

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.1921 of 2014

1.Rajathi Ammal
2.Vijayan
3.Usha
4.Sahadevan

... Petitioners

...Versus...

1.Manickammal
2.Chinnapappa
3.Unnamalai
4.Yasothiammal
5.Venkatesh
6.Dhanalakshmi
7.Mangala
8.Vijayalakshmi
9.Mohan
10.Saraswathi

... Respondents

PRAYER: This Civil Revision Petition has been filed under Section 227 of Constitution of India, challenging the order passed by Principal District Munsif cum Judicial Magistrate at Chengam, dated 05.08.2011 made in I.A.No.286 of 2009 in I.A.No.83 of 2008 in O.S.No.115 of 2007.

For Petitioners

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Mr.A.K.Rajaraman

For R1 to R8 and R10

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Mr.P.Mani

J U D G M E N T

This Civil Revision Petition is filed under Article 227 Constitution of India to set aside the order dated 05.08.2011 passed in I.A.No.286 of 2009.

2. The petitioners herein are the defendants in the suit.

3. The respondents herein filed O.S.No.115 of 2007 for partition of the suit property by metes and bounds and the said suit was decreed ex-parte on 10.08.2007. Thereafter, these petitioners filed I.A.No. 83 of 2008 under Order 9 Rule 9 to set aside the ex-parte decree wherein notice of hearing was ordered. As the proof of notice of hearing was not filed before the Court, the said I.A.83 of 2008 was dismissed for default and thereafter, they are filed in I.A.No.286 of 2009 to restore the application I.A.No.83 of 2008. In the said application, counter was filed and on considering the submissions of the respective parties, the learned Principal District Munsif-cum-Judicial Magistrate at Chengam dismissed the I.A and hence, this Civil Revision Petition.

4. Heard both sides.

5. It is seen from the records including the counter filed before the trial Court that when I.A.286 of 2009 was taken up for consideration, the respondent, who is the plaintiff in the suit, has stated that final decree proceedings in the partition has been completed and that the very same petitioner had participated in the final decree proceedings and subsequently, an Advocate Commissioner was also appointed who inspected the suit property. During inspection by the Advocate Commissioner, these petitioners were also present and final decree proceedings has been duly completed and hence, observing the entirety, the learned Trial Court has dismissed the I.A.

6. It is also to be noted that I.A.286 of 2009 is filed under Order 9 Rule 9 C.P.C and hence, in view of the above stated position, the petition under 227 Constitution of India will not lie.

7. In view of the fact that an alternate remedy is provided, the learned counsel seeks indulgence of this Court to challenge the final decree proceedings. This Court is of the considered view that it is always open to the petitioners/defendants to challenge the final decree proceedings in the manner known to law and as submitted by the learned counsel for the respondents herein that after the final decree proceedings, the shares of the allotments are also made and one of the

property has also been alienated pursuant to the final decree. Since these are all subsequent developments, this Court does not want to express any view except to say that it is open to the petitioner to challenge the final decree and dismissal of this application will not be a bar to seek any other remedy in the manner known to law.

8. With these observations, this Civil Revision Petition is dismissed. No costs.

23.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

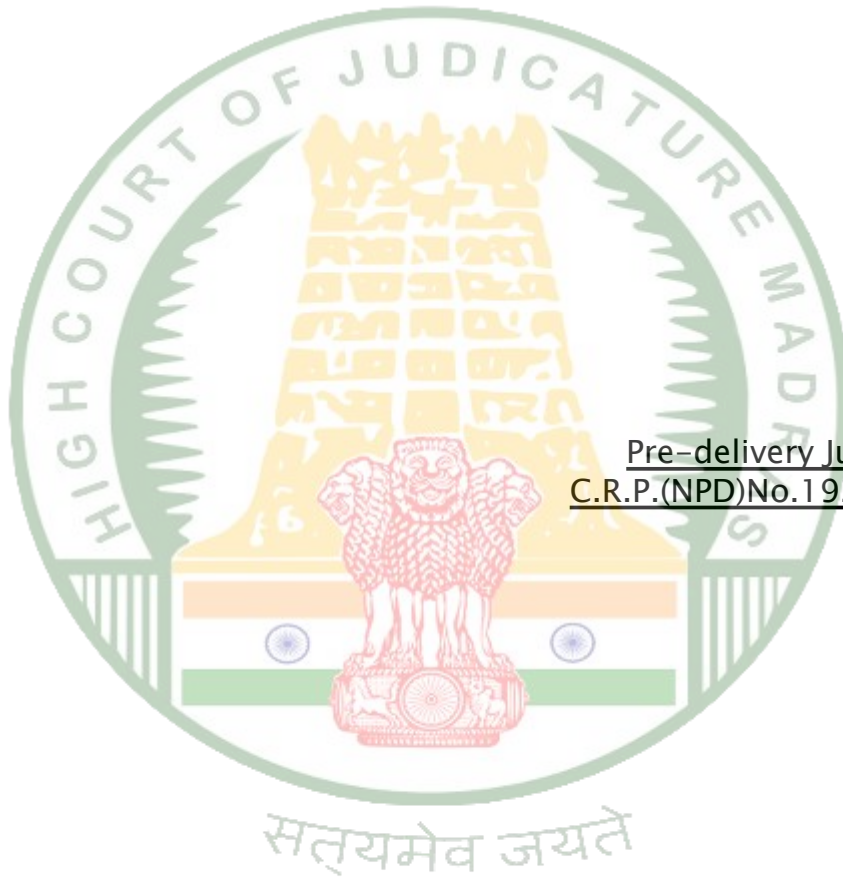
To

The Principal District Munsif cum Judicial Magistrate at Chengam,

C.R.P.(NPD)No.1921 of 2014

RMT.TEEKAA RAMAN,J.,

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Pre-delivery Judgment in
C.R.P.(NPD)No.1921 of 2014

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