

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

C.R.P.(NPD) Nos.3228 & 3229 of 2015
and M.P.Nos.1 & 1 of 2015

1. Suresh Kumar
2. Rajeswari
3. Shanthi

... Petitioners
in both CRPs

Vs.

1. Deviannan
2. Raju
3. Thilagavathi

... Respondents
in C.R.P.No.3228 of 2015

1. Deviannan
2. Raju
3. Kandasamy
4. Vasanthi

... Respondents
in C.R.P.No.3229 of 2015

Prayer in C.R.P.No.3228 of 2015:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.04.2015 passed in I.A.No.41 of 2014 in A.S.No.5 of 2012 on the file of the learned Subordinate Judge, Namakkal.

Prayer in C.R.P.No.3229 of 2015:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.04.2015 passed in I.A.No.42 of 2014 in A.S.No.6 of 2012 on the file of the learned Subordinate Judge, Namakkal.

For Petitioners
in both CRPs : Mr.S.Saravana Kumar

For Respondents
in C.R.P.No.3228 of 2015
For R1 & R2 : No appearance
For R3 : Mr.C.Jagadish

For Respondents
in C.R.P.No. 3229 of 2015
For R1 & R2 : No appearance
For R3 & R4 : Mr.C.Jagadish

COMMON ORDER

These revision petitions are arising out of the fair and decreetal orders dated 16.04.2015 passed by the learned Subordinate Judge, Namakkal, in I.A.Nos.41 & 42 of 2014 in A.S.Nos.5 & 6 of 2012, respectively thereby dismissing the petitions filed by the petitioners to implead themselves as parties to the appeal proceedings.

2. The respondents 1 & 2 are the plaintiffs in O.S.No.1040 of 2004 and they are the defendants in O.S.No.39 of 2007. The respondents 1 & 2 are the brothers. Initially they filed suit for injunction in respect of their share in the property derived from their ancestors as against their brother's wife viz., Thilagavathi. The suit in O.S.No.39 of 2007 filed by the respondents 3 & 4 in C.R.P.No.3229 of 2015 for injunction as against the respondents 1 & 2 herein in respect of the property which was purchased by them from the respondents 1 & 2 brother's wife viz., Thilagavathi, the third respondent in C.R.P.No.3228 of 2015.

3. The suit in O.S.No.1040 of 2004 filed by the respondents 1 & 2 was dismissed and the suit in O.S.No.39 of 2007 filed by the respondents 3 & 4 in C.R.P.No.3229 of 2015 was allowed. Aggrieved by the same the respondents 1 & 2 herein filed two appeal suits in A.S.Nos.5 of 2012 and 6 of 2012 respectively. When both the appeals were pending, the petitioners who are happened to be the son and daughters of the first respondent herein, filed petitions to implead themselves as respondents in the appeals.

4. They filed these petitions on the ground that both the suit schedule properties belonged to their grand father and they are ancestral properties. Therefore, they have shares over the said properties. In respect of the suit properties both the suits were filed and aggrieved by the judgment and decree, the present appeals were filed. Now only they came to know about the pendency of the above said appeals. Therefore for the effective participation in the appeal, since they are having share in the properties, they wanted to implead themselves as parties in the appeals.

5. On perusal of records, it revealed that in both the suits, the schedule mentioned properties belongs to the first and second respondents' father. Originally their father had three sons. The third respondent in C.R.P.No.3228 of 2015 is the wife of the first and second respondents' brother. He died long back. The respondents 1 & 2 are having 2/3 share in the suit properties and in respect of 1/3 share concerned, the third respondent sold out her share in favour of the respondents 3 & 4 in C.R.P.No.3229 of 2015. Therefore, the respondents 1 & 2 filed the suit for injunction as against the third respondent in C.R.P.No.3228 of 2015 in

respect of the 2/3 share of the suit properties. At the same time, the purchasers viz., the respondents 3 & 4 in C.R.P.No.3229 of 2015 filed suit for injunction in respect of 1/3 share, which was purchased by them from the third respondent in C.R.P.No.3228 of 2015.

