

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 01.12.2020]

[ORDERS PRONOUNCED ON :07.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.1791 of 2020

and

C.M.P.No.10957 of 2020

Imran

....Petitioner

.. Vs ..

1.Selvi
2.Chitra
3.K.Kuppusamy
4.Kasha
5.JMA Usan
6.Salima
7.J.M.Arun

...Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 13.07.2020 in I.A.No.4 of 2019 in O.S.No.158 of 2015 on the file of the Subordinate Judge, Thirupattur.

For Petitioner

: Mr.A.R.L.Sundaresan

Senior counsel

For M/s.A.L.Gandhimathi

For R2 to R4

: No appearance

For R5 to R7

:Mr.M.Sivavarthanan

ORDER

The contesting respondents were served and none appeared.

2. The 6th defendant in the suit is the revision petitioner.

3. This petition has been filed under Article 227 of the Constitution of India.

4. The respondents 1 to 3 herein are the plaintiffs in O.S.No.108 of 2015. They filed the above suit for partition and for separate possession wherein the 4th respondent herein the first defendant and others are shown as other defendants. The 6th defendant herein filed I.A.No.4/2019 under Order 7 Rule 11(b) & (d) to reject the plaint in respect of the 6th defendant. Though the contesting respondent namely the plaintiff in the suit are served names are printed in the cause list, none appeared.

5. Mr.ARL.Sundaresan, learned Senior Counsel could contend that the revision petitioner-6th defendant is a muslim by religion not connected with the family of the plaintiff and he is not a co-owner of the suit property and nor even purchaser of the any common right in the suit property from any person to whom allotted joint family property and hence he is totally stranger. However to create a confusion between the plaintiff and the defendant various suits have been pending and hence the plaint has to be rejected in respect of the 6th defendant. The plaintiffs 5, 6, 7 are the defendants in the suit.

6. On perusal of the lower Court records it is seen that the plaintiff has filed a suit for partition. There is no relief for declaration of title as against the other defendants. There are serial of disputes with regard to the suit property between the plaintiff and the defendants 1&2 on one hand and defendants 3 to 6 on the other hand.

7. Admittedly, the revision petitioner herein is not a co-owner or purchaser of any share in the family property of the plaintiff and therefore as per the plaint averments there is no whisper as to how these defendants is involved in the suit property has been not averred anything in the plaint as to whether the defendant has purchased any of the property from any co-owner and they are not connected with the plaint property.

8. It is also seen that the prayer in the plaint is only for a partition and there is no deed for declaration of title against the these defendants namely 3 to 6.

9. After perusing the Court fee column in the plaint, plaintiffs has not stated anything that they are in possession of the property or not.

10. Admittedly, these defendants is in possession of the property and hence I find that valuation of the suit property under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not correct. It ought to have been valued under Section 37. The application has been filed by these defendants in I.A.No.4/19 for rejection of the plaint filed by the defendants

that were dismissed by the learned Sub-Judge, Tirupattur on the ground that there is an order by the High Court to dispose the suit within a stipulated time except that there is no discussion in the said order. Since the petition have been filed for rejection of the plaint under Order 7 Rule 11 (b) & (d) of C.P.C.

11. On a close screening and scrutinizing of the plaint averment, I find that the defendant namely the revision petitioner/6th defendant is not a co-owner and he has not a purchaser of the common interest in the petition property and the plaint averment, there is no whisper nor even any cough regarding how this revision petitioner/6th defendant has right over the suit property and the plaint averment is not sufficient enough to proceed against the revision petitioner/6th defendant. I find that this is a gross abuse of process of Court by calling upon the 6th defendant to face the trial in respect of the suit property as if the suit property is a family property. I find that the suit framed, as such, is mischievous in name in order to settle some other suit civil dispute between the parties in one hand and with the third parties and hence to prevent the mischievous to justice, I am of the considered view that the petitioner herein the 6th defendant in the suit need not under go an orderal of the trial as he is noway connected with the property.

12. Accordingly, the plaint in O.S.No.158/2015 shall stands struck off in respect of the 6th defendant in the said suit namely the revision petitioner herein.

