

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CRP [PD].No.384/2019
& CMP.No.2646/2019

[Video Conferencing]

1.Valliammal
2.Kandhayee

Petitioners /
Plaintiffs

Versus

1.Kumar @ Palaniappan
2.Karthick
3.Pappathi
4.Rajathy

Respondents /
Defendants 6 to 9

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 31.10.2018 in CMA No.11/2018 on the file of the learned Additional District [Fast Track] Judge, Mettur, reversing the order dated 16.07.2018 in IA.No.228/2018 in OS.No.90/2018 on the file of the learned Subordinate Judge, Mettur and allow the Civil Revision Petition.

For Petitioners : Mr.R.Subramanian

For Respondents ; Mr.P.Mani

ORDER

- (1) The plaintiffs in OS.No.90/2018, now pending on the file of the Sub Court at Mettur, are the revision petitioners herein. The plaintiffs are sisters. Their brother is the 5th defendant Palanisamy, in the suit. All three of them are the children of one Sadayan, who died in the year 2000. Their mother, Veeralakshmi, had died subsequent to the death of Sadayan. The 5th defendant Palanisamy appears to have had a second wife and through that lady, defendants 6, 7, 8 and 9 had been born. Defendants 6 to 9 filed OS.No.160/2002 before the learned District Munsif at Mettur, against their father Palanisamy and one of his brothers, seeking partition and separate possession.
- (2) It is the grievance of Mr.R.Subramanian, learned counsel appearing for the revision petitioners that though the elder brother of Sadayan was impleaded, the daughters of Sadayan, namely revision petitioners herein were not impleaded as defendants in the said suit. Therefore, it is claimed that the revision petitioners/daughters of Sadayan were not

aware of either pendency of OS.No.160/2002 or of its subsequent proceedings. The suit proceeded and a judgment was passed on 31.07.2008. Thereafter, an appeal was filed in AS.No.47/2008 before the Sub Court at Mettur, wherein a decree was granted. Pursuant to such decree, I am informed that Final Decree application has been filed and thereafter, to put in effect the apportionment of properties, REP.No.11/2016 had also been filed and is now pending on the file of the Court of District Munsif, Mettur.

- (3) In the meanwhile, the plaintiffs herein had filed a suit in OS.No.90/2018 before the Sub Court at Mettur, seeking partition and separate possession. They claimed to be in possession of the properties which were also the subject matter of properties in OS.No.160/2002/REP.No.11/2016. They filed IA.No.228/2018 seeking to protect their possession. They also claimed that they had not been included as parties in OS.No.160/2002 and therefore, claimed that the decree passed thereunder, was not binding on them. Primarily they are interested in protecting their possession. IA.No.228/2018 came up for consideration before the Sub Court at

Mettur, and vide order dated 16.07.2018, injunction was granted, protecting possession. This order was taken up in appeal before the learned Additional Judge [Fast Track Court], at Mettur in CMA No.11/2018 and by an order dated 31.10.2018, the Civil Miscellaneous Appeal was allowed and the grant of injunction by the Trial Court was reversed and that order, in effect gave rise to the filing of the present Civil Revision Petition.

- (4) The learned counsel for the revision petitioners expressed anguish at the fact that though the petitioners are sisters of the 5th defendant Palanisamy, they were not impleaded as defendants in OS.No.160/2002 and therefore, they were totally unaware of the said proceedings and therefore, claimed that any decree passed pursuant to such suit, either by the Trial Court or by the First Appellate Court, would not directly bind on the revision petitioners herein. It is also the contention of the learned counsel that the petitioners are in possession and they had also produced relevant documents at the time when IA.No.228/2018 was argued before the learned Subordinate Judge at Mettur and those documents were properly appreciated by

the learned Subordinate Judge and an order of injunction was also granted, protecting their possession. The learned Judge had not just stopped with granting of an order of injunction, but rather, had also granted a direction that the petitioners possession should also be protected even during the proceedings in REP.No.11/2016 pending on the file of the learned District Munsif at Mettur. This direction is questionable. But, let me not enter into a discussion on that particular aspect.

- (5) Mr.P.Mani, learned counsel appearing for the respondents, on the other hand, stated that the petitioners can very well participate in the Execution Proceedings and file necessary application if they claim to be in possession and a burden will then be cast on the learned District Munsif, to examine the said application in its true spirit.
- (6) The learned counsel for the petitioners, while replying, however stated that on the other hand, a direction can be given to the learned Subordinate Judge at Mettur, to dispose of OS.No.90/2018 within a specific period of time and till such time, further proceedings in REP.No.11/2016 could be kept in abeyance. If the plaintiffs' claim

for partition is upheld, then naturally, further proceedings in REP.No.11/2016 would be rendered otiose since they are not parties to the Execution Proceedings nor were they parties to the suit or in the First Appeal or in the Final Decree application.