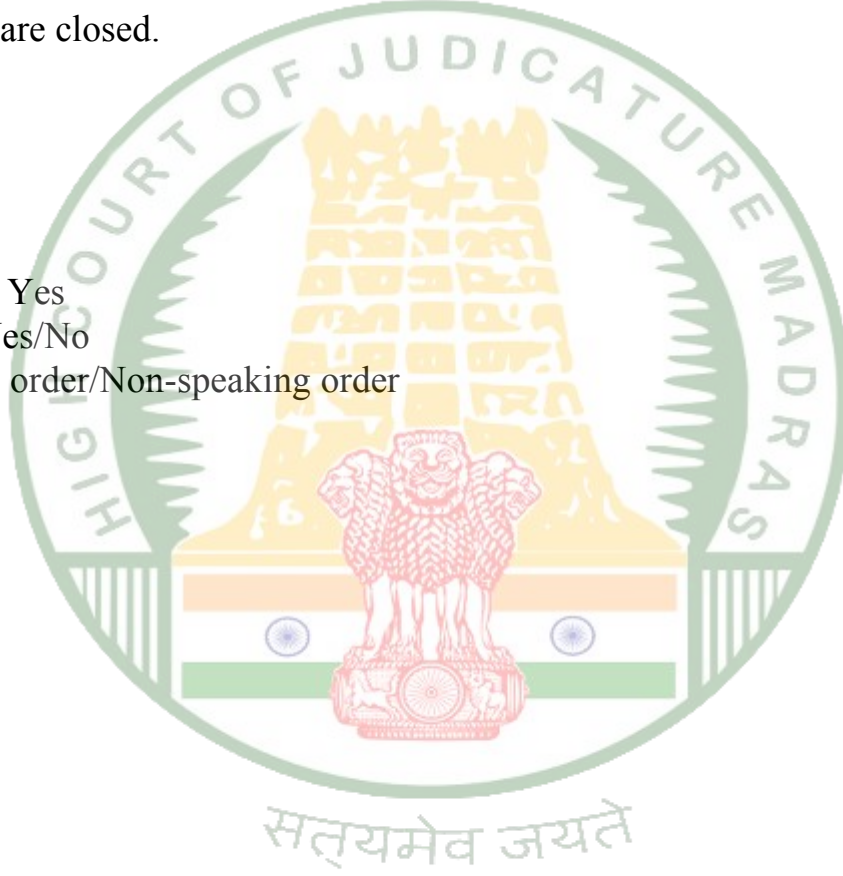
6. The suit filed by the respondents 1 & 2 dismissed and the suit filed by the respondents 3&4 in C.R.P.3228 of 2015 was allowed. Aggrieved by the same, the respondents 1 & 2 filed appeal suits in A.S.Nos. 5 & 6 of 2012 respectively. Admittedly, both the suits filed for injunction. Therefore, the petitioners absolutely had no role in the suit filed for injunction and if the petitioners have any share in the suit properties, they can very well adjudicate separately that too after the life time of the first respondent herein viz., their father, since they cannot claim any right over the properties during their father's life time. Therefore, the trial Court rightly dismissed the petitions and this Court does not find any infirmity or illegality in the order passed by the Court below.

7. Accordingly, both the Civil Revision Petitions are dismissed.
There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.01.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

rts



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To

1. The Subordinate Judge,
Namakkal.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

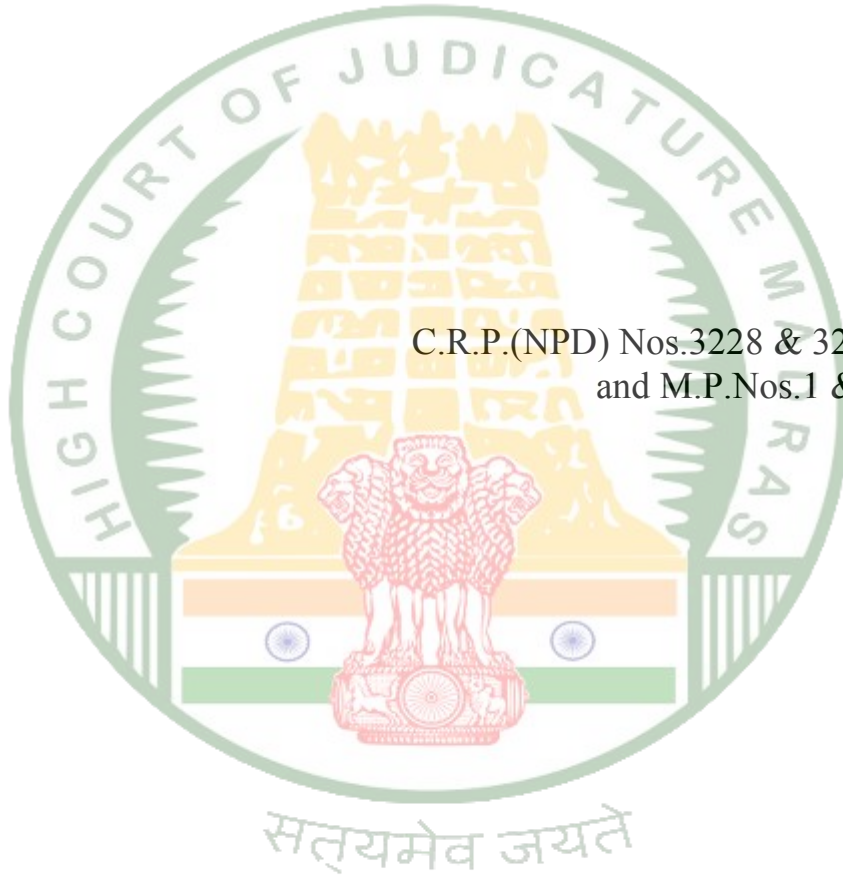


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G.K.ILANTHIRAIYAN, J.

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