

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.1066 of 2018
and C.M.P.No.5626 of 2018

1. D.Mohammed Dhaha
2. M.D.Khadija Banu

... Petitioners

Vs.

1. M.D.Ameerunnissa
2. K.Md.Yousuf
3. K.Md.Ali
4. K.Misiriya
5. Khaleelur Rahman
6. S.Sairath
7. Sarath
8. Hameed
9. Yusuf
10. Akbar
11. Rasheeda Begum
12. Md.Ghouse
13. Kalvath Syed Abdul kadir
14. Minor Kilir Mohideen

Rep by his mother and
next friend Rasheeda Begum

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.02.2018 made in I.A.No.75 of 2017 in O.S.No.56 of 2014 on the file of the learned Principal District Judge, Vellore.

For Petitioners : Mr.A.U.Ilango

For Respondents

For R1 : Mr.N.A.Nissar Ahmed

ORDER

The Civil Revision Petition is directed as against the fair and decreetal order dated 07.02.2018 passed by the learned Principal District Judge, Vellore, in I.A.No.75 of 2017 in O.S.No.56 of 2014, thereby dismissing the petition to recast the issue Nos.1 & 2 which were already framed by the trial Court.

2. The petitioners are the defendants 1 & 2 in the suit filed by the first respondent herein. The first respondent filed suit in O.S.No.56 of 2014 for partition and also for declaration declaring that the final decree passed the Court below in O.S.No.65 of 2009 dated 01.04.2010 as null and void. The trial Court framed the issues as follows :-

"1. Whether the plaintiff is estopped to claim any relief against the final decree passed in O.S.No.65/2009.

2. Whether the plaintiff is estopped to claim any right in view of the findings in W.P.No.14103/2014 and 22511 of 2012 on the file of High Court of Madras?

3. Whether the plaintiff is entitled to preliminary decree of partition of 4/12 shares in the suit properties?

4. Whether the plaintiff is entitled to a decree of declaration to declare the final decree passed in O.S.65/09 dated 01/04/2010 as null and void?

5. Whether the plaintiff is entitled to a decree or permanent injunction against the defendants?

6. To what other relief the plaintiff is entitled?"

3. While pending for enquiry, the petitioners filed petition in I.A.No.75 of 2017 to recast the issues 1 & 2 which were already framed by the trial Court as follows :-

"1. Whether the plaintiff is entitled to have the final decree passed in O.S.65/2009 by the District Court, Vellore, set aside and whether she is entitled to claim any relief against the final decree passed in O.S.65/2009

2. Whether the plaintiff is entitled to claim any right in view of the W.P.No.14103/2014 and W.P.21511 of 2012 on the file of High Court of Madras?

3. Whether the plaintiff is entitled to claim the relief of partition of the suit properties without setting aside the compromise final decree passed in O.S.65/2009, District Court, Vellore.

4. Whether the Court fee paid under Section 37(II) of the T.N.C.F. Act is correct and whether the plaintiff is in joint possession of the suit properties."

4. The above said petition was filed by the petitioners for the reasons that the issue Nos.1 & 2 have placed the burden of proof on the petitioners. Further submitted that the petitioners filed suit in O.S.No.65 of 2009 for partition of the suit properties. All the parties in the present suit are

the parties to the above suit. In the said suit all the parties amicably settled the issues and agreed to pass the final decree by allotting the properties to their concerned by a compromise. Accordingly, the Court below passed the decree in O.S.No.65 of 2009. The first respondent herein is the party to the said suit and on the strength of the compromise decree, she also filed petition to the Tashildar concerned and requested not to sub divide the properties in accordance with the decree, since there is a mistake in their respective shares. When it being so, without setting aside the decree passed in O.S.No. 65 of 2009, the first respondent is not entitled for partition and the suit itself is liable to be struck off.

5. On perusal of both the issues which were sought to be recast, as far as the issues 1 & 2 are concerned, those issues were already framed by the Court below, on the basis of the draft issues submitted by the first respondent. Admittedly, the petitioners failed to file any draft issues before the trial Court. Therefore, the Court below rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

6. At that juncture, the learned counsel appearing for the petitioners would submit that the suit itself is barred without challenging the decree passed in O.S.No.65 of 2009 dated 01.04.2010 and seeks liberty to file petition for rejection of plaint. Considering the above, the petitioners are always at liberty to file petition for rejection of plaint in the manner known to law. Since the suit is of the year 2014, the trial Court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this Order.

7. With the above directions, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

15.04.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal District Judge,
Vellore.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

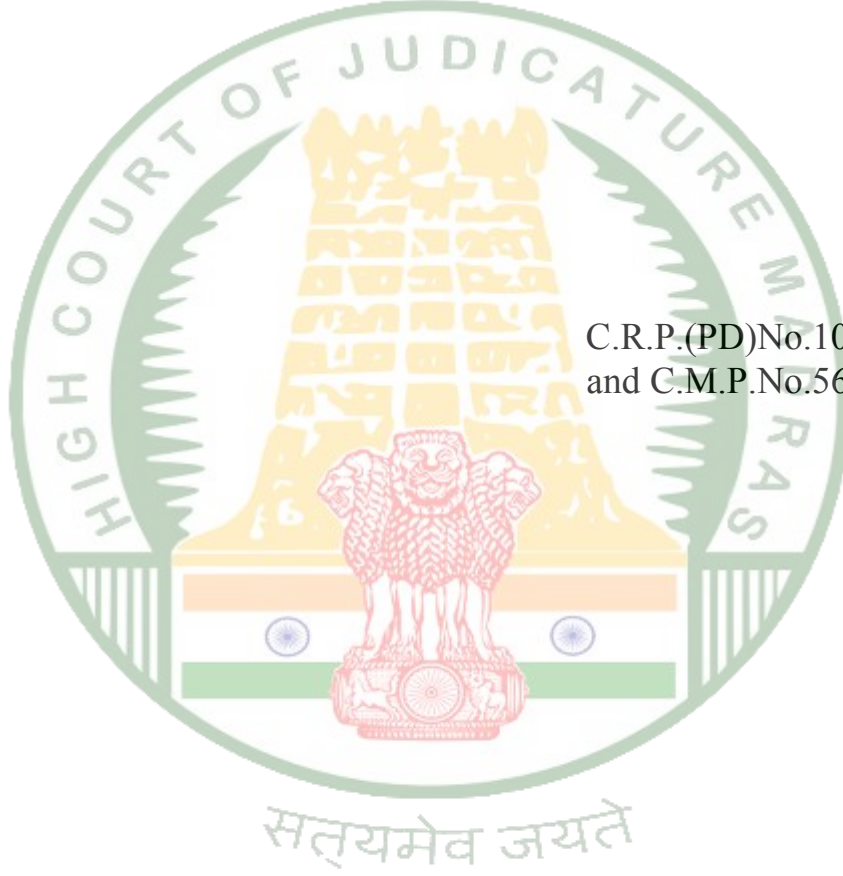


WEB COPY

C.R.P.(PD)No.1066 of 2018

G.K.ILANTHIRAIYAN, J.

rts



C.R.P.(PD)No.1066 of 2018
and C.M.P.No.5626 of 2018

WEB COPY

15.04.2021