(7) In view of the two parallel proceedings pending, I would rather issue the following directions:-

- (a) Let the learned Subordinate Judge, Mettur, devote attention to dispose of OS.No.90/2018, where I am informed pleadings have been completed and is at the stage of examination of witnesses. Let the learned Judge invite the parties to graze the witness box and commence the trial. Let the trial proceedings be conducted on day-to-day basis. When adjournments are sought, the learned Judge may grant a maximum of five working days in between any two adjournments and also ensure that adjournments are not granted for the same reason on not more than two occasions. If that procedure is followed, then any trial can be controlled by any Court. At any rate, let the learned Judge

give a finality to OS.No.90/2018, at least insofar as the Sub Court is concerned **on or before 31.08.2021**. I hope and I am confident that plaintiffs and defendants in the said suit would also cooperate with the said proceedings. If trial could not commence owing to COVID pandemic, at the instance of the High Court, the conclusion of the trial should be completed **on or before 30.09.2021**.

- (b) The plaintiffs are at liberty, if they are so advised and if they feel it appropriate to file relevant application in REP No.11/2016 under the relevant provisions and take advantage of various provisions of the Code of Civil Procedure and if any such application is filed, the learned District Munsif at Mettur, may take it up, examine the contents and proceed in accordance with law in giving finality to such application. It is only appropriate that due diligence is shown by the learned District Munsif, in dealing with any of such application because it is claimed and it is not disputed that the revision petitioners are members of the

family, though daughters.

- (c) I am confident that if any application is filed, the learned District Munsif at Mettur, would take up and dispose it of at the earliest. The revision petitioners are given time till **31.07.2021** to take a decision whether they are going to file such an application or not and thereafter, if such application is filed, the learned District Munsif at Mettur, may dispose it of at the earliest following due procedure.

- (8) With the above directions, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

30.06.2021

AP
Internet : Yes

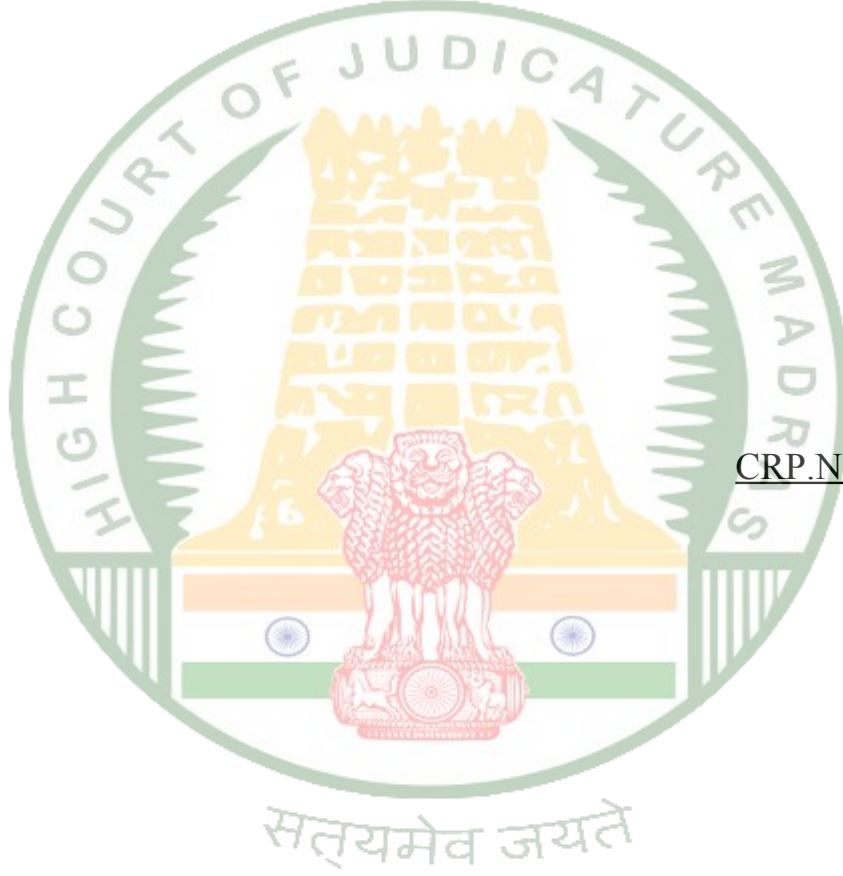
To

- 1.The District Munsif, Mettur.
- 2.The Subordinate Judge, Mettur.

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C.V.KARTHIKEYAN, J.,

AP



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