

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

C.R.P.(NPD) No.3582 of 2016
and C.M.P.No.18285 of 2016

Palanivel

... Petitioner

Vs.

Sivagami

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 03.03.2016 made in I.A.No.249 of 2016 in O.S.No.65 of 2012 on the file of the Sub Court, Attur.

For Petitioner : Ms.Zeenath Begum

For Respondent : Mr.P.Jagadeesan

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 03.03.2016 passed by the learned Subordinate Judge, Attur, in I.A.No.249 of 2016 in O.S.No.65 of 2012, thereby appointing the collector or his subordinate to make the partition as provided

under Section 54 of C.P.C., in the final decree application.

2. The petitioner is the defendant in the suit filed by the respondent for partition. The suit was decreed and the petitioner and the respondent were allotted half of the share in the suit properties. In pursuant to the decree, the respondent herein filed final decree application, in which the Court below appointed the District Collector as required under Section 54 of C.P.C., for partition for the reason that the suit properties are assessed lands and hence as per the Section 54 of C.P.C., the collector or his subordinate shall make the partition and the Court Commissioner cannot be appointed. The Court below also directed the Tashildar, Attur, who is the subordinate to the collector and who is the revenue authority, to divide the suit properties by means and bounds. Aggrieved by the same the petitioner filed this present Civil Revision Petition.

3. In this regard, the learned counsel appearing for the petitioner would rely upon the judgment reported in **(2020) 5 CTC 689** in the case of **Kaliyannan vs. Sangeetha and Ors.**, in which this Court held that under

Section 54 is not applicable to the ryotwari lands. The relevant portion is extracted here under :-

"8. In *K.V. Srinivasathathachar v. Naravalur Srinivasathathachar*, reported in (1933) 1 MLJ 63, another Division Bench of this Court considered Section 54 of the present Code itself and held that Section 54 would apply only to a case where the decree comprehends the partition of the whole of the estate paying revenue to the Government and it does not apply where the decree is for separate possession of a share of a portion of an undivided estate. While doing so, the Division Bench referred to the judgment of the Calcutta High Court in *Moulvi Abdul Razak v. Sreenath Ghose*, reported in ILR 58 Cal 152, and the judgment of the Full Bench of Calcutta High Court in *Jogodishury Debea v. Kailash Chundra Lahiry*, reported in ILR 24 Cal 725 (F.B.). *Jogodishury Debea v. Kailash Chundra Lahiry and others*, reported in ILR 24 Cal 725 (F.B.), was again a case of reference made by a Division Bench of the Calcutta High Court on the scope of Section 265 of the Code of Civil Procedure, 1882.

The Hon'ble Full Bench concluded that Section 265 of the Code of Civil Procedure, 1882, would not apply to partition of the revenue paying estate when no separate allotment of revenue is asked for and the Full Bench concluded that a Civil Court will have jurisdiction to divide the property in question. The Hon'ble Division Bench concluded that the provisions of Section 54 which would stand attracted only when a partition is sought for of the whole estate and not part of the estate. This view of this Court was followed by the Andhra Pradesh High Court in Kankanala Raju Bai v. Kankanala Peshireddy, reported in AIR 1982 AP 62, wherein the Andhra Pradesh High Court referred to the judgment of the Full Bench of this Court in Muthuchidambara v. Karupa, reported in ILR (7) M 382 (FB), and concluded that Section 54 would not apply to Ryotwari Land tenures.

9. The issue can be approached from another angle also. The decisions of the full bench of this court in ILR 7 Madras 382 and Calcutta High Court in ILR 24 Calcutta 725 turned on the meaning assigned to the word 'estate' occurring in

Section 265 of the Code of Civil Procedure 1882. The same word 'estate' has been used in Section 54 of the Code of 1908. In Ex parte Campbell reported in LR 5 CH 703 James. L.J reiterated the well established principle to be applied in consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it. James. L.J expresses the rule in the following terms,

"Where once certain words in an act of parliament have received the judicial construction in one of the superior courts and the legislature has repeated them without alteration in a subsequent statute I conceive that the legislature must be taken to use to them according to the meaning which a court of competent jurisdiction has given to them."

