

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1678 of 2021
and C.M.P. No.12976 of 2021

1.Jayammal
2.Shanmugam

...

Petitioners /
Defendants 4 & 5

versus

1.Bhoopathy
2.Duraisamy
3.Gunavathy
4.Rathinasabathy
5.Krishnan
6.Kandasamy
7.Jayam @ Sampooram
8.Lakshmiammal
9.Pappathiammal

...

Respondent /
Plaintiff

...

Respondents /
Defendants 1 to 3 & 6 to 10

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.01.2021, in I.A.No.1 of 2019 in O.S.No.72 of 2013 by the learned District Munsif, Rasipuram and allow this Civil Revision Petition.

For Petitioners : Mr.R.Rajesh

ORDER

This Civil Revision Petition is filed to set aside the order dated 29.01.2021 made in I.A.No.1 of 2019 in O.S.No.72 of 2013 passed by the learned District Munsif, Rasipuram.

2. The first respondent has filed O.S.No.72 of 2013 seeking the relief of declaration that, the Partition Deed dated 30.10.1992 executed among the defendants 1 and 2 has to be declared as null and void; the Sale Deed dated 16.11.2001 executed by the second defendant in favour of the fourth defendant has to be declared as null and void; the Sale Deed dated 27.01.2003 executed by the third defendant in favour of the fourth defendant has to be declared as null and void and for the relief of injunction.

3. The 1st respondent / plaintiff valued the suit under Section 25(d) of the Tamil Nadu Court Fee and Suit Valuation Act, 1965. Now, the present amendment petition is filed in I.A.No.1 of 2019 on the ground that the first petitioner is not a party to the document relate to 'A' schedule property. He has to pay Court Fee under Section 40 of the Tamil

Nadu Court Fee and Suit Valuation Act, 1965 to cancel the Partition Deed dated 30.10.1992 and accordingly, the amendment petition was filed.

4. The learned trial Judge found that this petition was filed belatedly when the case is pending for cross examination of P.W.1. However, the learned trial Judge found that the amendment petition has to be liberally construed and in such view of the matter, the amendment petition was allowed with costs.

5. The learned counsel for the petitioners submitted that the amendment petition was filed belatedly. The first petitioner filed the written statement on 21.10.2013. The issue with regard to the improper valuation of the suit property and the payment of Court Fee was raised in the written statement. However, the first respondent has not chosen to file the amendment petition immediately after filing the written statement of the first petitioner but filed belatedly after the trial has commenced. The learned trial Judge has also not given proper reason for entertaining the amendment petition. Therefore, he prayed for setting aside the order.

6. It is true that there is a delay in filing the amendment petition, especially, when the first petitioner pointed out in the written statement that, the suit is not maintainable, without prayer for cancellation of the Partition Deed dated 30.10.1992. It is also submitted that the suit should have been valued properly and proper relief should have been asked and proper Court Fee should have been paid as per Section 40 of the Tamil Nadu Court Fee and Suit Valuation Act. As already indicated that, this amendment petition is filed taking note of the written statement filed by the first petitioner with regard to the prayer asked and Court Fee paid. It is specifically said that, the suit is not maintainable, without prayer for cancellation of Partition Deed dated 30.10.1992.

7. In the said circumstances, the first respondent cannot be faulted for filing this amendment petition. Only concern is that, the amendment petition was not filed immediately after filing the written statement by the first petitioner. Taking note of the delay, the learned trial Judge ordered costs. This Court is also of the considered view that to

resolve the issue completely and comprehensively and to render substantial justice to the parties, the proposed amendment is absolutely necessary. The petitioners may file additional written statement, if so advised.

8. Considering the fact that this petition was allowed on imposing costs of Rs.2,000/-, this Court finds no reason to interfere with the finding of the learned District Munsif, Rasipuram and the order is confirmed.

9. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

18.08.2021

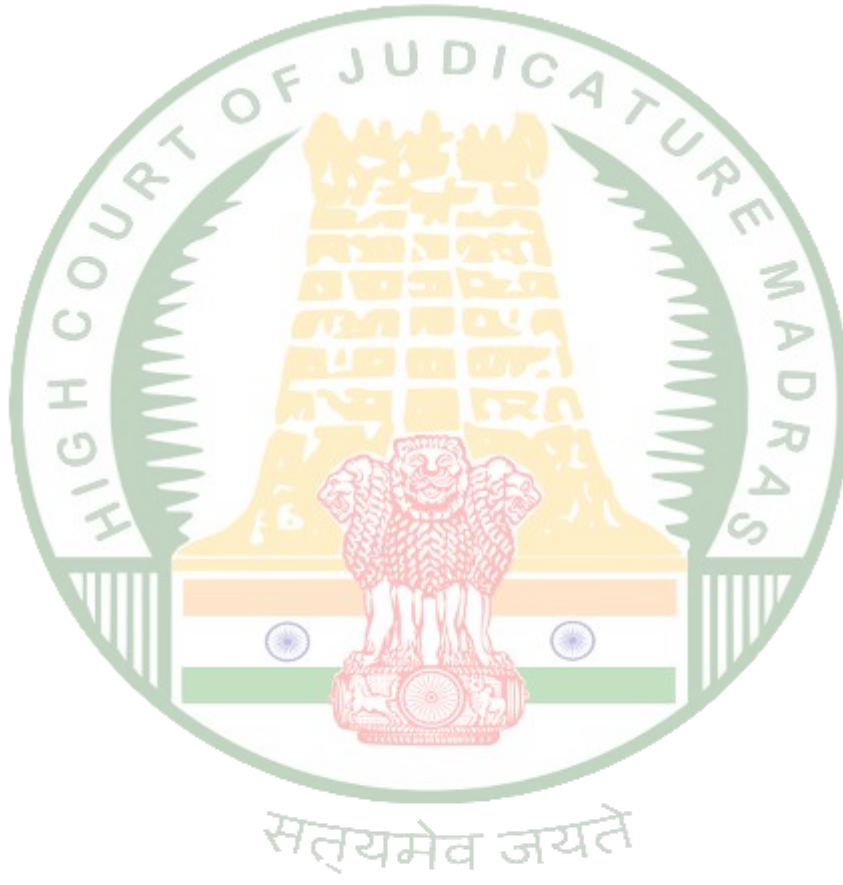
Speaking order / Non-speaking order
Index : Yes / No

sri

To

The District Munsif, Rasipuram.

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G.CHANDRASEKHARAN, J.

sri



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