

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3731 of 2016
& C.M.P.No.18925 of 2016

Duraisamy

...Petitioner

Vs.

1.Selvi
2.Karthi
3.Alamelu Ammal
4.Kannammal
5.Sekar
6.Thangamani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 27.04.2016 made in I.A.No.205 of 2015 in O.S.No.1 of 2011 on the file of the Principal District Court, Dharmapuri.

For Petitioner : Mr.N.Umapathi

For Respondents : Notice Served-NA

ORDER

The Civil Revision Petition is directed as against the fair and decretal order dated 27.04.2016 made in I.A.No.205 of 2015 in O.S.No.1 of 2011 on the file of the Principal District Court, Dharmapuri, thereby

dismissed the petition to implead the petitioner as a party in the final decree proceedings in O.S.No.1 of 2011.

2.Though notice was served to the respondents, name also printed in the causelist, no one has entered appearance either by person or through their counsel.

3.The petitioner is the 3rd party to the suit proceedings in O.S.No.1 of 2011. The respondents 1 and 2 herein are the plaintiffs in the said suit. The respondents 3 to 6 herein are the defendants in the suit filed by the respondents 1 and 2 for partition in respect of the suit property. The suit was decreed by Judgment and decree dated 16.11.2011. On the strength of the decree, the parties filed the final decree proceedings and in the final decree proceedings, an Advocate Commissioner was appointed and while he was inspecting the suit properties, the petitioner came to understand that in the said proceeding, his property also subjected for partition. In fact the petitioner purchased the said property on 11.03.1996 and the same is reflected as 5th item of the suit schedule property.

4.On the perusal of the plaint, the respondents 1 and 2 mentioned that the said property is situated in Dharmapuri R.D, Dharmapuri Sub-R.D.,

Balajangamanahalli Revenue Village, house bearing door No.6/48, whereas in the sale deed, they mentioned the Survey Number classified as gramanatham, admeasuring 0.860 hectares. While an Advocate Commissioner was appointed for division of property, in so far as the 5th item of the suit schedule property, he has recorded that there was a house and also opined that it is not divisible since it has a house. Thereafter the petitioner came to understand that the property purchased by him is also subjected to partition. Immediately, he filed a petition to implead himself in the final decree proceedings in O.S.No.1 of 2011, which was dismissed on the ground that the reason described in the property mentioned in the sale deed as well as the suit schedule property of item 5 differs. On perusal of the Advocate Commissioner's report, it revealed both the properties are one and the same. Therefore, the petitioner is a necessary party to participate in the final decree proceedings.

5.In view of the above discussion, the order dated 27.04.2016 made in I.A.No.205 of 2015 in O.S.No.1 of 2011 on the file of the Principal District Court, Dharmapuri, is set aside.

6.Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently connected miscellaneous petition is closed.

16.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Principal District Court, Dharmapuri.

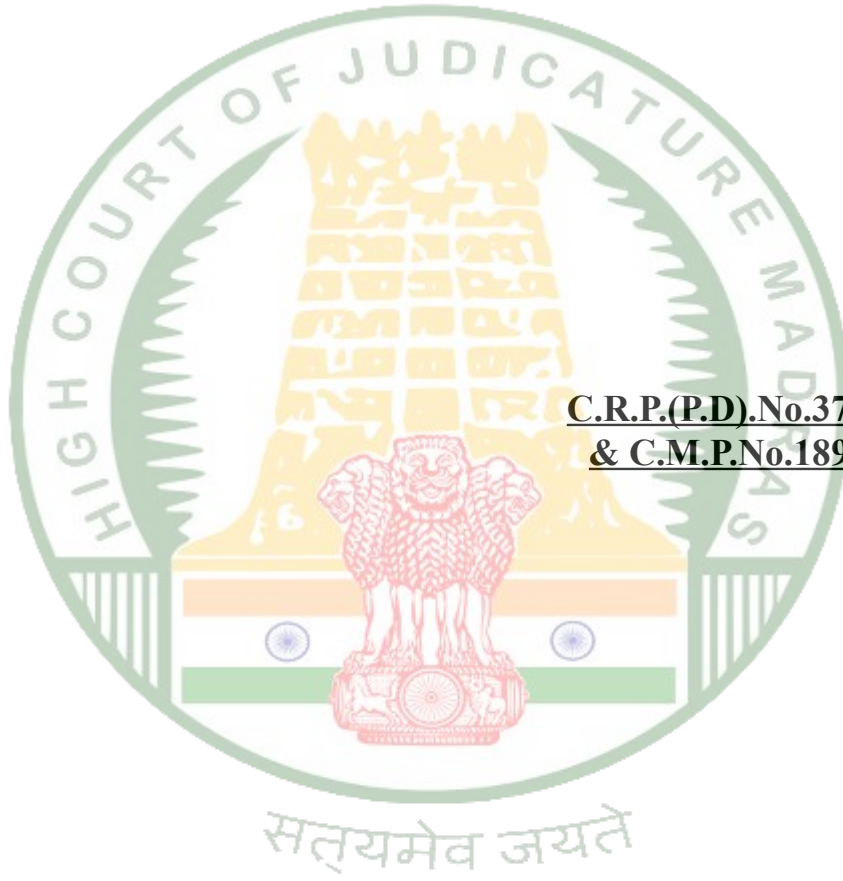


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