

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.2320 of 2018
and C.M.P.No.14421 of 2018

1.Babu @ Shantharam

2.Vaijayanthimala

...Petitioners

Vs

1.Leela Ammal
2.Meera Ammal
3.Seetharaman
4.Sasirekha
5.Radha
6.Balasubramanian
7.Geetha Krishnan
8.Vishnupriya
9.Sumathi
10.Anuradha
11.Udayakumar
12.Lakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside fair and final order of Sub Court, Ulundurpettai dated 26.04.2018 made in I.A.No.396 of 2017 in O.S.No.119 of 2017.

For Petitioners : Mr.S.Sounthar

For R3 : Mr.M.Raja

ORDER

This Civil Revision Petition has been filed challenging the order made in I.A.No.396 of 2017 in O.S.No.119 of 2017 dated 26.04.2018 on the file of the Sub Court, Ulundurpettai.

2.The gist of the case is that I.A.No.396 of 2017 in O.S.No.119 of 2017 was filed to implead the legal heirs of the deceased 8th defendant, Vasanthi. The respondents 3 and 4 herein are the son and daughter of the 8th defendant. The 12th respondent is the mother of the deceased Vasanthi. The respondents 3 and 4 have filed an application to implead them as plaintiffs 3 and 4 and mother of the deceased as 11th defendant and the same was allowed by the Court below. Aggrieved over the same, the present Civil Revision Petition has been filed.

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3.The learned counsel for the petitioners submitted that when the defendant died, naturally the legal heirs of the said defendant need to be

impleaded. In the present case, the respondents 3, 4 and 12 herein are the legal heirs of the deceased 8th defendant. Therefore, they are supposed to have impleaded as the defendants in the suit, whereas they have filed an application to implead respondents 3 and 4/ the son and daughter of the deceased 8th defendant as plaintiffs 3 and 4 and 12th respondent/mother of the deceased 8th defendant as 11th defendant in the suit, which is not appropriate. The Court below with non-application of mind has also allowed the application.

4.The learned counsel for the petitioners fairly submitted that at first the legal heirs have to be impleaded on the same capacity as defendants. Thereafter, if at all the legal heirs wants to change their character as plaintiffs, they are always entitled to approach the Court. Without following the said procedure, the above application has been filed and it was also allowed. Hence, the order of the Court below is liable to be set aside.

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5.The learned counsel for the third respondent submitted that third respondent, Seethraman has already represented as a Power of Attorney of

the 2nd plaintiff. Therefore, he has filed an application to implead him and his sister as plaintiffs. When a person is representing the plaintiff as Power of Attorney, he can be impleaded as one of the plaintiff. The suit was filed for partition. Hence, both the parties can be considered as plaintiff and there is no impediment for the petitioners herein in impleading the legal heirs of the 8th defendant as plaintiffs in the suit. Considering the facts and circumstances of the case, the Court below has rightly allowed the application and interference is not required.

6. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7. On perusal of the documents, it could be seen that the respondents 3 and 4, who are the son and daughter of the deceased 8th defendant in the suit filed an application to implead them as plaintiffs 3 and 4 and the mother of the deceased 8th defendant as the 11th defendant in the suit. The Court below allowed the said application since the third respondent representing the 2nd defendant as Power of Attorney. The learned counsel for the petitioner

dispute the claim of 3rd respondent, representing 2nd plaintiff as Power of Attorney. This aspect has to be examined by the Court below. According to the learned counsel for the respondents it would be proper to implead the respondents 3 and 4 as plaintiffs in the suit since the 3rd respondent is the Power of Attorney for 2nd plaintiff.

8.This Court does not find any irregularity or infirmity in the order passed by the Court below since the 3rd respondent is the Power of Attorney of 2nd plaintiff and the 4th respondent is also entitled for share in the suit property. The suit has been filed for partition and all the parties would be considered as a plaintiff and the petitioner herein is no way affected by impleading the respondents 3 and 4 as plaintiffs in the suit.