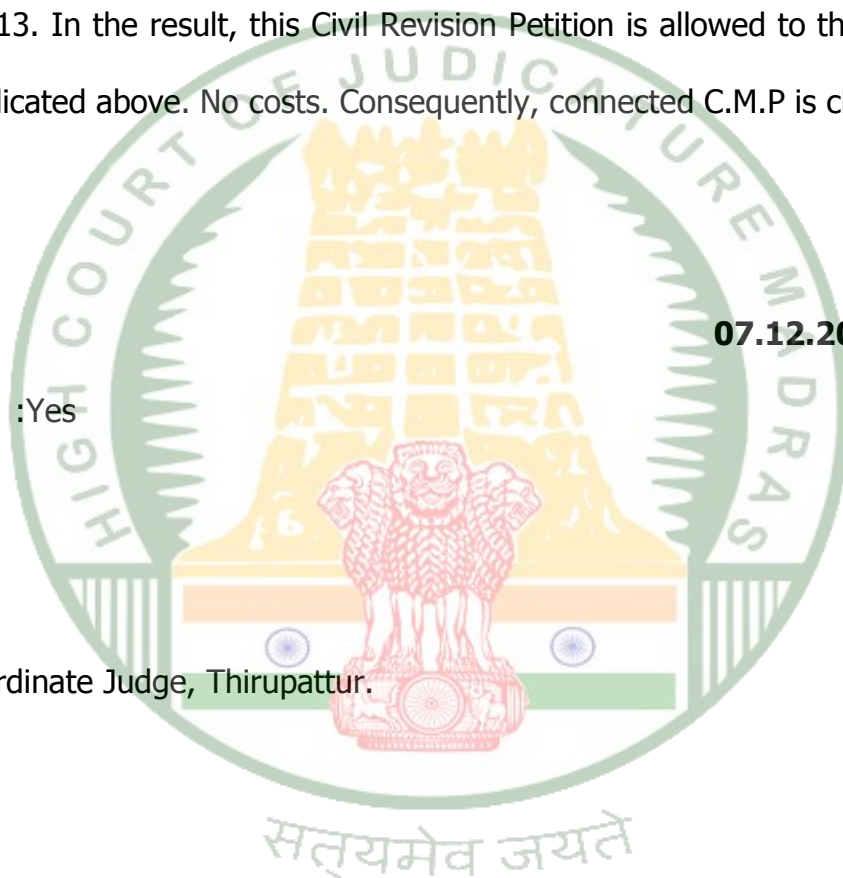
13. In the result, this Civil Revision Petition is allowed to the limited extent indicated above. No costs. Consequently, connected C.M.P is closed.

07.12.2020

Internet :Yes
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To

The Subordinate Judge, Thirupattur.

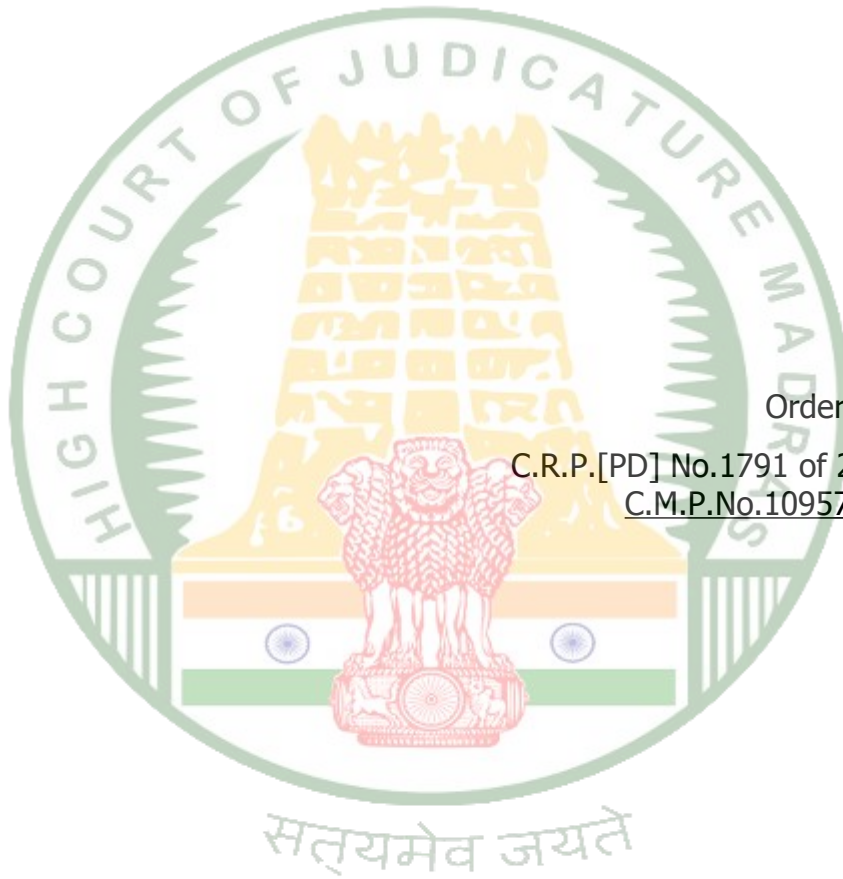


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RMT.TEEKAA RAMAN, J.

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