

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.2392 of 2012

and

M.P.No.1 of 2012

1.K.Seetharamman
2.K.Rajaram
3.S.Mahalakshmi
4.K.Santharam
5.A.Vigneswari
6.M.Devi.

...Petitioners/Plaintiffs

Vs.

1.G.Prema Bai
2.Santha Bai
3.Ramnarayanan Lal
4.K.Jegadeshn
5.Muthusamy
6.Nagamanickam
7.Murugesan
8.Samuthiragani
9.Thirupathi Asari
10.Manickam Asari
11.A.Jawahar Lal
12.S.Vaijyanthi
13.M.Nagin
14.S.Gunasudari
15.A.Ashokkumar
16.A.Ganesh Lal
17.B.Narashingha Prasath

18.B.Sivakumar
19.R.Shanthi
20.K.Dhanalakshmi
21.Kasthuri Bai
22.Saroja Bai
23.B.Roopavathy
24.S.Seethulal
25.Jagadesh Lal
26.S.Gajendran Lal.

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 18.11.2011 in I.A.No.351 of 2011 in O.S.No.708 of 1991 on the file of the Principal Subordinate Court, Coimbatore and allow the above Civil Revision Petition.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.Vivek for R11, R15 & R16
(No appearance)
For R1 to R10, R12 to R14 &
R17 to R24 -Given up

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 18.11.2011 in I.A.No.351 of 2011 in O.S.No.708 of 1991 on the file of the Principal Subordinate Court, Coimbatore and allow the above Civil Revision Petition.

2. The respondents 1 to 10, 12 to R14 & 17 to 24 were given up by the petitioners. When the Civil Revision Petition was taken up for hearing on 14.08.2020, petitioners' side argument was heard, but there was no representation for the respondents 11, 15 and 16. Hence, it is posted today for the respondents' side argument. Even today, there is no representation for the respondents 11, 15 and 16. As the Civil Revision Petition is pending from the year 2012, the same is disposed of, after hearing the arguments of the learned counsel for the petitioners and on perusal of records.

3. The case of the petitioners is that the petitioners' mother filed a suit in O.S.No.708 of 1991 on the file of the Principal Subordinate Court, Coimbatore. During the pendency of the suit, petitioners' mother died and therefore, the petitioners herein were impleaded as her legal representatives. The defendants entered their appearance through a counsel and also filed their written statement. During the pendency of the said suit, the petitioners herein filed an application to amend the plaint stating that the decree passed

in the subsequent suit in O.S.No.1167 of 1996 in respect of the same properties, is null and void. The said petition was dismissed by the learned Subordinate Judge. Aggrieved over the same, the petitioners have filed the present Civil Revision Petition before this Court.

4. The learned counsel for the petitioners submitted that when the suit filed by the petitioners' mother in the year 1991 was pending, the defendants 13 and 17 filed a separate suit in O.S.No.1167 of 1996, in which, the plaintiffs 2 and 3 were shown as defendants 9 and 10 and subsequently they were exonerated. No notice was served on them as they were not parties in the suit. Hence, they were not aware of the subsequent suit filed in O.S.No.1167 of 1996. Thereafter, both the preliminary decree and final decree were passed. The petitioners subsequently came to know about the decree and they filed an application to amend the plaint to declare that the said judgment and decree in O.S.No.1167 of 1996 as null and void.

5. The Trial Court dismissed the said application without considering the facts that when the earlier suit is pending, a subsequent suit

was filed for the same properties and obtained final decree by playing fraud on the Court without adding necessary parties. The Trial Court held that the petitioners have not filed an appeal challenging both the preliminary decree and final decree passed in the suit in O.S.No.1167 of 1996.

6. It is seen that the petitioners' mother filed a suit against the respondents herein. During the pendency of the suit, petitioners' mother died and the petitioners were impleaded as legal representatives in the suit. The defendants in the said suit, filed a written statement. Before commencement of the trial, the petitioners filed an application under Order VI Rule 17 to amend the plaint, which was dismissed.

7. It is also further seen that the respondents 11 and 15 herein have filed a separate suit in O.S.No.1167 of 1996, in which, the petitioners 1 and 2 herein were shown as defendants 9 and 10, subsequently they were exonerated even prior to service of summons in the said suit. It seems that they were not parties to the said suit and other petitioners 2 to 6 have also not been impleaded as parties in the said suit. Therefore, it is clear that in

O.S.No.1167 of 1996 the petitioners herein were not parties. Thereafter, the respondents 11 and 15 herein got both the preliminary decree and final decree in the said suit in O.S.No.1167 of 1996. Later, the petitioners herein came to know that in the subsequent suit filed by the respondents 11 and 15, they got a decree by playing fraud on the Court. Since the suit filed by the petitioners and the subsequent suit filed by the respondents 11 and 15 are partition suit of the same properties, the petitioners filed the amendment petition to declare that the judgment and decree passed in O.S.No.1167 of 1996 as null and void.

8. The learned counsel for the respondents opposed the amendment application stating that though the petitioners are well aware of the suit in O.S.No.1167 of 1996 filed by the respondents 11 and 15 and the decree passed therein, but they have not challenged the same by filing appeal. Considering the above submissions, the Trial Court dismissed the amendment application.

9. It is seen that the Trial Court has not considered the fact that the respondents 11 and 15 herein filed a separate suit and obtained decree suppressing the earlier suit in O.S.No.708 of 1991 in which they are the parties and the same is pending. Therefore, this Court is inclined to allow the amendment petition filed by the petitioners herein.

