25.06.1990. It is also claimed that the father of the plaintiff Muthusamy had constructed a house in the remaining 13½ cents and has been living there. Contending that the defendant society is now

claiming certain extent of land in the area in possession of the plaintiff, the plaintiff has come up with the above suit for partition and separate possession of 13 ½ cents.

4. The suit was resisted by the petitioner/defendant contending that after the sale of 1 acre 24 cents on 25.06.1990, the plaintiff's father Muthusamy had encroached upon 2 cents belonging to the society and has erected a compound wall. Therefore, according to the defendant, there is no property measuring 13½ cents that is available for partition. After the completion of the trial, the plaintiff has come up with these two applications seeking reopening of the suit and appointment of an Advocate Commissioner.

5. The plaintiff would contend that unless the property is measured and the boundaries are marked, the Court cannot effectively adjudicate the dispute between the parties. The applications were resisted by the defendant contending that the plaintiff is now seeking to convert the suit for partition is to one for possession and for identification of the

property. It is also pointed out that in a suit for partition, the identification of the property does not arise at all. The applications are also dubbed as an attempt to secure the evidence.

6. The learned II Additional District Judge, Erode who heard the applications, allowed the same, reopened the suit and appointed an Advocate Commissioner to measure the suit property and file a report. Aggrieved, the defendant has come up with the Civil Revision petitions.

7. I have heard Mr.A.Sundaravadhanan, learned counsel appearing for the petitioner and Mr.N.Manokaran, learned counsel appearing for the respondent.

8. As already pointed out, the suit is one for partition, the question that would arise in a suit for partition is as to whether there is a joint ownership and as to whether there is any necessity for division of the property. The availability or otherwise of the property, the physical features, the location of the property etc., do not really arise for consideration in a

suit for partition. It is for the plaintiff in a suit for partition to prove that there is a joint ownership and the plaintiff is entitled to a share in the property. If that is proved, the plaintiff would be entitled to a decree, failing which, the plaintiff will have to fail. The appointment of an Advocate Commissioner to identify the property does not really arise in a suit for partition.

9. The pleadings of the parties are very clear. The plaintiff seeks partition and allotment of 13 ½ cents out of a larger extent of 2 hectares. From the pleadings, it could be gathered that the plaintiff's father was entitled only to 1 acre and 37 ½ cents in the suit Survey numbers. It is not known as to how the plaintiff is claiming partition of a larger extent of 2 hectares. I find that the application for appointment of an Advocate Commissioner is only an attempt to fish for evidence by the plaintiff. Identifying the property and noting down the physical features are all things that are foreign to a partition action. Therefore, I find the learned II Additional District Judge, Erode was not justified in appointing an Advocate Commissioner to find out the location of the property in a suit for

partition.

10. I find that the order of the learned II Additional District Judge, Erode is materially irregular and has to be interfered with. Therefore, the Civil Revision petitions will stand allowed and the orders of the learned II Additional District Judge, Erode in I.A.Nos.474 and 475 of 2017 will stand set aside and both the applications will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.07.2020

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Index: Yes/No
Speaking order / Non speaking order

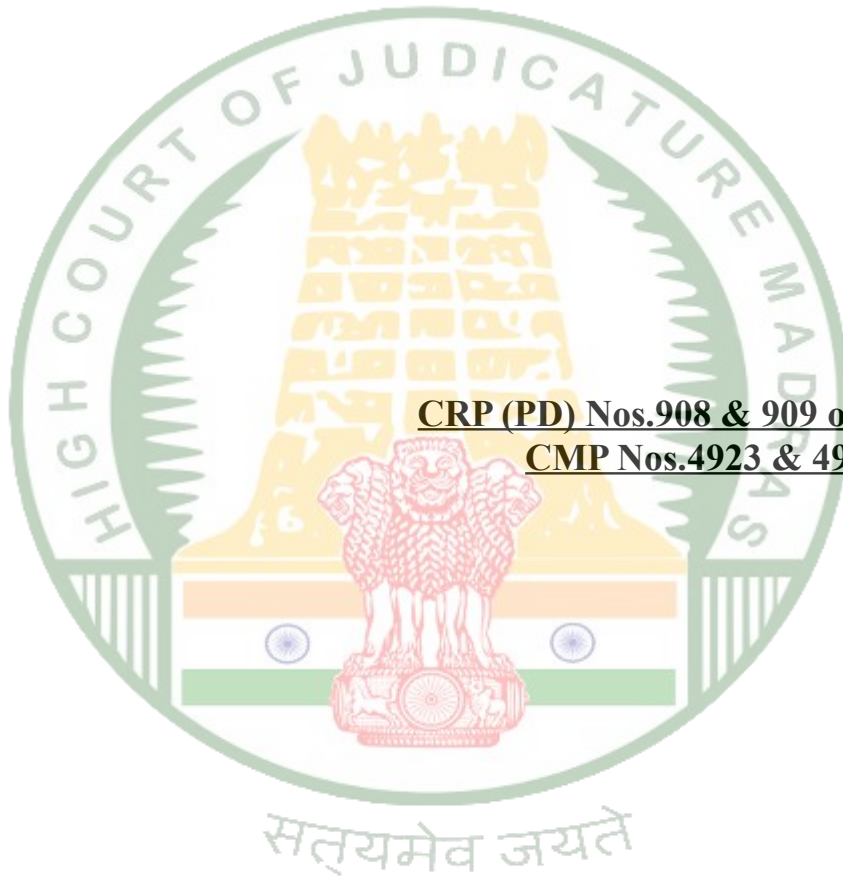
To:

1. The II Additional District Court,
Erode
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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R.SUBRAMANIAN, J.

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