

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P (PD) No.415 of 2018

and

CMP.No.2246 of 2018

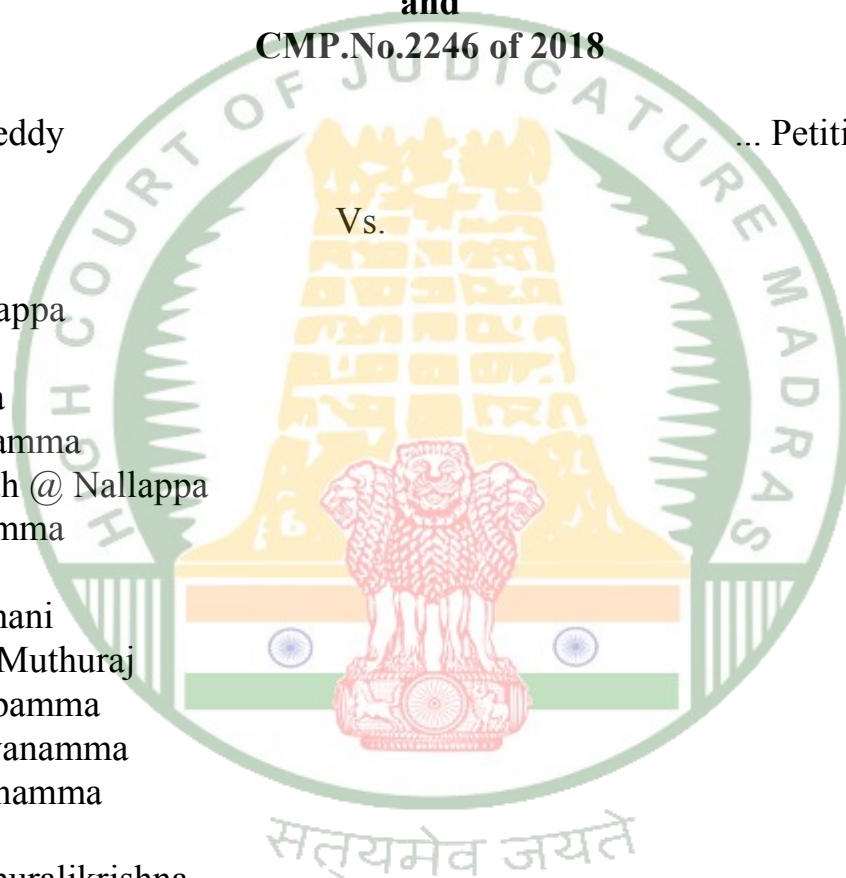
Suresh Reddy

... Petitioner

Vs.

1. Krishnappa
2. Raja
3. Sujatha
4. Kenchamma
5. Annaiah @ Nallappa
6. Muthamma
7. Shilpa
8. Ramamani
9. Minor Muthuraj
10. Thoppamma
11. Narayanamma
12. Rathinamma
13. Vijay
14. Balamuralikrishna
15. Sharada
16. A.Krishnappa
17. K.Rajasekar
18. L.Ravichandran
19. M.Srinivasan
20. A.Lilly

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.337 of 2015 in O.S.No.155 of 2014 dated 14.11.2017 on the file of the District Munsif-cum-Judicial Magistrate No.1, Hosur, Krishnagiri District.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.S.C.Vishwanath (for R-1 to R-9)

: No Appearance

(for R-10 to R-12, R-14, R-15)

: Notice Served (No Appearance)

(for R-13, R-16 to R-19)

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.337 of 2015 in O.S.No.155 of 2014 dated 14.11.2017 on the file of the learned District Munsif-cum-Judicial Magistrate No.1, Hosur, Krishnagiri District, thereby dismissing the petition for rejection of plaint.

