

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.3703 of 2018 and
CMP No.20597 of 2018

1. S.Siraj Ahamed Khan
2. S.Sultan Ahamed Khan
3. S.Musthaq Ahamed Khan
4. S.Sayeed Ahamed Khan
5. S.Masood Ahamed Khan

... Petitioners

Vs

1. M.Tameema Husna
2. H.Inayathullah Khan

.... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 20.06.2017 passed in I.A.No.10814 of 2016 in O.S.No.5426 of 2013 on the file of the learned XVIII Assistant Judge, City Civil Court at Chennai.

For Petitioners : Mr.R.Abdul Mubeen

For Respondents :Mr.S.Balasubramanian (for R1)
No appearance (for R2)

ORDER

The defendants 2 to 6 in O.S.No.5426 of 2013 are on revision, challenging an order made in I.A.No.10814 of 2016 rejecting the application for purchase of the property filed under Section 4 of the Partition Act.

2. The suit was laid by the plaintiff seeking a preliminary decree for partition and separate possession of her 5/14th share in the suit property. The plaintiff would contend that she has purchased 5/14th share under the Sale deed on 05.05.2008. The suit is being resisted by the defendants contending that the plaintiff being a third party and not a member of the family is not entitled to a decree for partition since the property is a family dwelling house.

3. Pending suit, the defendants 2 to 6 came up with the instant application seeking a direction for a sale of the plaintiff's share to the defendants, purportedly under Section 4 of the Partition Act.

4. The trial Court rejected the application on the ground that it is premature as it has been filed even before the shares of the parties have been ascertained.

5. I have heard Mr.R.Abdul Mubeen, learned counsel for the petitioners and Mr.S.Balasubramanian, learned counsel appearing for the 1st respondent.

6. Mr.R.Abdul Mudeen, learned counsel appearing for the petitioners would vehemently contend that there is no dispute regarding the shares and therefore the trial Court was not right in dismissing the application. A reading of Section 4 of the Partition Act shows that the family members can apply for sale of the share of a third party purchaser if the property is a dwelling house. In order to enable the person to apply for sale under Section 4 of the Partition Act, the shares of the parties and the status of the parties must be ascertained. That can be done only at the time of passing of a preliminary decree for partition. Admittedly the suit has been pending and no preliminary decree has been passed. Therefore, the

learned trial Judge was right in dismissing the application on the ground that it is premature.

7. I do not see any illegality or irregularity in the order of the trial Court in dismissing the application. Hence, the Civil Revision fails and it is accordingly dismissed. It will be open to the defendants to renew the application after the preliminary decree. No costs. Consequently, connected miscellaneous petition is closed.

20.11.2020

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Index: Yes/No

Speaking order / Non speaking order

To

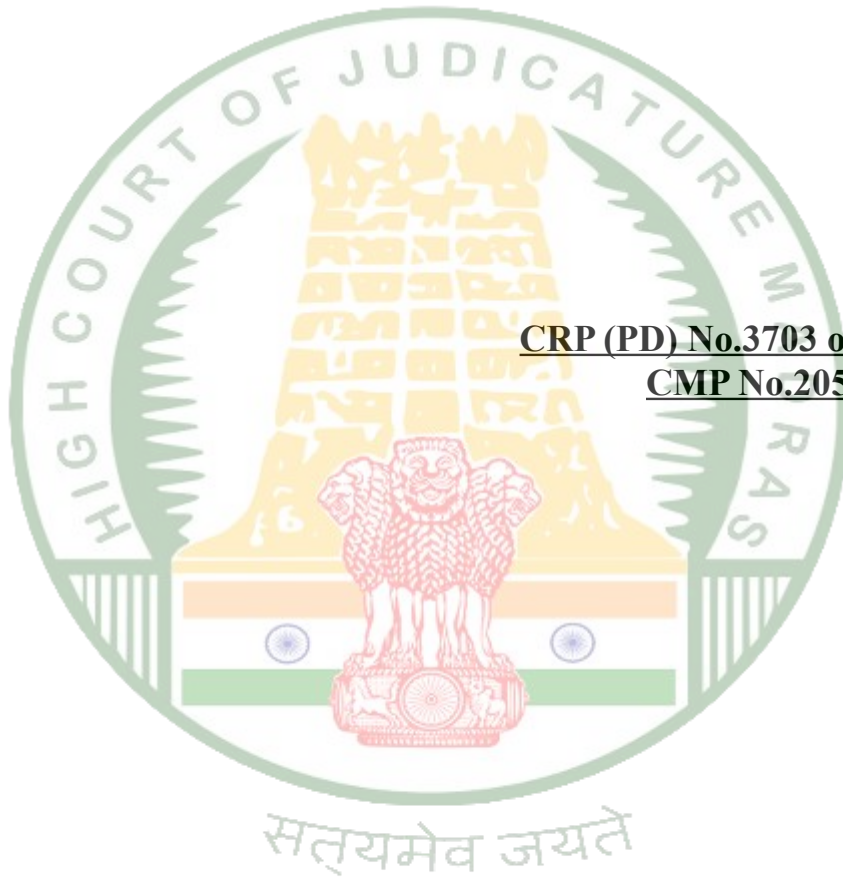
The XVIII Assistant Judge, City Civil Court, Chennai

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R.SUBRAMANIAN, J.

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