This pronouncement in Ex parte Campbell was relied upon by Lord Buckmaster in Barras-Vs-

Aberdeen Steam Trawling and Fishing Company, Limited reported in 1933 A.C 402.

This doctrine was reiterated by the Hon'ble Supreme Court Bengal Immunity Company Limited-Vs-State of Bihar reported in A.I.R. 1955 SC 661. Hon'ble Justice T.L. Venkatrama Iyer speaking for the bench observed as follows:

"Then we come to the constitution. Articles 245(1) and 246 which deal with the subject reproduce section 99(1) and 100 with only alterations of a formal character. They confirm the parliament's and the state legislatures' power to enact laws in respect of the topics mentioned in the respective lists to be exercised for the territory over which they have jurisdiction. It is well settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute or reproduced the new statute come they should be interpreted in the sense which had been judicially put on them under the repealed act, because the legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when they repeat the same words, they must be taken to have accepted

the interpretation put on them by the court as correctly reflecting the legislative mind".(Emphasis Supplied)

If the above rule of construction is applied to the case on hand, there can be no doubt that, the phrase 'estate' occurring in Section 54 of the Code of Civil Procedure 1908 will have to be assigned the same meaning that was assigned to it by the full benches of this court and the Calcutta High Court referred to supra. In that case there can be no doubt that Section 54 in its terms cannot be apply to ryotwari tenures.

10. We should not also lose sight of the fact that after the introduction of the various Estate Abolition Laws, the concept of permanent estate itself was abolished and Ryotwari tenures have been introduced in this part of the Country. The judgment of the Hon'ble Supreme Court relied upon by the learned Subordinate Judge is not from this region as it arises out of an order from the High Court of Patna and the Hon'ble Supreme Court did not lay down as of law that in all cases where a land paying revenue to the Government is to be partitioned, the partition is to be effected by

the District Collector or any Gazetted Officer authorized by the District Collector.

11. In view of the law declared, it can be stated without fear of contradiction that this Court has been consistent in excluding the applicability of Section 54 to division of Ryotwari estates. I therefore conclude that the learned Subordinate Judge was not right in forwarding the application for passing a final decree to the District Collector."

4. In view of the above, the suit properties are the private land under the Ryotwari Act. Therefore, the provisions under Section 54 of C.P.C., is not applicable to the ryotwari land and the order passed by the Court below is perverse and liable to be set aside. Accordingly, the order dated 03.03.2016 passed by the learned Subordinate Judge, Attur, in I.A.No.249 of 2016 in O.S.No.65 of 2012 is hereby set aside. The Court below is directed to appoint an Advocate Commissioner to divide the suit properties with the help of the qualified surveyor.