सत्यमेव जयते

2. The petitioner is the eighth defendant and the Respondents 10 to 20 are the other defendants in the suit filed by the respondents 1 to 9 for declaration and permanent injunction in respect of the suit properties. The respondents 10 to 15 are the plaintiffs and the respondents 1 to 9 are the defendants in O.S.No.41 of 1998. The said suit was filed for declaration and

permanent injunction in respect of the property comprised in S.No.153/1A1 for an extent of 27.5 acres. According to the respondents 10 to 15 herein, their father and the father of the respondents 1 to 9 have jointly purchased the property ad-measuring 1.75 acres in the year 1958 by the registered sale deed dated 10.02.1958. After purchase of the said property, on oral partition, they got 87.5 cents each in the total extent of 1.75 acres comprised in 153/1A1 situated at Hosur, Krishnagiri District. After oral partition, the father of the respondents 10 to 15 died and his legal heirs inherited his share and sold out 60 cents of it by way of three sale deeds each 20 cents dated 19.03.1997. Thereafter, the remaining property admeasuring 27.5 cents is in possession and enjoyment of the respondents 10 to 15 herein. While being so, the respondents 1 to 9 attempted to trespass into their property and as such, they were constrained to file a suit in O.S. No. 41 of 1998 for declaration and permanent injunction in respect of the property admeasuring 27.5 cents comprised in S.No.153/1A1. The said suit was decreed in their favour and aggrieved by the same, the respondents 1 to 9 herein preferred an Appeal Suit in A.S.No.6 of 2008 on the file of the Sub Court, Hosur. The Appeal Suit was allowed and aggrieved by the same, the respondents 10 to 15 filed a Civil Miscellaneous Appeal before this Court in C.M.A.No.2759 of 2011 and the same was allowed by the judgment and decree dated

29.08.2013 and remanded the Appeal Suit for fresh consideration. Now, the Appeal Suit in A.S.No.6 of 2008 is pending on the file of the Sub Court, Hosur for adjudication. While pending the said appeal, the respondents 1 to 9 herein again filed the present impugned suit in O.S. No. 155 of 2014 for declaration to declare the title in favour of the respondents 1 to 9 herein and also for declaration to declare that the sale deeds executed by the respondents 10 to 15 herein dated 19.03.1997 as null and void and along with the prayer for permanent injunction.

3. On a perusal of the records, it reveals that when the respondents 10 to 15 filed the suit in O.S.No.41 of 1998, they categorically averred that originally the property admeasuring 1.75 acres purchased by their father and the father of the respondents 1 to 9 herein by the sale deed dated 10.02.1958 jointly. Thereafter, by oral partition, they partitioned the property and allotted 87.5 cents to each. After demise of their father, they sold out the property admeasuring 20 cents each by way of three sale deeds from their share of 87.5 cents, in which the petitioner herein is one of the purchaser by the sale deed dated 19.03.1997 in respect of 20 cents out of 87.5 cents comprised in S.No.153/1A1 situated at Hosur, Krishnagiri District. In the said suit, the respondents 1 to 9 filed their written statement and they denied

the oral partition between their father and the father of the respondents 10 to 15 herein. Therefore, they had knowledge about the sale deeds, which were executed by the respondents 10 to 15 herein dated 19.03.1997. The said suit was decreed and the appeal suit is now pending on the file of the Sub Court, Hosur, Krishnagiri in A.S.No.6 of 2008 filed by the respondents 1 to 9 herein. While pending, the said Appeal Suit, now the respondents 1 to 9 herein filed the present impugned suit, that too after a period of 17 years from the date of sale deed dated 19.03.1997 for declaration to declare that those sale deeds as null and void. Though the present suit is filed for the entire extent of the property admeasuring 1.75 acres, the respondents 1 to 9 had knowledge about the sale deeds, which were executed by the respondents 10 to 15, even in the year 1998 itself.

4. A perusal of the judgment passed in O.S.No.41 of 1998, reveals that the Court below concluded that the oral partition happened in between the respective father of the respondents 1 to 9 and the respondents 10 to 15 herein. On the strength of the said oral partition, both of their fathers were allotted 87.5 cents each and after demise of the father of the respondents 10 to 15 herein, the respondents 10 to 15 herein executed three sale deeds on 19.03.1997 in favour of three parties, in which the petitioner is one of the

purchaser. Therefore, the suit itself clearly barred by limitation and it is liable to be rejected.

5. Insofar as the cause of action is concerned, the present impugned suit has been filed with the cause of action that the suit property was purchased by their fathers on 10.02.1958 and in the last week of July 2014, the petitioner and others tried to trespass into the suit property. Though they stated that the petitioner and others tried to trespass into the suit property in the month of July 2014, even according to them, no complaint was lodged and no iota of evidence was enclosed along with the plaint for any cause of action to file the present suit. Therefore, without any cause of action, they filed the present impugned suit and it is liable to be rejected.

