

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) Nos.148 & 149 of 2021

A.R. Vivek,

... Petitioner

Vs.

1. S. Rajendran,
2. Dhanam,
3. A.R. Dharani,
4. Dhanalakshmi,
- Duraisamy @ Loganathan (Died)

5. P. Sakthivel,
6. V. Vijayalakshmi,
7. V. Chidambaram,
- 8.A.V. Subramaniam
9. M. Ponnamal
10. Thangavel
11. Maheshkumar
12. M. Rajendran
13. Selvi
- 14.M. Radha
- 15.Kannammal
- 16.Manikandan
- 17.Yogambal @ Logambal
- 18.Ranganayaki
- 19.Jagadambal
- 20.S. Sumathi,
- 21.Mohanambal @ Mani
- 22.B. Sarojini
- 23.Vanithamani @ Chinnapillai

... Respondents

Common Prayer: These Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 20.11.2020 made in I.A. Nos.11 and 12 of 2020 in O.S. No.284 of 2010 on the file of the II Additional District Munsif Court, Erode.

For Petitioner ... Mr.M. Guruprasad

For Respondents ... No Appearance

(In Both petitions)

COMMON ORDER

The Civil Revision Petitions have been filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 28.11.2020 made in II.A. Nos.11 and 12 of 2020 in O.S. No.284 of 2010 on the file of the II Additional District Munsif Court, Erode.

2. The brief facts of the case is as follows:

The suit in O.S.No.284 of 2010 on the file of the II Additional District Munsif Court, Erode, has been filed by the

plaintiff/petitioner herein seeking for partition. The suit has been posted for the arguments after let in both oral and documentary evidence on either side. In the counter affidavit, the defendants/respondents herein sought for declaration in the suit property. In their counter claim, it has been stated that a final decree in O.S. No.394 of 2008 on the file of the Sub-ordinate Judge Court, Erode, was obtained by them and the legal heirs of the Angammal. The same was filed as Ex.B27 before the Trial Court. At this juncture, the plaintiff/petitioner herein came to know on seeing the description of the property in the plaint filed by them that the defendants have obtained final decree for some other sub-division in different survey number. In the said final decree, the defendants were allotted some portions in the properties. As the same has to be marked in the suit by way of oral and documentary evidence, the petitioner has filed the I.A. No.11 of 2020 under Section 151 of CPC for re-open of the aforesaid case of letting in further evidence on the side of the defendants/respondents herein and I.A. No.12 of 2020 under Order XVIII Rule 17 and Section 151 C.P.C. for recall of DW-4 for further evidence on the side of the defendants. The learned Judge dismissed the same by order dated 20.11.2020 as the alleged documents were not filed before

the court. Being aggrieved, the Present Civil Revision Petition has been filed before this Court to set aside the order passed by the Court below.

3. The learned counsel appearing for the petitioner would submit that at any stage of the proceedings, the applications can be filed as per Order XVIII Rule 17 and Section 151 CPC for re-open the case and recall of of the evidence ie. DW4 for further evidence on the side of the defendants. Hence, Both I.A. Nos.11 & 12 of 2020 have been filed as per Order XVIII Rule 17 and under Section 151 CPC respectively. The same was dismissed by order dated 20.11.2020 on the ground of the DW4 was already cross examined at length for two days. So, it cannot be any justification in dismissing the applications. As the 9th defendant in the suit/8th respondent herein has been a party to the collusive suit for partition filed by one branch of legal heirs wherein the sub-division of the properties in the plaint differs in the decree. Hence, it is pertinent to recall this defendant ie. DW-4, to establish his devious intention to usurp the properties. In order to give best evidence, the petitioner filed I.A. Nos.11 & 12 of 2021 to recall the evidence of DW4, but the Court below has dismissed the same for illogical reasons and the same is indefensible

in the eye of law. Hence, the Civil Revision petitions have been filed to set aside the order dated 20.11.2020 made in I.A. No.11 & 12 of 2020 in O.S. No.284 of 2010 on the file of the II Additional District Munsif Court, Erode.

