

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

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

C.R.P.(PD) No.2809 of 2016
and C.M.P.No.14296 of 2016

1. K.Senthil Kumar
S/o.Late Krishnamurthy

2. Manjula
D/o.Late Krishnamurthy

3. Mahalakshmi
W/o.Late Krishnamurthy

... Petitioners

1. S.P.Raveendran
S/o.Late Palanisamy

2. S.P.Jagadeesan
S/o.Late Palanisamy

3. Mrs.Lalitha
W/o.N.Gopal and D/o.Late Palanisamy

4. Mrs.Parimala
W/o.Manoharan & D/o. Late Palanisamy

... Respondents

Prayer:-

Page 1 of 8

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 20.04.2016 in I.A.No.691 of 2015 in O.S.No.173 of 2015 on the file of the I Additional District and Sessions Judge Court, Coimbatore and allow the above Civil Revision Petition.

For Petitioners : Mr.C.R.Prasanan
For Respondents : Mr.J.Hariharan
for Mr.V.Nicholas

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 20.04.2016 in I.A.No.691 of 2015 in O.S.No.173 of 2015 on the file of the I Additional District and Sessions Judge Court, Coimbatore, thereby, dismissing the petition filed by the petitioners seeking to pass an order to take up and try the Court fee issue as a preliminary issue and to pass orders directing the respondents to pay the Court fee under Section 37(1) the Tamil Nadu Court Fees and Suit Valuation Act.

2. The petitioners are the defendants in the suit filed by the

respondents herein, seeking for partition suit. It is the case of the petitioners that the suit has to be valued under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, since it is specifically pleaded that the mother of the respondents was in possession and enjoyment of the suit property along with her mother till her death.

3. The learned counsel for the petitioners would submit that originally the property belonged to one Kumarasamy Chettiar. He had one son and one daughter namely, Krishnamoorthy and Rajammal. The petitioners are the legal heirs of Krishnamoorthy and the respondents are the legal heirs of the said Rajammal. Even according to the respondents, the said Kumarasamy Chettiar died in the year 1954 and his wife Sankarammal died in the year 1980. Therefore, before the Indian Succession Act came into force, the respondents' grand father, Kumarasamy Chettiar died in the year 1954 and as such, their mother is not entitled for any share in the property belonging to their grand father Kumarasamy Chettiar since the Indian Succession Act came into force only from 17.06.1956. When the suit was filed on the basis of averments made in the plaint, the respondents should have valued the suit under Section 37(1) of the Tamil Nadu Court Fees and

Suit Valuation Act. Therefore, the petitioners filed an interlocutory application before the trial Court to frame the Court fee issue as a preliminary issue and pass orders thereby, directing the respondents to pay Court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act. In fact, the petitioners are disputing the date of death of grand father Kumarasamy Chettiar. According to them, their grand father died in the year 1932, which is evident from the judgement passed in O.S.No.88 of 1962 dated 12.01.1995 in a dispute between the said Kumarasamy Chettiar and his brother Nanjappa Chettiar. When the respondents herein are not at all entitled for any share in the suit property, naturally, the respondents cannot plead as co-sharers of the property. He further submitted that, at any point of time, they are not in possession and enjoyment of the suit property.

4. Per contra, the learned counsel for the respondents categorically pleaded in the plaint that the respondents' mother Rajammal was in possession and enjoyment of the suit properties along with her mother namely, Sankarammal. Further, he pleaded that they are the co-sharers of

the suit property and as such it can be decided only by letting evidence during trial. He further submitted that when there is a specific pleading in the plaint that it cannot be decided as a preliminary issue, the same can be decided only during trial. As such, the trial Court has rightly dismissed the petition and it does not warrant any interference by this Court. In support of his contention, the learned counsel relied upon a judgement of this Court in ***M.K.Mala Vs. M.K.Ravi*** reported in **2015 (2) MWN (Civil) 598**.