6. Insofar as the plea of res-judicata is concerned, though the respondents 10 to 15 filed the suit for declaration in respect of 27.5 cents, they categorically disclosed the fact about the sale deeds which were executed by them on 19.03.1997 in respect of 60 cents. Further, they averred that the suit property was purchased by their father and father of the respondents 1 to 9 herein jointly to an extent of 1.75 acres and thereafter, they orally partitioned the property, in which their father was allotted 87.5

cents in the suit property. The same was decreed and aggrieved by the same, the respondents 1 to 9 herein filed the Appeal Suit and it is pending in A.S.No.6 of 2008 on the file of the Sub Court, Hosur, Krishnagiri District. Therefore, the present suit is hit by the principles of res-judicata and it is not at all maintainable. Without considering the above, the Court below dismissed the petition for rejection of plaint only on the ground that already the respondents 10 to 15 filed the suit and the same was decreed and aggrieved by the same, the respondents 1 to 9 filed Appeal Suit and it is pending. Therefore, the petition for rejection of plaint is not maintainable. It is nothing but perverse and illegal and as such, it is liable to be set aside.

7. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.337 of 2015 in O.S.No.155 of 2014 dated 14.11.2017 is hereby set aside. The plaint in O.S.No.155 of 2014 is hereby rejected. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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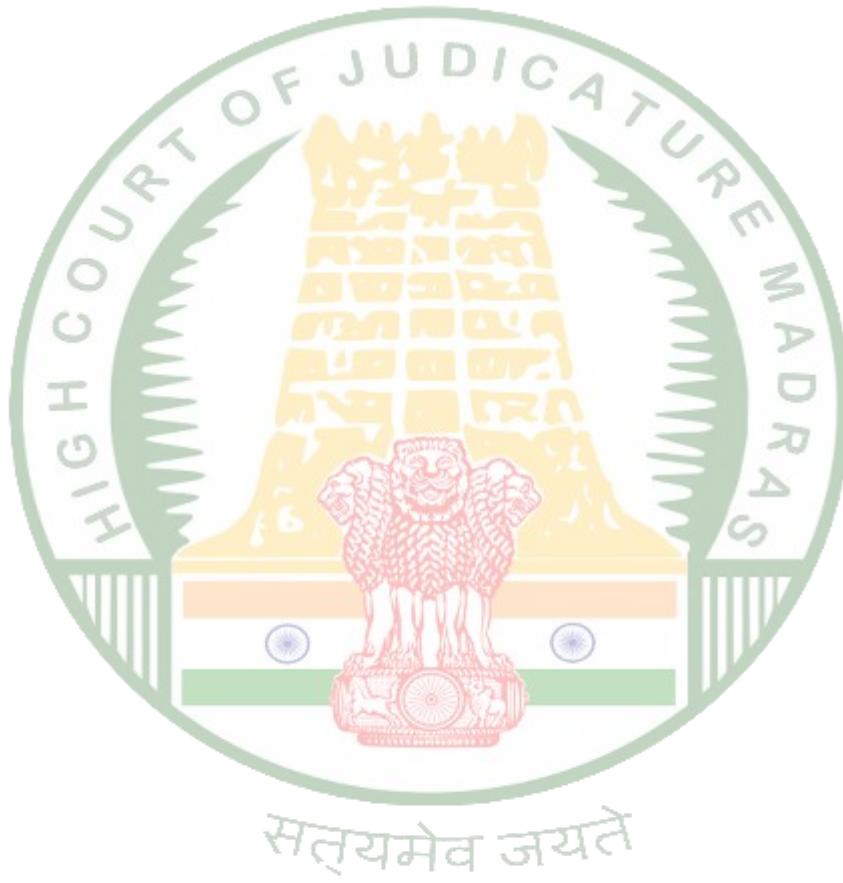
1. The District Munsif-cum-Judicial Magistrate No.1,
Hosur, Krishnagiri District.
2. The Section Officer,
V.R. Section, High Court of Madras.



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