4. Heard, the learned counsel appearing for the petitioner as well as perused the material available on record.

5. On perusal of the record, it is seen that the suit in O.S. No.284 of 2010 has been filed in the year 2010. Written statements have been filed by the defendants-21/20th respondent, 1st defendant/1st respondent herein, 3rd defendant/3rd respondent herein, 9th defendant adopted by defendants 8,10 to 15, and defendants 5 to 7 on various dates subsequent to the filing of the aforesaid suit. For all the above written statement, the plaintiff has filed his reply statement on 28.03.2018 wherein in the paragraph no.7 reads as under:

7. The contentions in the additional written statement paragraph 4 to the effect that the plaintiff has wantonly allowed the suit to be dismissed for default and subsequently it was restored on 02.02.2018; that during the

intervening period, a compromise decree was passed in O.S. No.394 of 2008 on the file of the II Additional Sub-ordinate Judge, Erode on 27.04.2016; that in that suit, the suit property herein was a part of that suit property; that the defendants 9 to 15 and 18 to 20 herein were parties in that suit; that a compromise decree arrived therein, out of total extent of 2.40 1/4 acre 0.99 acres were allotted to defendants 18 to 20, which are covered in R.S. No.141/5, 6,8 the remaining extent of 1.41 1/4 acre in R.S. No.145/5, 6,8 has been allotted to the defendants 8,9,11,12,13 and that the defendants 10,14,15 did not claim any share in the suit property are not correct and binding on the plaintiff. The 6th defendant is put to strict proof of the correctness of the allegation.

On seeing the aforesaid reply statement, the plaintiff/petitioner herein has explained in detailed manner with regard to the compromise Decree passed in O.S. No.394 of 2008 and parties and extent of acres in different survey numbers therein. When the plaintiff/petitioner is well aware about the compromise decree in O.S. No.394 of 2008 on 28.03.2018 itself, and thereafter only the DW-4 was crossed examined on 27.11.2019 and further he was cross examined by the plaintiff side at length on 05.12.2019 and 06.12.2019 for two days. Subsequently, all other

witnesses were examined and the evidence was closed. Further, after hearing the arguments on the side of the plaintiff, the said suit was posted for the arguments of the defendants side.

7. Under such circumstances, the contention of the learned counsel of the plaintiff/petitioner herein cannot be accepted that he came to know now only with regard to the difference of the sub-division in the survey number between the plaint and the final decree and it is liable to be dismissed. Hence, this Court is not inclined to interfere with common order dated 20.11.2020 made in I.A. Nos.11 & 12 of 2020 passed by the Ist Additional District Munsif and the same is hereby confirmed.

8. In the result, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

WEB COPY

05.02.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

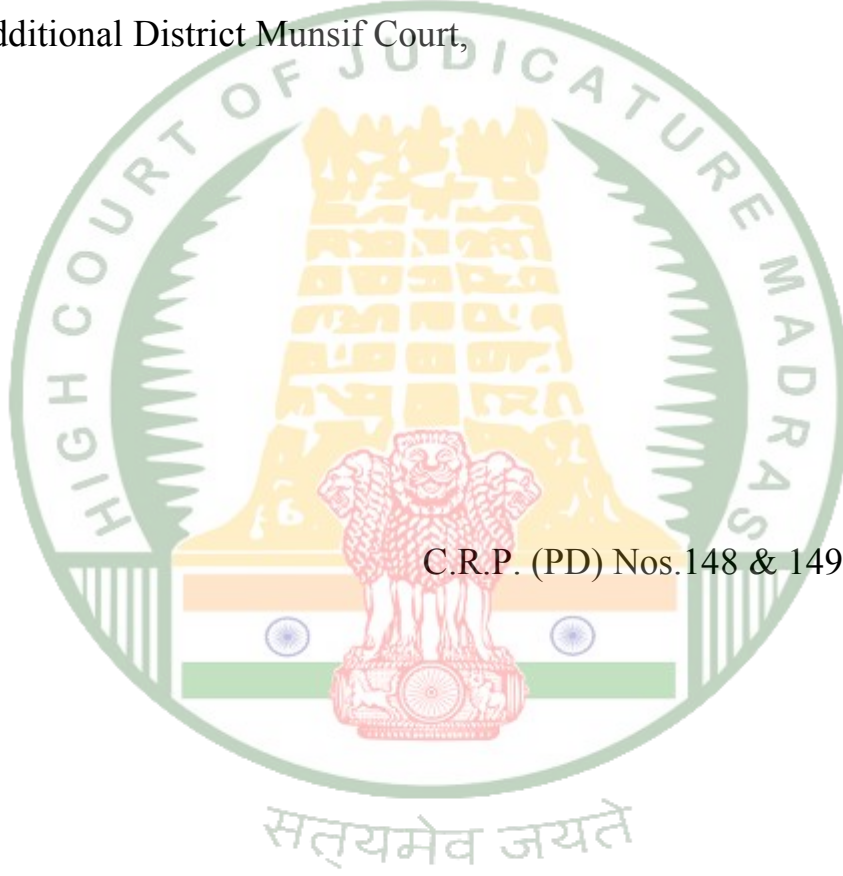
C.R.P.(PD) No.148 of 2021

V.BHAVANI SUBBAROYAN, J.,

lbm

To:

The II Additional District Munsif Court,
Erode.



C.R.P. (PD) Nos.148 & 149 of 2021

WEB COPY

05.02.2021