10. Hence, the order passed by the Trial Court is set aside and the amendment application filed by the petitioners in I.A.No.351 of 2011 in O.S.No.708 of 1991 is allowed. The petitioners shall carry out the amendment in the Original Suit, pending before the Trial Court and the defendants in the said suit are permitted to file an additional written statement, if any. Since the suit is pending from the year 1991, the Trial Court shall proceed the case as expeditiously as possible and dispose of the same within a period of six months from the date of receipt of a copy of this order.

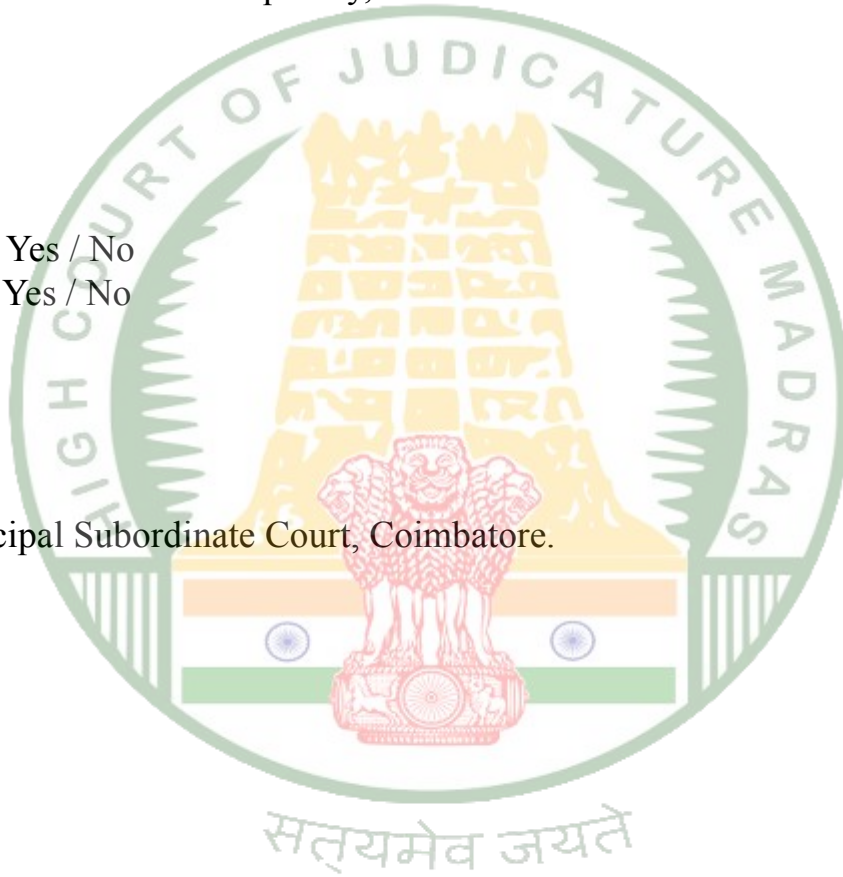
P.VELMURUGAN, J.
dna

11. With above directions, this Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

28.08.2020

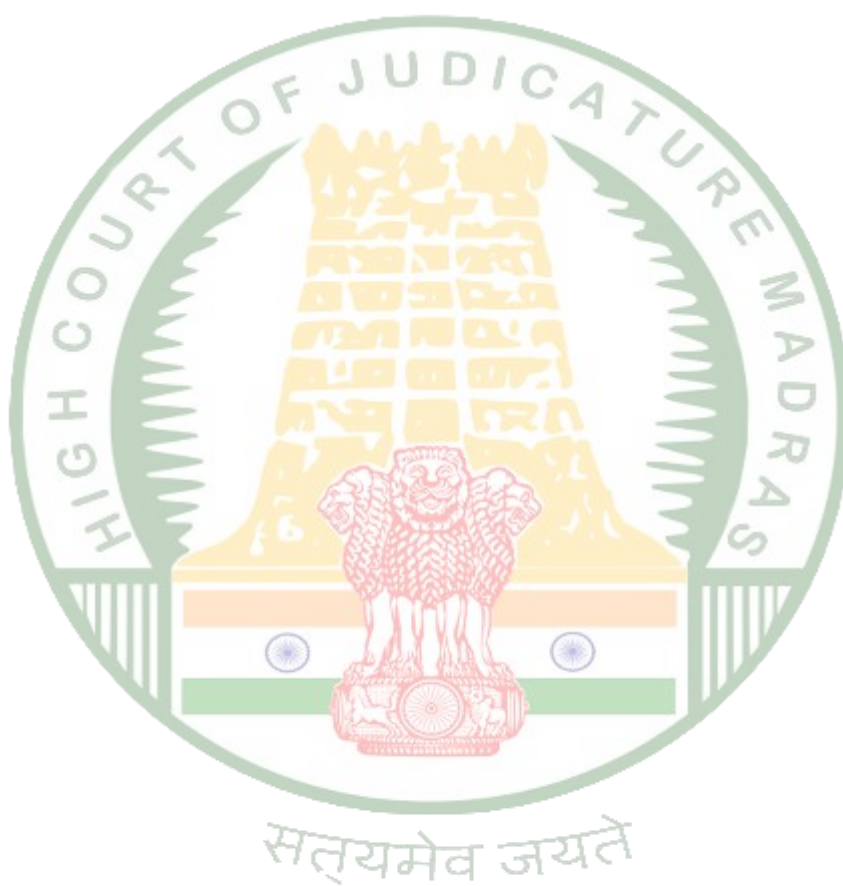
Internet : Yes / No
Index : Yes / No
dna

To
The Principal Subordinate Court, Coimbatore.



C.R.P.(PD).No.2392 of 2012
and
MP.No.1 of 2012

WEB COPY



WEB COPY