5. With the above directions, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.02.2021

Internet : Yes

Index : Yes/No

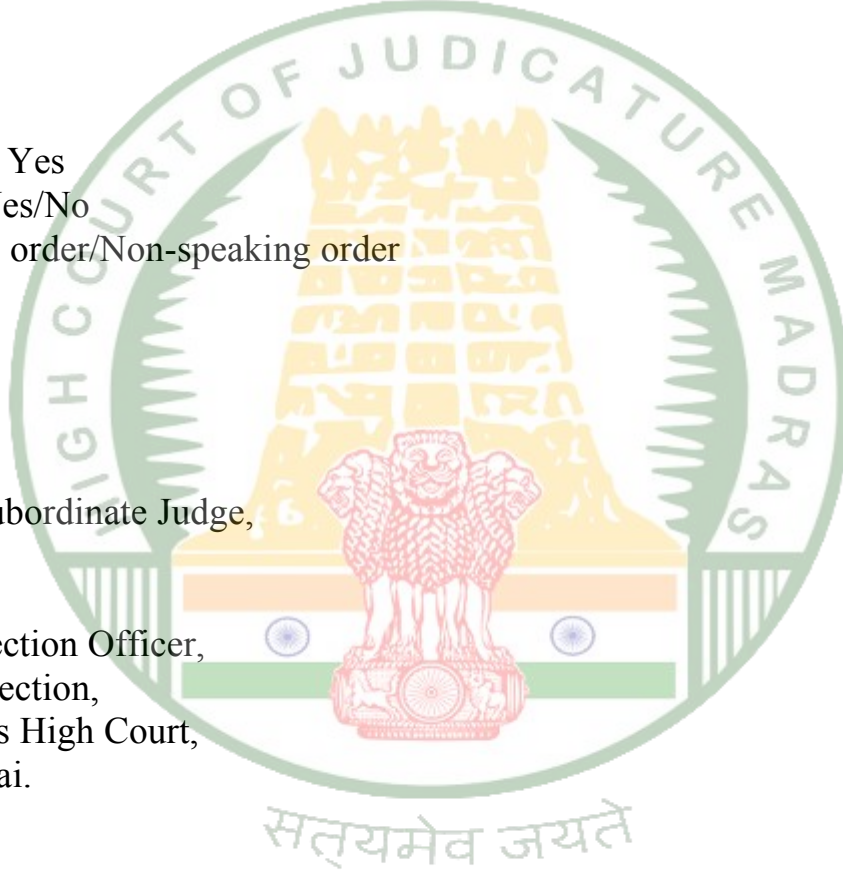
Speaking order/Non-speaking order

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To

1. The Subordinate Judge,
Attur.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

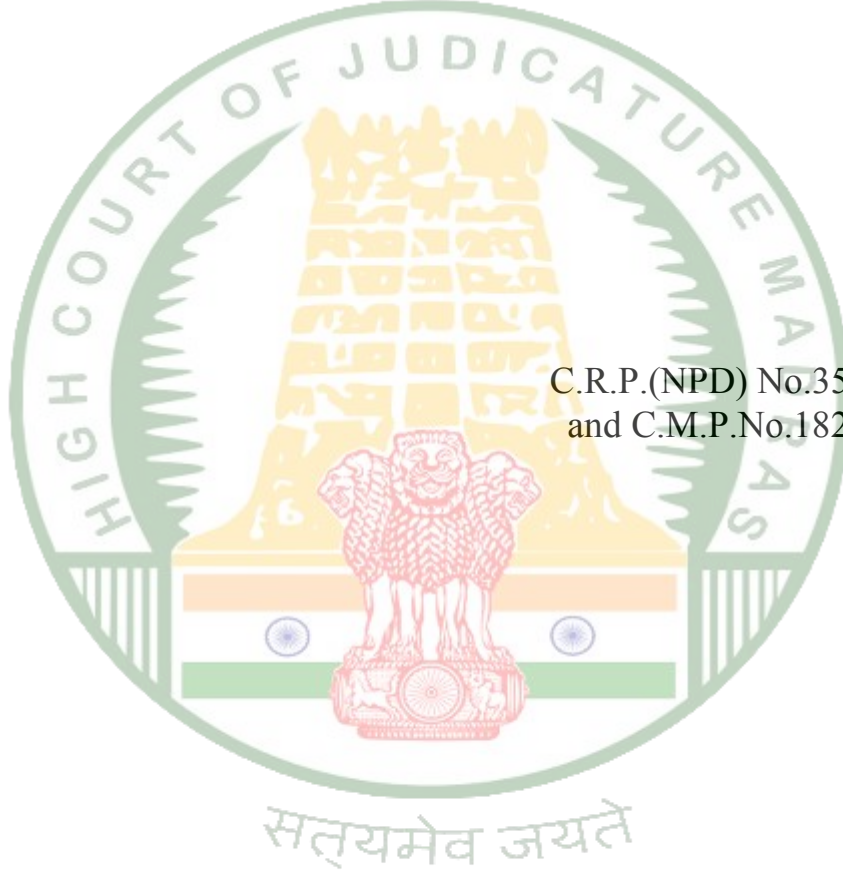


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