

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.350 of 2020
and C.M.P. No.1837 of 2020

1.B.Sumathi
2.B.Vignesh

...

Petitioners /
Defendants

versus

1.Rouccoumany
2.Raquiny @ Sathiyavani
3.Oucha Devy

...

Respondents/
Plaintiffs

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the order and decree dated 27.09.2019 passed in I.A.No.1035 of 2018 in O.S.No.1 of 2017 by the learned II Additional District Judge, Puducherry and thereby allow the Revision.

For Petitioners : M/s.S.Jayanthi

For Respondents : Mr.R.Thiagarajan

ORDER

This Civil Revision Petition is filed for setting aside the order dated 27.09.2019 passed by the learned II Additional District Judge, Puducherry in I.A.No.1035 of 2018 in O.S.No.1 of 2017.

2. I.A.No.1035 of 2018 was filed under Order 6, Rule 17 read with Section 151 of C.P.C., for amending the plaint. It is seen from the affidavit filed in support of the petition that, the proposed amendment has sought for, on seeing the written statement filed by the defendants 1 and 5. It is claimed that the written statement filed by the defendants 1 and 5 that, *"Gopalan, son of Late Mariappan made a Will during his lifetime in a sound and disposing state of mind on 19.07.2002 in the presence of witnesses bequeathing the suit property in favour of 5th defendant as well as his step brother the deceased G.Baskaran, son of Late Gopalan into two equal shares. The said registered Will dated 19.07.2002 was registered on the file of Sub Registrar, Pondicherry in Doc.No.222/2002 in Book 3, Vol.117. After the death of Late Gopalan on 03.06.2012 the Will dated 19.07.2002 came into operation and accordingly, the suit property was taken by the said Baskaran as well as the 5th defendant absolutely."*

3. In view of this particular pleadings, that the defendants 1 and 5 claimed right through the Will of their father Gopalan, it has become necessary for the respondents / plaintiffs to challenge the Will. Therefore, the amendment petition was filed for amending the cause of action and challenging the Will by including certain paragraphs and also, the prayer. This petition was contested by the petitioners. The learned II Additional District Judge, on considering the rival submissions, allowed the amendment petition. Against the said order of allowing amendment petition, the petitioners / defendants are preferred this Civil Revision Petition.

4. The learned counsel for the petitioners submitted that, the proposed amendment would entirely change the nature and character of the suit. Therefore, the proposed amendment cannot be permitted. If at all, the respondents want to challenge the Will, they have to withdraw the suit and file a fresh suit. It is also claimed that, yet another suit was filed in O.S.No.33 of 2017, wherein the Will was challenged and that was negatived. Hence, the learned counsel for the petitioners prayed for setting

aside the order passed by the learned II Additional District Judge, in I.A.No.1035 of 2018 and for dismissal of the amendment petition.

5. Considered the submissions of both the parties and perused the records.

6. The suit in O.S.No.1 of 2017 was filed seeking the relief of partition of the suit property by metes and bounds into 7 equal shares and allotment of 3/7th share to the plaintiffs, delivery of possession of their share and injunction against the petitioners not to encumber the suit property and for other reliefs. The common contention of the petitioners and respondents is that, the suit property was allotted to Gopalan on 29.01.1987. Thereafter, the suit property was enjoyed by the said Gopalan, his children, and his 2 wives. The petitioners started acting detrimental to the interest of the respondents. Therefore, the lawyer's notice was given seeking partition. The petitioners have not come forward to effect partition. Therefore, the suit for partition was filed.

7. The defendants filed by the written statement. As already narrated, the claim in the written statement filed by the defendants is that, Gopalan had executed the Will on 19.07.2002 bequeathed his property to Baskaran and Seenuvasan. The respondents are not aware of the existence of the said Will. When the petitioners claim right to the entire property through the Will, it is absolutely necessary for the respondents to challenge the Will. The proposed amendment in the considered view of the Court, is absolutely necessary for effective and binding adjudication and for avoiding multiplicity of the proceedings.

8. Admittedly, the trial has not commenced in this suit. The amendment petition was filed before the commencement of the trial. The proposed amendment will not in the way to change the character and nature of the suit. Only the aspects which had came to the notice to the respondents through the written statement, is sought to be challenged and it is well within the scope of the suit filed and the relief claimed. The learned trial Judge has rightly considered the matter and allowed the petition. Therefore, this Court finds no reason to interfere with the order dated 27.09.2019

passed by the learned II Additional District Judge, Puducherry in I.A.No.1035 of 2018 in O.S.No.1 of 2017 and the order is confirmed.

