

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.4131 of 2015
& M.P.No.1 of 2015

A.Yasodha

... Petitioner

Vs

1.S.Uma Maheswari

2.M.Arjunan

3.K.Rajkumar

4.T.Venkatachalamoorthy

5.S.Rathan

6.B.Kumar

7.Tamilnadu Industrial Investment Corporation

8.Muthusamy Gounder

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 10.09.2015 made in I.A.No.623 of 2014 in O.S.No.14 of 2012 on the file of the 1st Additional District Judge, Erode.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.A.Sundaravadhanam for R1
R2 to R8 - Notice served-NA

ORDER

The Civil Revision Petition is directed as against the fair and decretal order dated 10.09.2015 made in I.A.No.623 of 2014 in O.S.No.14

of 2012 on the file of the 1st Additional District Judge, Erode, thereby allowed the petition for amendment filed by the 1st respondent herein.

2.The 1st respondent is the plaintiff, who filed the suit for declaration and consequential injunction in which the petitioner is the 6th defendant. While pending the suit, the 1st respondent filed a petition for amendment to amend the plaint under Order 6 Rule 17 and Section 151 CPC. Initially the 1st respondent filed the suit for following prayers:-

"a) declaring the impugned sale deed purported to have been obtained by the 5th defendant dated 25.10.2010 vide Document No.6628/2010 of SRO, Erode, from the 7th defendant colluding with the defendants 1 to 4 by playing fraud, misrepresentation and hence the collusive impugned sale deed is non-est and nullity and does not have any legally valid and binding force on the plaintiff;

b)declaring the impugned sale deed purported to have been executed by the 5th defendant dated 27.10.2010 vide Document No.6629/2010 of SRO, Erode in favour of the 6th defendant in collusion with the defendants 1 to 4 by playing fraud, misrepresentation and hence the collusive impugned sale deed is non-est and nullity and does not have any legally valid and binding force on the plaintiff;

c)declaring the plaintiff is the absolute owner of the Item No.I and II of the suit properties by virtue of the gift settlement deed dated 18.06.2010 executed by the 8th defendant vide document No.3990/2010 of SRO, Erode, in favour of the plaintiff irrespective of the cancellation of settlement deed dated 16.03.2012 executed by the 8th defendant vide Document No.1528/2012 of SRO, Erode; (Amendment as per Order in I.A.No.487 of 2013 dated 26.06.2013)

d)granting consequential injunction restraining the 6th defendant, her men, agents, hirelings etc in manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

e)directing the defendants 1 to 6 to pay the cost of the suit; and

f)grant such other and further reliefs as this Hon'ble court may deem and fit and proper in the circumstances of the case."

Whereas the 1st respondent filed an amendment petition to amend the prayer in the plaint in I.A.No.623 of 2014. The reason stated in the affidavit filed in support of the amendment petition is that while the pending suit, the petitioner herein trespassed into the 1st item of the suit property and as such

sought for recovery of possession in respect of 1st item of the suit property.

Further stated that the 1st respondent is entitled to act 39 of 2005 as per which, she has become a co-parcener by birth and thereby she become entitled to 1/3rd share in the suit properties, irrespective of the fact that the main sale deeds are proved or not. When the suit filed for declaration declaring the sale deeds executed on the dates, 25.10.2010, 27.10.2010 as null and void, the 1st respondent cannot sought for alternative prayer that too for a partition. The amendment will change the entire nature and character of the suit.

3. Therefore, paragraph Nos.9 and 13 in the petition for amendment, i.e., I.A.No.623 of 2014 are set aside and in so far as the other amendments are concerned, it is allowed. In view of the above modification, the Civil Revision Petition is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The 1st Additional District Judge, Erode.

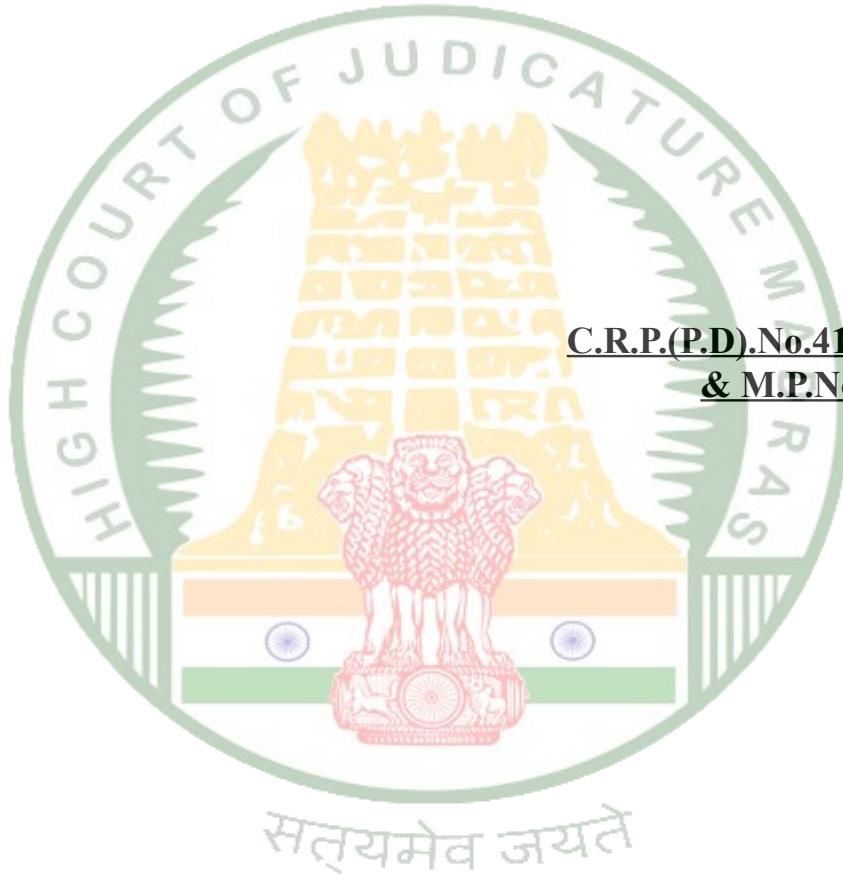


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