

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4420 of 2014
and
M.P.No.1 of 2014

Saravanan

... Petitioner

...Versus...

1.S.P.Nachiappan

2.B.Malathy

3.Neethimathy

4.C.Krishnakumar

5.C.Premalatha

[R4&R5 impleaded as a party of respondents
vide Court order dated 14.10.2019 made in
M.P.No.1 of 2015 in C.R.P(NPD)No.4420/2014(RPAJ)]

... Respondents

PRAYER:This Civil Revision Petition has been filed under Section 227 of Constitution of India, against the fair and decretal order dated 29.10.2014 in I.A.No.554 of 2013 in O.S.No.114 of 2010 on the file of the Principal District Court, Namakkal.

For Petitioners :: Mr.D.Shivakumaran

For R1&R3 :: Mr.C.Prabhakaran

For R2 :: Mr.P.Valliappan

For R4&R5 :: Mr.M.Madhankumar

J U D G M E N T

The first respondent herein filed a suit in O.S.No.114 of 2010 on the file of the learned Principal District Judge, Namakkal, for partition and for separate possession of the property. The plaintiffs are father and daughter, while, the defendant is the son, each claiming 1/3rd share. The preliminary decree was passed on 29.04.2011 and A.S.No.306 of 2011 filed before this Court was dismissed on 23.09.2013 and S.L.P (Civil) C.C.No.4924 of 2014 was also dismissed on 04.04.2014. Thereafter, I.A.No.554/2013 is filed before the Trial Court for passing of final decree wherein an Advocate Commissioner was appointed and time was given for filing a report. Challenging the final decree proceedings by appointing the Advocate Commissioner, the Revision Petitioner has preferred this petition.

2. In the Execution Proceedings, the son has taken a specific stand that pending the judicial proceedings in preliminary proceedings stage, the father, one of the plaintiff, has alienated his share of the property on 12.08.2011 in favour of respondents 4&5 herein, who had settled the property in favour of his ward on 10.12.2014. In other words, R4 and R5 are the subsequent purchasers. Pending the suit, from one of

the plaintiff and R5 has got settlement from R4 and therefore, they must be added as parties. Though the R4 is a nominal alienee, he must be added as a party to avoid multiplicity of proceedings the contention was not considered by the Execution Court and the same was rejected and an Advocate was appointed as a Commissioner to divide the property by metes and bounds.

3. Pending this C.R.P, the present C.M.P.No.1 of 2015 was filed to implead R4 and R5 to the proceedings wherein parties are filed counter affidavit stating that while the father, namely one of the plaintiff, has stated he will take care of the interest of this purchaser, while, the respondents 4&5, R4 subsequent purchaser, settled the property in favour of R4 and R5 filed the counter stating that they will not claim more than claim of the first plaintiff namely the father of the parties. That M.P.No.1 of 2015 was allowed and accordingly, the respondents 4&5 are ordered to be impleaded without prejudice to the contention of both the parties.

4. When the C.R.P is taken up for final hearing, after hearing, the rival submissions, I find that the preliminary decree as modified by High Court in A.S.No.306/2011 has been confirmed by the Hon'ble Supreme

Court, in the above said S.L.P on 04.04.2014. Hence, the trial Court has rightly taken into consideration and ordered the appointment of Advocate Commissioner in the final decree proceedings, which cannot be found fault with.

5. Taking into consideration, the subsequent development, this Court by an order dated 14.10.2019 has allowed the subsequent purchaser who had purchased the entire divided share from the first plaintiff as a party/respondent in this civil revision.

6. In the said application, both the parties have filed affidavit and counter affidavit. In the counter affidavit filed by the plaintiff, he has categorically stated that the subsequent purchaser cannot claim more than the share of his vendor namely the first plaintiff and whether the property that was purchased by the respondents 4&5 has to be allowed to the first plaintiff is to be determined only by the Advocate Commissioner in the final decree proceedings and hence, in view of the affidavit filed by the Decree-Holder No.1 namely the first respondent herein and the affidavit filed herein shall form part of the record and the parties are worked out their remedies before the trial Court and in the event of any objection being filed regarding the allotment of share, the

affidavit so filed by the parties in the above said C.M.P shall be taken into consideration by the Execution Court.

7. In the result, this Civil Revision Petition is dismissed and the trial Court is directed to dispose of the E.P in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P is closed.

20.01.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

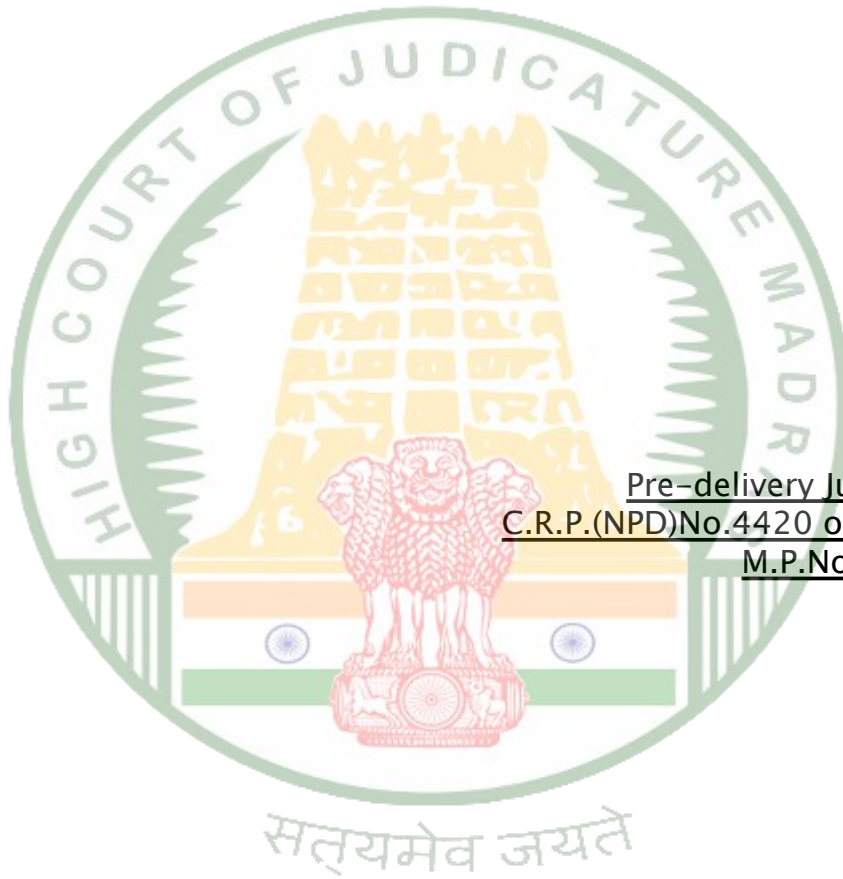
To

The Principal District Court, Namakkal.

C.R.P.(NPD)No.4420 of 2014 and
M.P.No.1 of 2014

RMT.TEEKAA RAMAN,J.,

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Pre-delivery Judgment in
C.R.P.(NPD)No.4420 of 2014 and
M.P.No.1 of 2014

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