

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.3150 of 2018
and CMP No.18077 of 2018

Thimma Naicker

.. Petitioner

Vs.

1. Manimekalai

2. Palanisamy

3. Vasanthamani

4. Raja @ Paulraj

5. Thangamuthu

.. Respondents

सत्यमेव जयते

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.07.2018 made in I.A.No.661 of 2017 in O.S.No.103 of 2016 on the file of the learned Sub Court, Perundurai.

For Petitioner : Mr. N.Manokaran

For Respondents : Mr. S.Kaithamalai Kumaran for R1

No appearance for RR 2 to 5

ORDER

This matter is taken up for hearing through Video-Conferencing.

The fourth defendant in OS No.103 of 2016 challenges an order made in IA No.661 of 2017 by which his application for filing an additional written statement was dismissed by the Trial Court on the ground that the fourth defendant is seeking to withdraw certain admissions made in the original written statement.

2. The suit was filed by the plaintiff seeking partition contending that her father had settled his 1/4th share in the suit properties in her favour under a registered Settlement Deed dated 12.07.2016. On the strength of the said settlement deed, the plaintiff sought for partition and separate possession of her 1/4th share.

3. The suit is being resisted by the fourth defendant. The fourth defendant filed a written statement on 08.11.2016 admitting the fact that the suit property were partitioned between the heirs of one Thimmanaicker and the heirs of Mallanaicker on 25.04.2006 and under the said partition, the suit property was allotted to Palanisamy, Ponnusamy, Thimma Naicker and Thangamuthu, sons of Mallanaicker. It is also claimed that from the date of the said partition, the sons of Mallanaicker have been in joint possession and enjoyment of the property.

4. Again in paragraph 8, there is a specific plea raised that the suit properties are undivided joint family properties and therefore, the fifth defendant, who is a co-parcener has no right to execute a settlement in respect of the property in favour of the plaintiff. Subsequently, when the suit was taken up for trial, the fourth defendant came up with an additional written statement containing a totally contradictory plea, he sought to project a family arrangement that is said to have been taken place in the year 1989, during which the fifth defendant had relinquished his interest in the

family property in favour of the fourth defendant, after receiving appropriate consideration and had left the Village. Therefore, according to the fourth defendant he has been in possession of the share of the fifth defendant right from the year 1989. Leave of the Court was sought to file the above additional written statement.

5. This was resisted by the plaintiff contending that a plea in the additional written statement is totally contradictory to the plea raised in the original written statement and it amounts to withdrawal of an admission made to the effect that the properties are joint family properties and the fifth defendant has a share in the joint family properties. The validity of the Settlement Deed executed by the fifth defendant in favour of the plaintiff was alone question on the ground that the fifth defendant had no right to settle his share in the undivided co-parcenary property.

6. The Trial Court concluded that the application is an attempt to withdraw the admission that was already made and dismissed the application, aggrieved the fourth defendant has come up with this Civil

Revision Petition.

7. I have heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr. S.Kaithamalai Kumaran, learned counsel appearing for the first respondent. The other respondents though served are not appearing either in person or through counsel duly instructed.

8. No doubt the fourth defendant is entitled to take contradictory or destructive pleadings, but at the same time, the fourth defendant is not entitled to withdraw an admission made in the earlier pleadings. The fourth defendant in his original written statement has categorically admitted the right of the fifth defendant, he has also claimed that the defendants who are the children of Mallanaicker are in joint possession of the properties. The fourth defendant has also sought to invalidate the settlement deed on the ground that the fifth defendant could not have executed a settlement in respect of his undivided share in the co-parcenary property.

9. After taking such a plea the fourth defendant now by way of the

additional written statement seeks to project the family arrangement in 1989, even before the partition of the year 2006 and claim that the fifth defendant had relinquished his right. This pleading essentially seeks to nullify the effect of the admissions regarding the character of the property and the title of the fourth defendant made earlier. Such withdrawal is impermissible.

10. Therefore, I do not find any illegality or irregularity in the order of the Trial Court in dismissing the application. The Civil Revision Petition therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

25.09.2020

jv

Index: No

Internet: Yes

Speaking order

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To

1. The Sub Court,
Perundurai.
2. The Section Officer,
V.R.Section,
High Court of Madras.

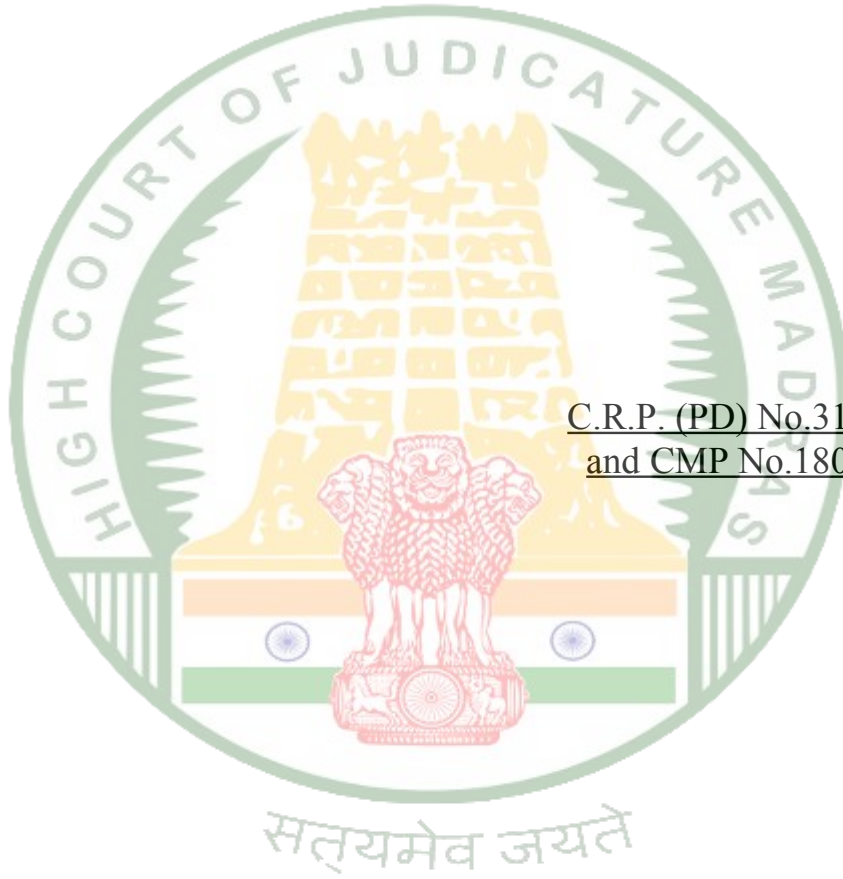


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R.SUBRAMANIAN, J.

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