

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.807 of 2018
and CMP No.4457 of 2018

1.P.S.Arunraj
2.P.S.Shobiya Sri

...Petitioners

Vs

1.P.K.Subramaniam
2.P.S.Selvaraj
3.P.S.Thangarasu
4.T.Arthi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.12.2017 made in I.A.No.426 of 2017 in O.S.No.86 of 2015 on the file of the II Additional District Court, Erode.

For Petitioners : Mr.N.M.Manokaran
For R1, R3 & R4 : Mr.A.Sundaravadhanan
For R2 : No appearance

ORDER

This Civil Revision Petition is directed against the fair and decreetal order dated 21.12.2017 made in I.A.No.426 of 2017 in O.S.No.86

of 2015 on the file of the II Additional District Court, Erode, thereby dismissing the petition to implead the proposed party as fourth defendant.

2. The petitioners are the plaintiffs and the respondents 1 to 3 are the defendants. The petitioners filed a suit for partition in respect of the suit property. While pending the suit, the first respondent has executed a registered settlement deed in favour of the proposed respondent in respect of the un-divided properties. The proposed party is none other than the granddaughter of the first respondent herein. All the respondents colluded together and created the settlement deed and it is hit by lispendense. Therefore, the proposed party is just and necessary party to decide the main suit. The Court below dismissed the petition on the ground that in respect of the suit property which was settled by the first respondent in favour of the proposed party was purchased by his wife along with one, Venkatesh jointly by registered sale deed dated 05.12.1986 and subsequently it was allotted to his wife Pavalakodi. After her demise, the first respondent became the absolute owner of the said property and executed the settlement deed in favour of the proposed party. Therefore, the suit property is not a

joint family property and the same was self acquired property of the first respondent herein. The Trial Court ought not to have gone into the merits of the suit, while deciding the petition to implead the proposed party as necessary party to the suit. Admittedly, while pending suit, the first respondent executed the settlement deed in respect of one of the item of the suit property in favour of the proposed party. Therefore, the proposed party is necessary and proper party to decide the main suit.

3. In view of the above, the order passed in I.A.No.426 of 2017 in O.S.No.86 of 2015, dated 21.12.2017, on the file of the II Additional District Judge, Erode, is set aside and the Civil Revision Petition is allowed. The proposed party is permitted to file written statement. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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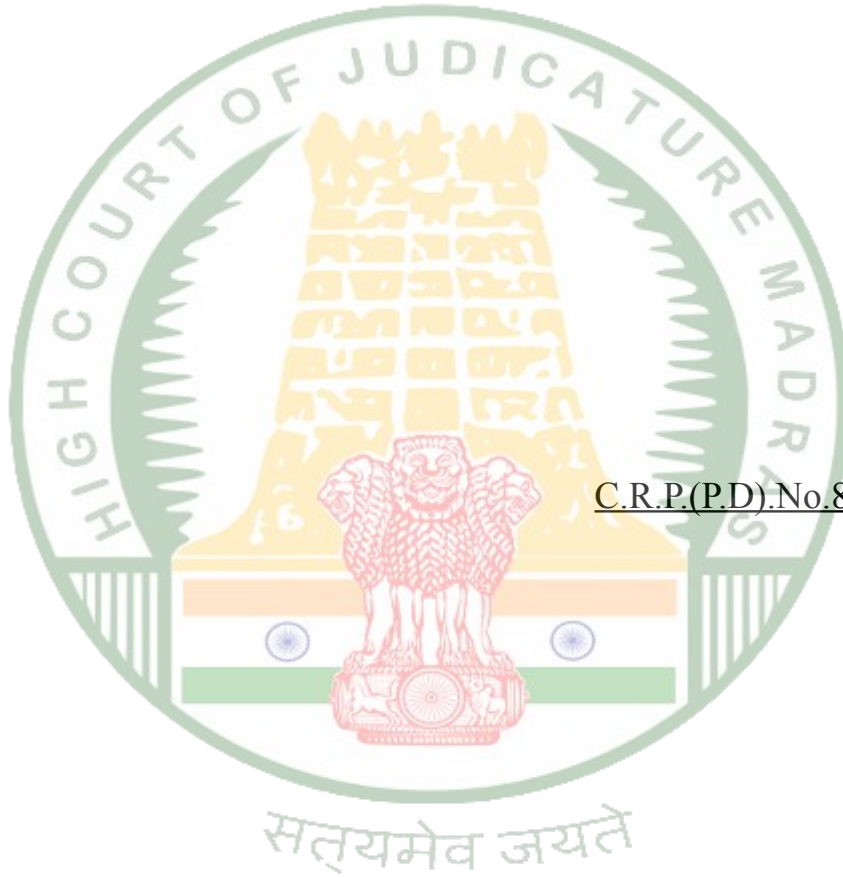
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C.R.P.(P.D).No.807 of 2018

G.K.ILANTHIRAIYAN.J,

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To
The II Additional District Court,
Erode



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