

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.4711 of 2014
and
M.P.No.1 of 2014

Natarajan

...Petitioner

..Vs..

1.Thayammal
2.Madammal
3.K.Andamuthu

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 11.09.2014 passed in I.A.No.68 of 2014 in O.S.No.87 of 2012 on the file of the Sub-Court, Mettur.

For Petitioner : Mr.P.Mani

For R1 : Not ready in notice

For R2&R3 : Mr.A.Sundaravadhanan

WEB COPY

ORDER

This petition is filed against the order passed in I.A.No.68 of 2014 in O.S.No.87 of 2012 on the file of Sub-Court, Mettur.

2. The petitioner herein filed O.S.No.87 of 2012 seeking the relief of directing the defendants to sell the suit 2nd item of property to the plaintiff for the value of Rs.2,00,000/- which is the prevailing market value, or for the amount to be ordered by this Court. He has filed the present I.A to implead the purchaser of the portion of the property in the common pathway available for the purpose and the same was dismissed. Hence, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that after partition, the pathway leading to the respective land is common and the necessary pleadings was made in the total extent of 1.66.0 (4.10 acres) hectares of land in S.No.360/2. The plaintiff was allotted 1.99 acres and defendants with 1.92 acres and in the remaining 19 cents, the said two cart tracks were formed. These two cart tracks are common for the plaintiff, defendants and other participants of the document. This common enjoyment of cart tracks is clearly mentioned in the partition

deed under "பொது உரிமை". The plaintiff, defendants and other participants are having pathway and cart track rights in the said two common cart tracks. So, if any third party purchases the suit 2nd item of property from the defendants, so many problems like pathway dispute will arise in future. The person who purchased the properties from the defendants, have to cross the plaintiff's 1st item of property and further, the suit 2nd item of property is situated just adjacent to the plaintiff's suit 1st item of property on the Eastern side.

4. Per contra, the learned counsel for the respondents has drawn my attention to the pleadings in the written statement. As per agreed partition, there is a common pathway to all the partitioned members of the family that alleged cart-track is earmarked with specific breadth and length within specific boundary. In fact, the 2nd item of the suit property is the separate property of the defendants. In that property, the plaintiff is not having any right of preemption. Because, it is not a property intestate. That the ancestral properties were partitioned, along with the father of the plaintiff and the defendants. That the father of the defendant was allotted separate share with life interest. That the property is also given to the defendants after his death as per the partition. Therefore, the plaintiff cannot question the right of the defendant in

alienating her share. That this defendant had sold her share to one Thiru.K.Andamuthu, son of Karuppannan of Vedhapalikadu of Kannamoochi Village n 30.03.2012 for a consideration of Rs.2,02,000/- and the sale deed was registered as document number 629/2012 of Sub Registrar office, Kolathur. Ever since the date of sale, that said Andamuthu is in possession of the 2nd item of the suit property jointly with the 1st defendant. Therefore, in the common pathway the plaintiff is also having user right.

5. On a perusal of the written statement, even before filing of the suit, the defendants have sold the property to one Andamuthu on 30.03.2012 for consideration mentioned therein by a registered sale deed. After sale, the suit has been filed. Thereafter, the impleading petition is filed by the purchaser who purchased the property prior to the suit and the impleading petition has been dismissed.

6. Whether the plaintiff is entitled for the relief in view of nature of the property and whether any remaining portion of common property interest is available or not is to be worked out only by the trial Court and hence, without prejudice to the rights of the parties and contention of the respondents, there will be an order to implead the

purchaser. However, it is hereby made clear that the purchaser has been impleaded only for the effective adjudication of any order that is passed at the final disposal of the suit and the entitlement of the petitioner as to his alleged preemptive property right and whether there is a common interest is available are the subject matter of the trial.

7. The trial Court is hereby required to frame separate issue to that effect. In such event both the parties at liberty to adduce evidence and prove the respective case.

8. This Civil Revision Petition is allowed on payment of costs of Rs.1,000/- to the respondent counsel within a period of four weeks from the date receipt of a copy of this order. The Registry is directed to send a copy of the order within a period of three weeks to the trial Court. The trial Court is directed to complete the trial within a period of twelve weeks thereafter. Consequently, connected M.P is closed.

WEB COPY

08.01.2020

nvi

Index:Yes/No
Speaking Order:Yes/No

To
The Sub-Court, Mettur.

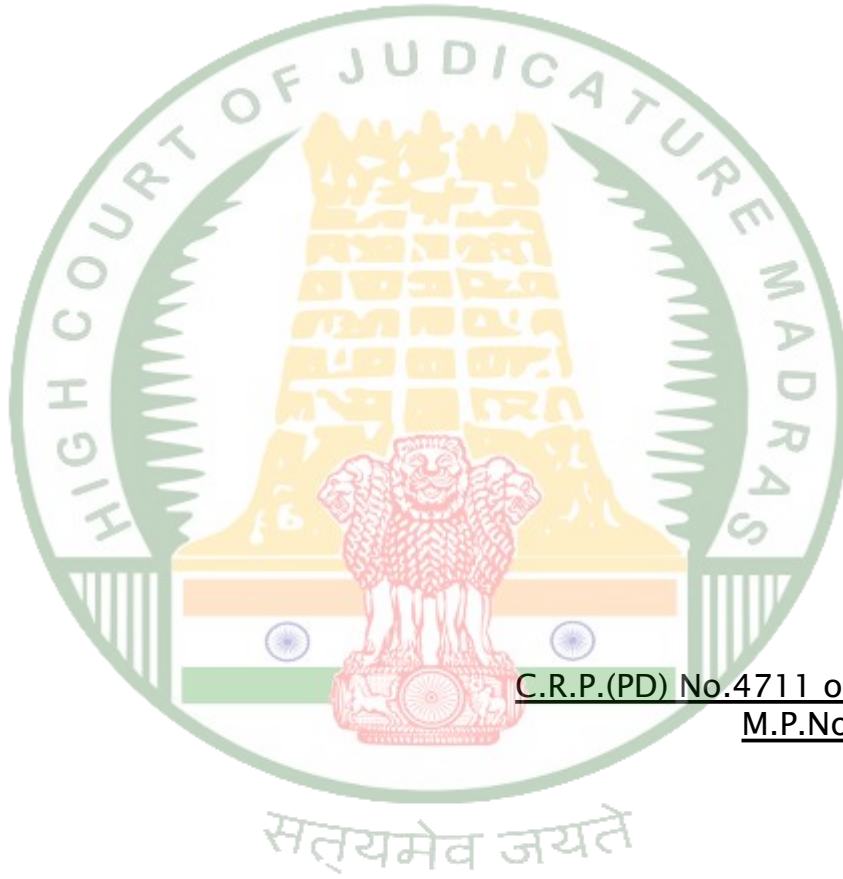


WEB COPY

C.R.P.(PD) No.4711 of 2014 and
M.P.No.1 of 2014

RMT.TEEKAA RAMAN,J.,

nvi



C.R.P.(PD) No.4711 of 2014 and
M.P.No.1 of 2014

WEB COPY

08.01.2020