

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020

PRONOUNCED ON : 22.01.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(PD).No.2195 of 2020

and

C.M.P.No.13844 of 2020

1. Mrs.Lakshmi

2. Parameshwari

3. Somakumari

4. Umakumari

5. Radhamani

6. Sivakumar

7. Murugan

... Petitioners

1. Mrs.B.Shantha

2. Mrs.C.K.Somalatha

R.Janikiraman (Died)

3. Mr.J.Ramsundar

4. Mrs.V.Vimala

5. Mrs.C.N.Usha

... Respondent

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the order dated 10.02.2020 in Transfer O.P.No.248 of 2019 on the file of the Principal District Judge at Coimbatore.

For Petitioners : Mr.P.Wilson Topaz

For Respondents : Mr.S.Kumaresan

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in Transfer O.P.No.248 of 2019 dated 10.02.2020.

2. Mr.S.Kumaresan, Caveator takes notice on behalf of the respondents.

3. Heard Both sides.

4. *The brief facts that are necessary for determination of this Civil Revision petition are as follows;*

(a) The case of the petitioners is that the petitioners' father Nagappa Gounder was the cultivating tenant under the land owner Sri.Krishnan Chettiyar. After the demise of Nagappa Gounder, the petitioners are in the possession and enjoyment of the suit property as the cultivating tenants. The petitioners' father

Nagappa Gounder filed a suit in O.S.No.281 of 2009 before the District Munsif, Coimbatore. The said suit was dismissed by the learned District Munsif, Coimbatore. Feeling aggrieved, the petitioners' father preferred an appeal in A.S.No.13 of 2016 before the Sub Court, Coimbatore and the same is pending.

(b) Pending A.S.No.13 of 2016, the respondent herein who have obtained decree in the partition suit, has filed an Execution Petition and hence, the petitioners filed an application to transfer the Execution Petition to be heard along with the Sub Court Appeal. The said petition was dismissed. Hence, the Civil Revision Petition.

(c) According to the petitioners, one of the daughters of the original owner filed a suit in O.S.No.236 of 2004 before the Additional District Court, Coimbatore. In the said suit, the petitioners' father Nagappa Gounder filed a petition to implead him as a party and the said petition was dismissed. Thereafter the said suit in O.S.No.236 of 2004 was decreed and thereby preliminary decree was passed. Thereafter, the Final Decree was passed in the year 2008. Now the respondents 1 and 2 filed E.P.No.22 of 2018. In the said Execution Proceedings, the

petitioners filed E.A.No.6 of 2019 and 7 of 2019 and the same were pending on the file of the Additional District Judge, Coimbatore. The petitioners want to decide their appeal suit in A.S.No.13 of 2016 along with the E.P. proceedings.

(d) The learned counsel for the respondent, based upon the counter affidavit filed before the trial Court, has stated that the application filed by the father of the petitioner Nagappa Gounder in the above suit for partition is already dismissed, as he has no locus standi. Thereafter, the suit in O.S.No.236 of 2004 for partition was decreed.

(e) The case of the respondents 1 and 2 is that the respondents filed the suit in O.S.No.236 of 2004 for partition and the same was decreed. Thereafter, the respondents 1 and 2 filed an application to divide the suit properties subject to the preliminary decree. Accordingly the Advocate Commissioner was appointed and the filed Report has also been filed. Thereafter, the Final Decree was passed in the year 2008. Subsequently the respondents 1 and 2 filed E.P.No.22 of 2018 seeking the relief of eviction. In the said Execution Proceedings, the petitioners filed E.A.No.6 of 2019 and 7 of 2019.

(f) The said Nagappa Gounder filed a petition in T.R.No.2 of 2008 before the Tahsildar of Coimbatore North Taluk to record him as a cultivating tenant. The said petition was also dismissed by the Tahsildar, Coimbatore, in the year, 2012. Thereafter, they preferred a revision before the Assistant Commissioner of Revenue, Trichirapalli and the same was also dismissed by the Assistant Commissioner of Revenue. Against the said order, the petitioners' father preferred a revision before the DRO, Coimbatore and that revision was also dismissed in the year 2013. Thereafter, the petitioners filed a Writ Petition in W.P.No.31850 of 2013, before this Court and the same was also dismissed by this Court on 16.02.2015. Against the dismissal order, the petitioners filed a Writ Appeal in W.A.No.785 of 2016. The said Writ Appeal was also dismissed by the Hon'ble Division Bench of this Court, on 01.07.2016.

5. On overall consideration of the facts and circumstances of the case and also considering the nature of case, this Court comes to the conclusion that the petitioners have availed all the provisions of

cultivating tenancy laws. Further the petitioners' case has been negated by this Court.