5. Heard Mr.C.R.Prasanan learned counsel for the petitioners and Mr.J.Hariharan learned counsel for the respondents

6. The petitioners are the defendants in the suit filed by the respondents for partition. According to the respondents, the suit property originally belonged to their grand father Kumarasamy Chettiar and he died in the year 1954, leaving behind their mother, maternal uncle one Krishnamurthy and their grand mother Sankarammal, who died in the year 1980. After her death, the respondents' mother was living with her mother namely, Sankarammal and she was in possession and enjoyment of the suit

property, whereas the case of the petitioners is that their grand father Kumarasamy Chettiar died in the year 1932, which is evident from the judgement passed in O.S.No.88 of 1962 filed between their grand father and his brother namely, Najappa Chettiar for partition. Pending the said suit, he died and thereafter, his legal heirs were impleaded as parties in the partition suit. The Indian Succession Act came into force from 17.06.1956. Therefore, if the date of death of said Kumarasamy Chettiar is taken as 1954, as rightly pointed out by the learned counsel for petitioners, a female is not entitled to any share before the Succession Act came into force. Thus, the respondents' mother, who is the daughter of Kumarasamy Chettiar cannot have any right over the suit property. Though the respondents pleaded that their mother was in possession and enjoyment of the suit property and was living along with her mother till her death, when they are not entitled for any share in the suit property, it cannot be said that they are co-owners of the suit property. When they are not co-owners of the suit property, they are not entitled to any share in the suit property, the suit for partition itself is not maintainable and liable to be rejected. Therefore, the judgement relied on by the learned counsel for the respondents is not helpful

to the case of the respondents.

7. Hence, the order dated 20.04.2016 in I.A.No.691 of 2015 in O.S.No.173 of 2015 on the file of the I Additional District and Sessions Judge Court, Coimbatore is hereby set aside. Accordingly, this Civil Revision Petition is allowed and the plaint filed by the respondents in O.S.No.173 of 2015 on the file of the I Additional District Judge Court, Coimbatore is hereby rejected. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.03.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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सत्यमेव जयते

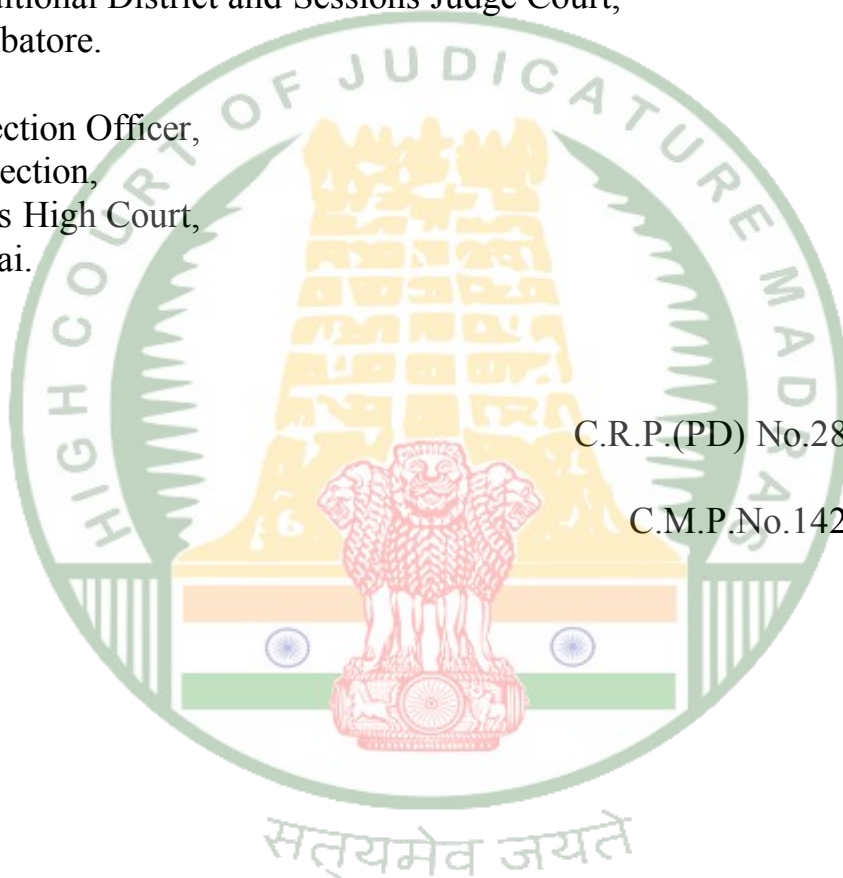
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G.K.ILANTHIRAIYAN, J.

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To

1. I Additional District and Sessions Judge Court,
Coimbatore.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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