

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.3589 of 2018
and CMP No.20078 of 2018

1. Chitra

2. Bharathi

... Petitioners

Vs.

Gunasekaran

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.09.2018 made in I.A.No.604 of 2018 in O.S.No.333 of 2009 on the file of the learned Principal District Munsif Court, Villupuram.

For Petitioners

: Mr. N.Manokaran

For Respondent

: Mr. Hema Sampath, Senior Counsel
for M/s.R.Meenal

ORDER

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

The plaintiffs in OS No.333 of 2009, a suit for partition seeking half share in the suit properties, have come up with this Civil Revision Petition.

2. Challenge is to the order of the Trial Court made in I.A.No.604 of 2018, in and by which, the Trial Court had allowed an application filed by the third defendant under Order 6 Rule 17 of the Code of Civil Procedure, seeking to amend the plaint including certain properties to the suit schedule.

3. The suit was laid by the plaintiffs claiming half share in the suit properties as the children of the first defendant. The second defendant is another son of the first defendant and the fifth defendant is the wife of the first defendant. The third defendant is an alinee from the first defendant of some of the properties apart from being the brother of the first defendant. The plaintiffs also impugned the alienation made by the first defendant in favour of the third defendant in the year 1997 in the suit.

4. During the pendency of the suit, the third defendant came up with the present Application in I.A.No.604 of 2018 seeking to include certain properties on the contention that the first defendant after the sale of the properties in favour of the third defendant in the year 1997, had purchased several other properties in the name of his minor son/the second defendant and his wife/the fifth defendant. Those properties were purchased out of the proceeds of the sale of items 1 to 11 in the schedule to the plaint. It is the further contention of the third defendant that certain other properties which were purchased by the first defendant in the name of his family members were omitted to be included and since all the properties were purchased from and out of the sale proceeds of the ancestral properties to him under the Sale Deed dated 14.08.1997, those properties should also be included in the suit for partition.

5. This application was resisted by the plaintiffs contending that the application is belated and the third defendant, who is a purchaser, is not entitled to take such a plea. The Trial Court upon a consideration of the facts and circumstances of the case allowed the application. Aggrieved the

plaintiffs are on Revision.

6. I have heard Mr.N.Manokaran, learned counsel appearing for the petitioners in support of the Revision and Mrs.Hema Sampath, learned Senior Counsel appearing for Mrs. R.Meenal, for the respondent in opposition.

7. Mr.N.Manokaran, learned counsel appearing for the petitioners would vehemently contend that the Trial Court was not right in allowing the third defendant, who is only a purchaser to amend the plaint in order to include some more properties in the suit. Mr.N.Manokaran, would also contend that while it is open to the third defendant to show that the sale in his favour was a prudent act of the Manager of a joint family and to show that the property was sold for purchasing other properties, the same will not clothe him with the right to seek inclusion of the other properties.

8. Contending contra Mrs.Hema Sampath, learned Senior Counsel would submit that it is open to the third defendant to show that the sale was

a prudent act of management by the first defendant. He can go one step further and show that there are other properties which stand in the name of the other members of the family which would also take the colour of joint family properties and they should also be included in the suit. If ultimately he is able to show that those properties were purchased out of the proceeds of the sale in his favour, he can request the Court to allot those properties towards the half share of the plaintiffs, so that the properties sold to him by the first defendant could be allotted to his share. By not allowing him to include those properties in the suit, the Court will be deprive him of the very valuable right to seek equity.

9. I am in agreement with the submissions of the learned Senior Counsel for the respondent. The suit is one laid by the plaintiffs contending that the sale by the first defendant in his capacity as a Manager of a joint Hindu family is not valid. It is for the plaintiffs to prove that the sale was an imprudent act by the Manager. At the same time, the third party purchaser, viz., the third defendant can show that the sale was a prudent act and it was made for purchase of certain other properties in the name of the other

members of the joint family. Upon showing that he can request the Court to either dismiss the plaintiffs claim or to include those properties in the suit and pass a decree for partition as against those properties also, so that, those properties which are still with the members of the family can be allotted towards the plaintiffs' half share, thereby preserving the sale in favour of the third defendant.

10. The Trial Court by allowing the application for amendment has only enabled such an allotment being made. I do not find that the order of the Trial Court would cause any prejudice to the plaintiffs. I should also point out that the properties that were purchased do not stand in the name of the plaintiffs, they stand in the name of the deceased second defendant and the fifth defendant. The fifth defendant who will actually inherit the share of the deceased second defendant has not objected to the properties being included.

11. Hence, I do not see any merit in the Civil Revision Petition. The Civil Revision Petition therefore fails and it is accordingly **dismissed**. No

costs. Consequently, the connected miscellaneous petition is closed. The plaintiffs would be entitled to file a reply statement if so advised.

06.08.2020

jv

Index: Yes/No

Internet: Yes/No

speaking order/Non speaking order

To

The Principal District Munsif,
Villupuram.

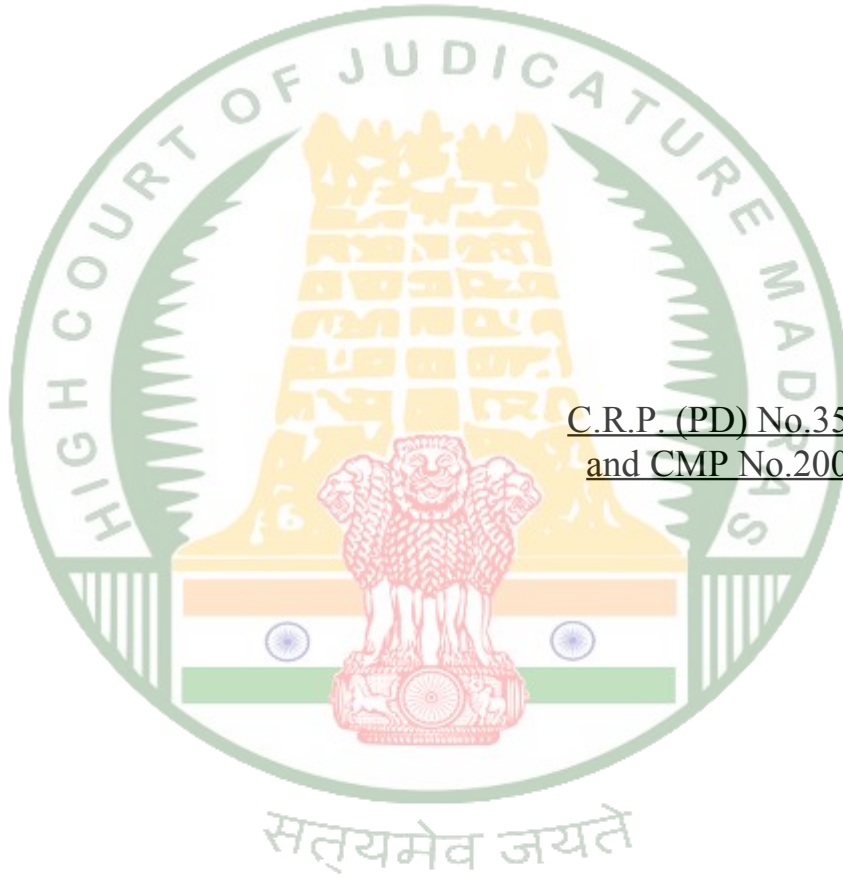


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