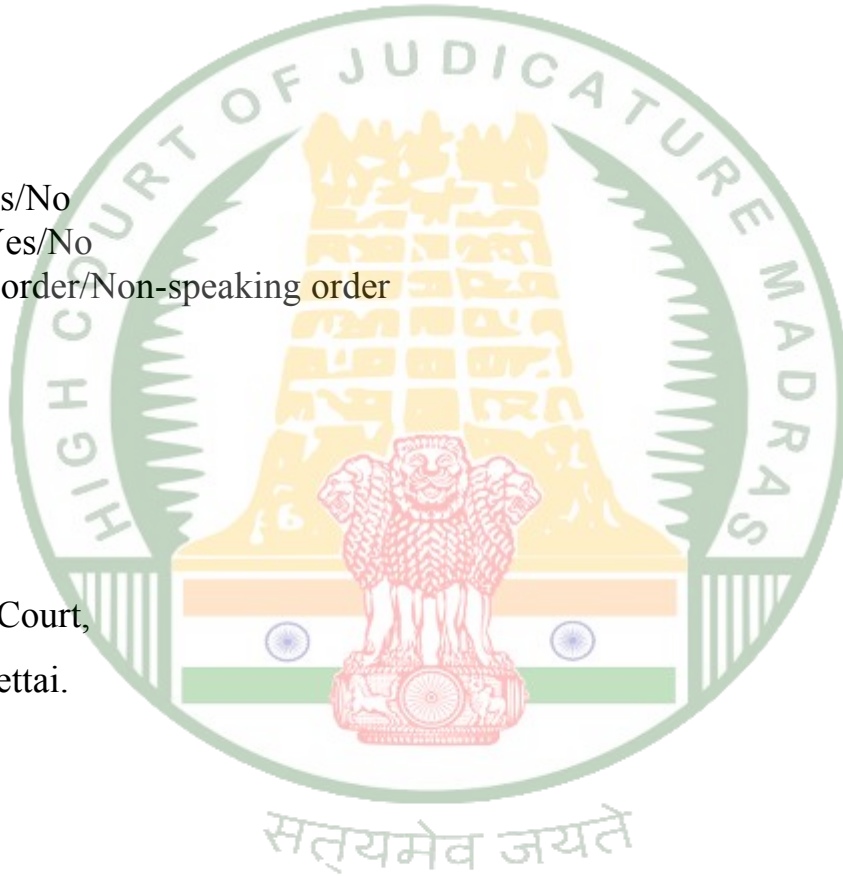
9.As far as the 12th respondent, Lakshmi is concerned, she is the mother of the deceased 8th defendant. There is impediment to the petitioner in impleading her as 11th defendant and her right over the suit scheduled property has to be decided by the Court below.

10.With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2021

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

To
The Sub Court,
Ulundurpettai.



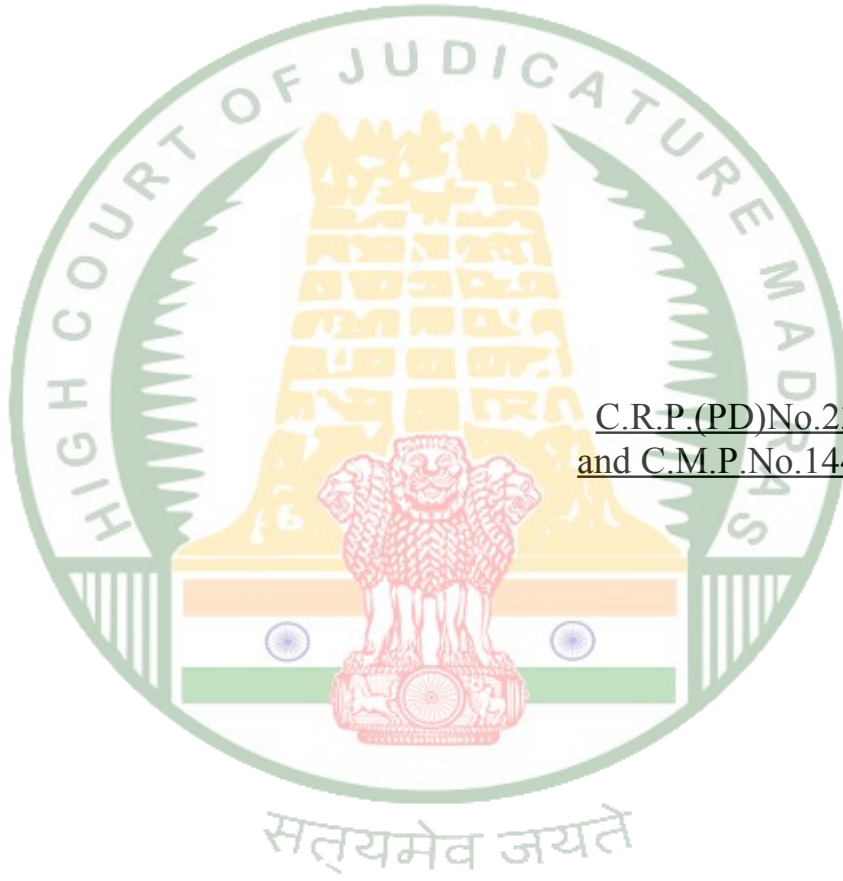
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KRISHNAN RAMASAMY,J.

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