

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.721 of 2021

Pichayammal, ... Petitioner

Vs.

1. Palaniammal,

2. Mariammal,

3. Muthumariammal,

4. Viswanathan Chettiar,

5. Mani Chettiar,

6. Venkatesan Chettiar,

7. Ramesh Chettiar,

8.A. Natarajan

9. A. Soundarrajan

10. A. Bala Mohanraj

11. A. Maayandi,

12. A. Venkat @ Balakrishnan

... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to direct the II Additional Sub-ordinate Court, Coimbatore to dispose of I.A. No.254 of 2013 in O.S. No.266 of 2005 on merit within a reasonable time frame fixed by this Hon'ble Court.

For Petitioner ... Mr. K.S. Karthik Raja

For Respondents ... No Appearance

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India has been filed praying for to direct the II Additional Sub-ordinate Court, Coimbatore to dispose of I.A. No.254 of 2013 in O.S. No.266 of 2005 on merit within a reasonable time frame fixed by this Hon'ble Court.

2. The case of the petitioner is that as the suit property was purchased out of the Joint Family Business in favour of the plaintiff who is the petitioner herein and 1 to 3 defendants who are the respondents herein by virtue of a Sale Deed 29.10.1984, the plaintiff/petitioner herein has filed the suit in O.S. No.266 of 2005 on the file of the II Additional

Sub-Ordinate Court, Coimbatore, wherein the plaintiff/petitioner had sought for partition of 1/4th share in the suit schedule property. The Trial Court after conducting the trial and perusing the oral and documentary evidence, allowed the same by order dated 19.11.2012 directing the defendants/respondents herein for dividing the suit property into equal shares and allot one such share to the plaintiff by metes and bounds and the same was decreed accordingly. After the aforesaid order, as the suit property has not been divided into four equal shares, the plaintiff/petitioner herein has filed I.A.No.254 of 2013 before it praying for to pass a final decree within the terms of preliminary decree by appointing an Advocate Commissioner to divide the petition mentioned property into four equal shares and to allot one such share to the plaintiff/petitioner herein.

3. The learned counsel for the petitioner would submit that even though the suit in O.S. No.266 of 2005 was filed by the plaintiff/petitioner herein as early as in the year 2005 and preliminary decree for partition was decreed as early as on 19.11.2012, the plaintiff/petitioner herein is unable to utilize the fruits of the decree

because of the delaying the disposal of the I.A.No.254 of 2013 filed by the plaintiff/petitioner herein. As the matter is being regularly adjourned without any effective hearing and the same is pending only for steps and other vexatious reasons, the Court below may be directed to dispose of the matter within a reasonable time frame as fixed by this Court.

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

5. It is realized from the adjudication of the Court below filed by the petitioner along with Typed set of papers that from the year 2011 itself, the I.A.No.254 of 2013 is pending before the Court below without being heard and being adjourned for service pending and application pending. From the year 2019, the matter is being adjourned till date for taking steps for R1 in I.A.No.1 of 2019 and issuing fresh notice to other proposed parties as well as for filing Counter. Despite the plaintiff/petitioner herein got favourable order in O.S.No.266 of 2005 to allot her share in the suit schedule property in the year 2012, she could not avail the benefit of the decree passed by the Trial Court. Thereafter,

the plaintiff/the petitioner has filed I.A. No.254 of 2013 to appoint an Advocate Commissioner to allot one share in the suit schedule property, the same has been adjourned till date with the aforesaid reasons without disposal of it. Hence, this Court directs the Court below to serve fresh notice on all the proposed respondents and other respondents to whom notices were unserved and if they are not served by way of notice, substitute service shall be ordered to complete the same within a short period and after completing the service of notice, the Court below shall decide the matter on or before 30th November 2021.

6. With the aforesaid direction, the Civil Revision petitions is disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

29.03.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

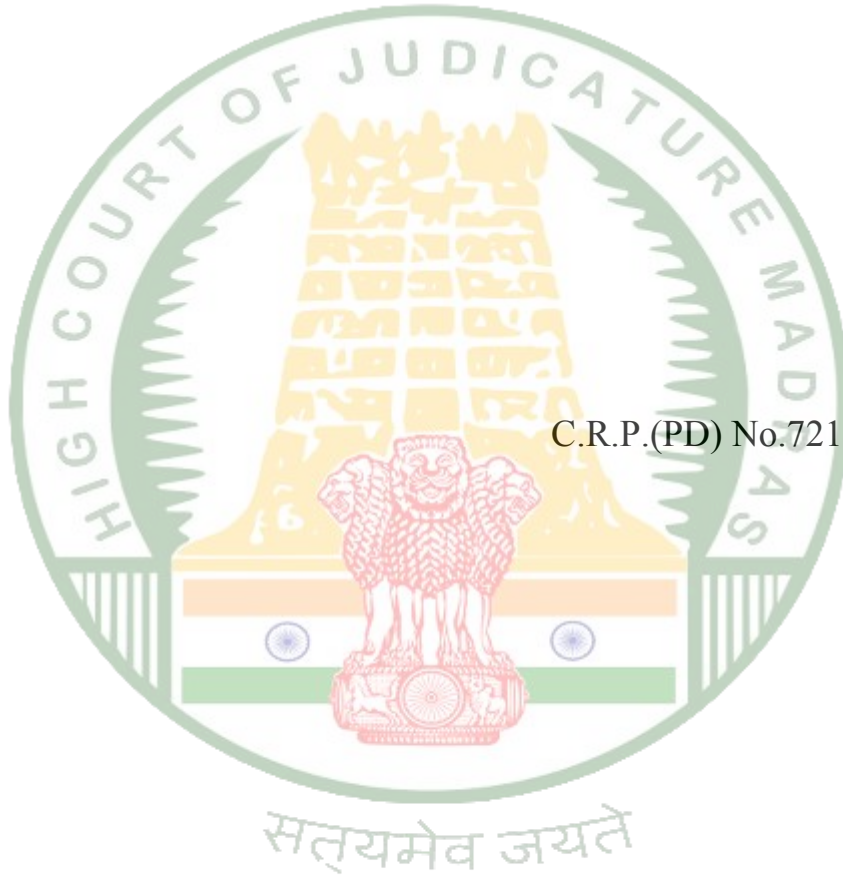
To:

The II Additional Sub-ordinate Court,
Coimbatore

C.R.P.(PD) No.721 of 2021

V.BHAVANI SUBBAROYAN, J.,

lbm



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