6. Now, the point of consideration is whether the joint trial of the Execution proceedings in A.S.No.13 of 2016 is warranted. It needs to be stated that the petitioners' father claims to be the cultivating tenant in one of the suit properties which is the subject matter of the Suit in O.S.No.236 of 2014, which was filed initially.

7. I find that the claim of the petitioners that their father Nagappa Gounder is a cultivating tenant was being negated in all forums and went to the stage of writ appeal and the said plea was also rejected and therefore, the petitioners' father has availed all the legal remedy available under the provisions of the cultivating tenancy law and the same has been negated by the Division Bench of this Court in W.A.No.785 of 2016.

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8. Now, after passing of decree in the partition suit between the legal heirs of the original land owner, they have obtained a partition decree in O.S.No.236 of 2004 and now they have filed in E.P.No.22 of 2018. In the said E.P. the petitioners appears to have filed E.A.No.6 of

2019 and 7 of 2019 on the file of the District Judge, Coimbatore. Now, he seeks the joint trial of execution proceedings along with the A.S.

9. It remains to be stated that the plea of the petitioner and his father is that they are the cultivating tenant and that has obtained finality before the Hon'ble Division Bench of this Court. It appears that the petitioner's father has filed O.S.No.281 of 2009, before the District Munsif Court and that is also dismissed and hence, now I find no bonafide reason or any legal reasoning for the joint trial of A.S.No.13 of 2016 and the execution proceedings. In the event of the petitioners' appeal in A.S.No.13 of 2016 being allowed, it is always open to the petitioners to make use of the provision under Section 144 of C.P.C.

10. Since the claim of the petitioners' father being cultivating tenant is rejected by the Division Bench and also by the learned District Munsif, I find that the present revision petition is nothing but to prolong the judicial proceedings and hence, the finding rendered by the Principle District Judge, Coimbatore that the petitioner can avail provision under Section 144 of C.P.C. appears to be correct and does not suffer from any irregularity or illegality warranting interference.

11. In this view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2021

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Speaking Order: Yes/No

To

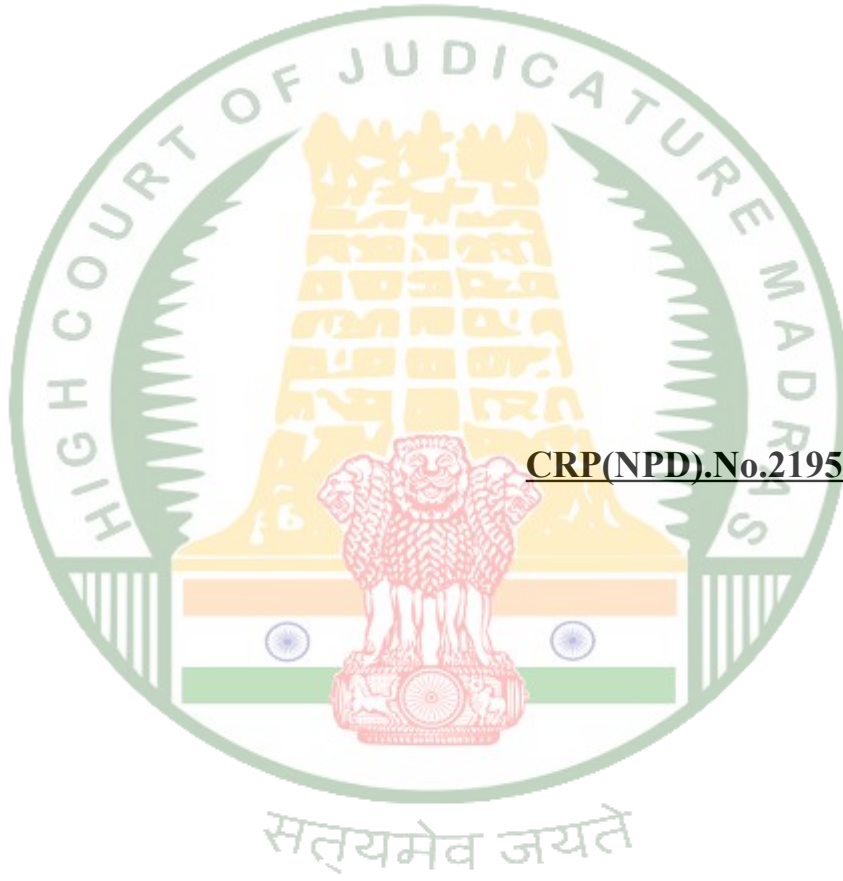
The Principal District Judge at Coimbatore.



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RMT.TEEKAA RAMAN, J.

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