

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

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

C.R.P.(NPD) No.2557 of 2018
and
C.M.P.No.15462 of 2018

Sithayee

... Petitioner

Vs

1.Manickam
2.Rajendiran
3.Mandhiri
4.Rukumani
5.Rajathi
6.Vinayathal

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.04.2018 made in I.A.No.174 of 2017 in I.A.No.803 of 2011 in O.S.No.163 of 2003 on the file of the District Munsif, Sankari.

For Petitioner : Mr.P.Valliappan
For R1, R3 to R6 : No appearance
For R2 : Mr.R.Marudhachalamurthy

ORDER

This Civil Revision Petition is field against the fair and decreetal order dated 05.04.2018 made in I.A.No.174 of 2017 in I.A.No.803 of 2011 in O.S.No.163 of 2003 on the file of the District

Munsif, Sankari, thereby dismissing the petition to delete some of the properties in the final decree petition.

2. The revision petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit in O.S.No.163 of 2003 for partition. The said suit was decreed by the Judgement and Decree dated 11.06.2007 and thereby the petitioner was allotted 1/12th share in the suit properties. Thereafter, the petitioner filed a petition in I.A.No.174 of 2017 for final decree on the basis of the preliminary decree passed in O.S.No.163 of 2003. The first respondent was allotted 7/12th share and respondents 2 to 5 were allotted 1/12th share in the suit properties. Immediately, after passing the preliminary decree, the respondents 1 to 3 and 6th respondent were sold the entire lands in Survey No.137/23 by the two sale deeds dated 12.06.2008 and 04.08.2008 to the third parties. Thereafter, the petitioner and respondents 4 and 5 herein also released their 3/12th common share in respect of the property comprised in Survey No.137/23 in favour of the respondents 1 to 3 herein by a released deed dated 16.09.2013. Therefore, the entire extent comprised in Survey No.137/23 is sold away to third parties. As such, the petitioner as well

as the respondents herein are not entitled to have any share in the property comprised in Survey No.137/23. Hence, the petitioner filed a petition to delete the particular items in the final decree application. The Court below dismissed the petition for the reason that a perusal of Ex.A3 reveals that the petitioner and the respondents 4 and 5 have released their 3/12th common share in the lands in the property comprised in Survey Nos.137/7, 137/10, 19, 23, 137/11 and 702/1. Therefore, relying upon Exs.A1 to A3, the Trial Court dismissed the petition.

3. A perusal of the records reveals that the petitioner and the respondents 4 and 5 executed the release deed dated 16.09.2013 in respect of the property comprised in Survey No.137/23. In fact, the respondents 1 to 3 and 6th respondent also sold out the entire lands in Survey No.137/23 by a registered sale deed dated 12.06.2008 and 04.08.2008. Therefore, no property is available for passing final decree. Without considering the above, the Court below dismissed the petition and as such, it is liable to be set aside.

4. In view of the above, the order dated 05.04.2018 made in

I.A.No.174 of 2017 in I.A.No.803 of 2011 in O.S.No.163 of 2003 on the file of the District Munsif, Sankari, is hereby set aside and the Trial Court is directed to pass final decree within a period of three months in respect of the other properties.

5. With the above direction, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

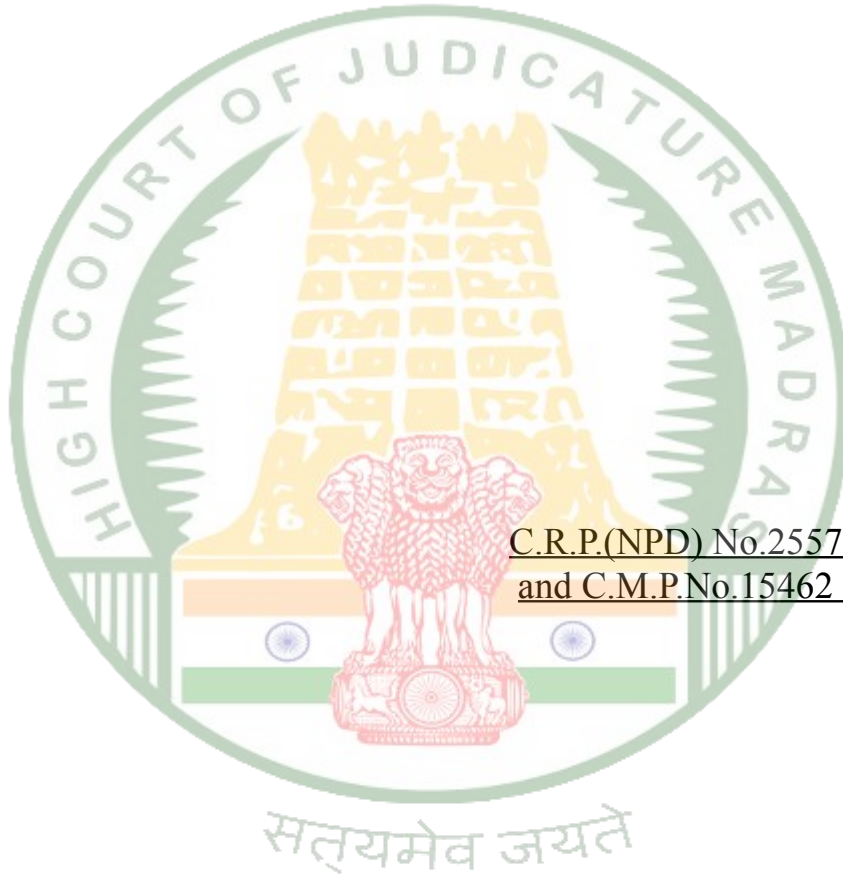
To

The District Munsif,
Sankari.

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G.K.ILANTHIRAIYAN,J.

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