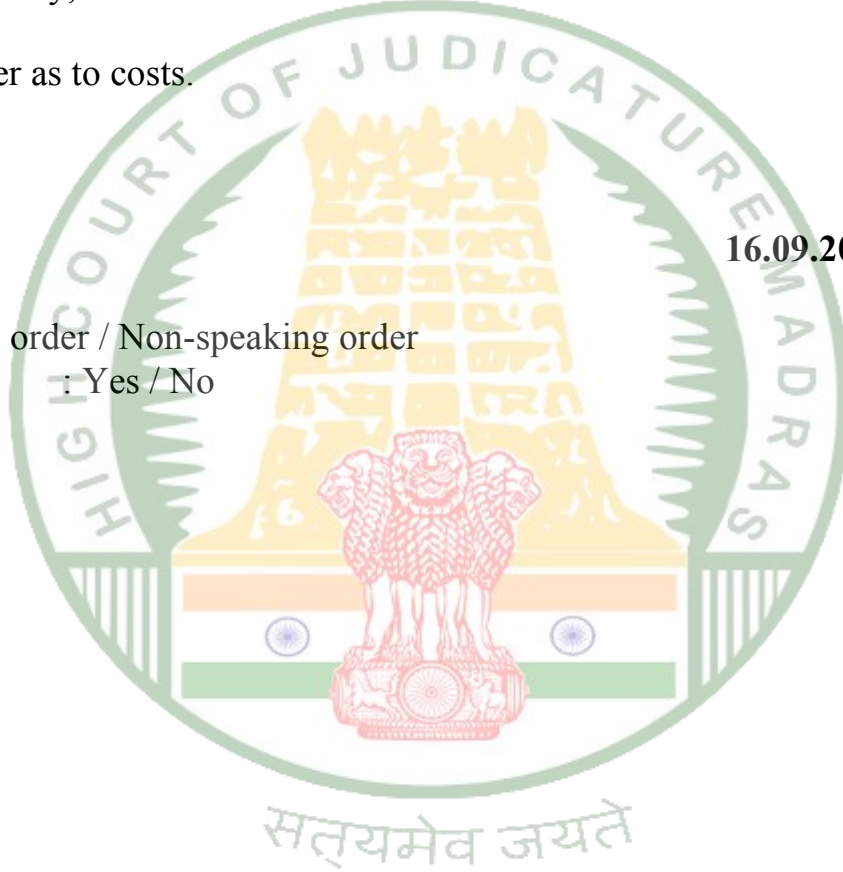
9. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

16.09.2021

Speaking order / Non-speaking order

Index : Yes / No

psa / sri



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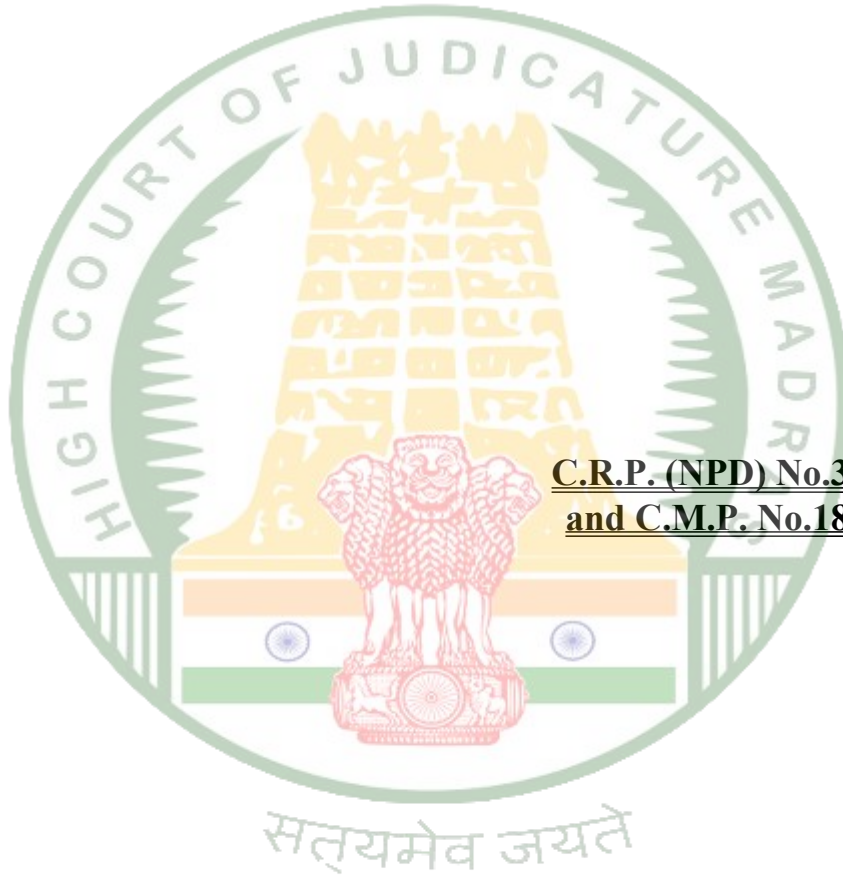
The II Additional District Judge,
Puducherry.



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G.CHANDRASEKHARAN, J.

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