

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM

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

CRP.(PD).No. 1654 of 2014

and

M.P.No. 1 of 2014

1.Gopal

2.Saroja

... Petitioners

vs.

1.S.Uthirasamy

2.Annammal

3.Kavin

4.Ponnusamy

5.P.Govindaraj

6.P.Kumar

7.Latha

8.Krishnamurthy

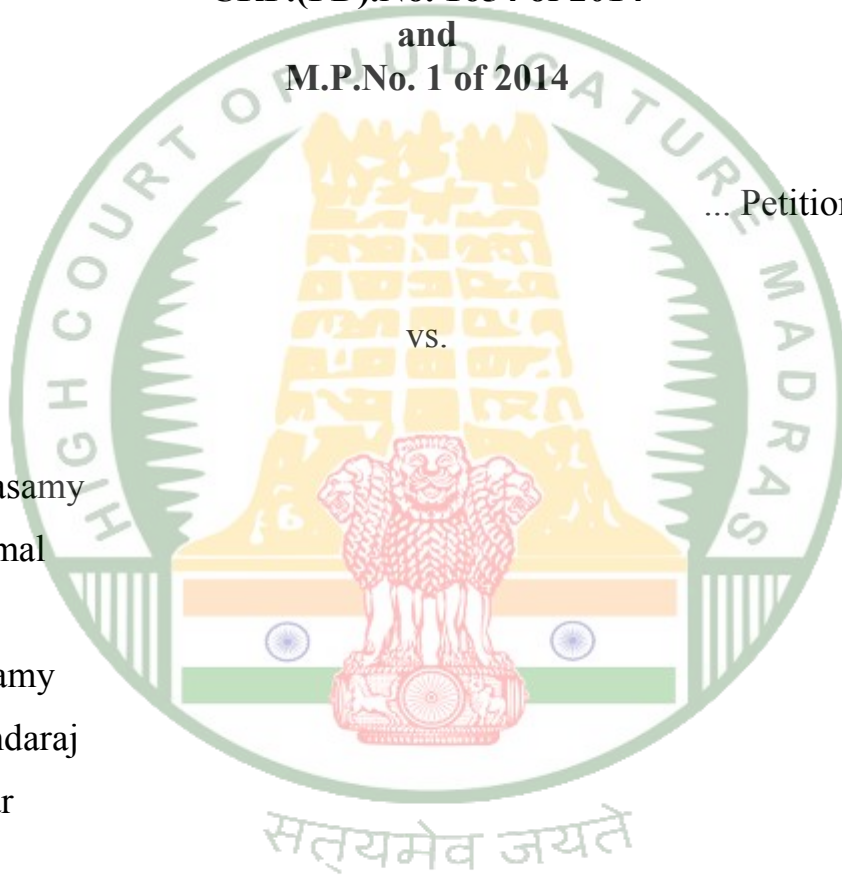
9.Rajaraman

10.R.Muthukumar

11.P.Duraisamy gounder

12.D.Senthil @ Devakumar

... Respondents



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PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 20.02.2014 made in I.A.No.19 of 2013 in O.S.No.93 of 2009 on the file of the learned Sub Court, Sankari by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.S.Saravanan
(For R1, R3 to R6)

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 20.02.2014 made in I.A.No.19 of 2013 in O.S.No.93 of 2009 on the file of the learned Sub Court, Sankari, thereby dismissing the petition to recognize the petitioners herein as legal representatives of the estate of the deceased plaintiff and implead them as plaintiffs 2 and 3 in O.S.No.93 of 2009.

2. The first petitioner is the power of attorney of the principal T.M.Venkatraman. The said T.M.Venkatraman/plaintiff filed a suit in O.S.No.93 of 2009 through the first petitioner herein for bare injunction as against the respondents herein in respect of the suit property. The first

petitioner herein purchased the suit property from the plaintiff for the valid sale consideration of Rs.18,21,000/- and also from his legal heirs. Though entire sale consideration was paid by the first petitioner to the plaintiff and his legal heirs, they executed power of attorney in respect of the suit property in his favour. Therefore, the power of attorney is coupled with interest and is not mere power of attorney. On the strength of power of attorney, the first petitioner herein executed a registered agreement of sale with the second petitioner herein. Even from the date of power of attorney, the possession of the suit property was handed over. The first petitioner also executed a sale deed in favour of the third party in respect of portion of the suit property on the basis of strength of the power of attorney executed by the plaintiff.

3. While being so, there is a dispute in respect of cart track and as such, the first petitioner filed suit in the capacity as power agent of his principal T.M.Venkatraman. While pendency of the suit, the said T.M.Venkatraman died on 20.01.2012. After his demise, his legal heirs were acting against the interest of the petitioners herein and as such, they also filed a suit in O.S.No.46 of 2012 for specific performance and it is

pending. Therefore, they filed a petition to recognize them as legal representatives of the estate of the deceased plaintiff and implead them as plaintiffs 2 and 3 in O.S.No.93 of 2009.

4. The Court below dismissed the said petition for the reason that the legal representatives means only they are legal heirs or entitled to be the legal representatives can be represented the deceased person. After dismissal of the said petition, the suit in O.S.No.46 of 2012 was also dismissed for not taking steps to implead the legal representatives of the deceased plaintiff on 13.06.2016.

5. Learned counsel for the petitioners submits that under Section 2(11) of the Civil Procedure Code, 1908, the petitioners can very well represent on behalf of principal plaintiff, since they already acquainted with the suit property by paying entire sale consideration.

6. In fact, his legal heirs namely one of his son stood as witness in the power of attorney and also stood as witness for the agreement of sale executed by the first petitioner in favour of the second petitioner and he also

stood as a witness in the sale deed executed by the first petitioner in favour of the third party in respect of portion of the suit property. Therefore, they are coming under the definition of the legal representative as defined under Section 2(11) of the Civil Procedure Code, 1908.

7. Learned counsel appearing for the first and third to sixth respondents would submit that the main suit itself was dismissed on 13.06.2016. Since no legal representatives of the deceased had taken steps to implead themselves as parties to the suit. Further, he submitted that the first petitioner is admittedly a power holder and after the death of principal, power goes and as such, the Court below rightly dismissed the petition. He would further submit that the fourth respondent herein is died and the fifth and sixth respondents already on record who are the legal heirs of the fourth respondent herein.

8. Heard Mr.N.Manokaran, learned counsel for the petitioners and Mr.S.Saravanan learned counsel for the first and third to sixth respondents and perused the materials placed on record apart from the pleadings of the parties.

9. The first petitioner is a power of attorney, filed a suit for bare injunction as against the respondents herein. On perusal of the records, the power of attorney executed by the deceased plaintiff as well as his legal heirs coupled with interest. After receipt of sale consideration in respect of the suit property they executed power of attorney and they turned against the first petitioner for execution of agreement of sale in favour of the second petitioner herein in which one of the principal also stood as witness. On the strength of the power of attorney, the petitioners herein also executed sale deed in favour of the third party in respect of portion of the suit property in which the son of the principal stood as witness. It revealed that the petitioners are inter-meddles with the suit property. In this regard, it is relevant to extract the provision under Section 2(11) of the Civil Procedure Code, 1908 as follows:-

"2(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued"

10. The term 'legal representatives' includes executors, administrators,

assignees or persons acquiring interest by devolution under Order XXII Rule 10 of the Civil Procedure Code, 1908. Therefore, the petitioners have interest over the suit property and they can be continued as legal representatives of the original plaintiff.

11. In view of the above discussion, the impugned order in I.A.No.19 of 2013 in O.S.No.93 of 2009 dated 20.02.2014 is set aside and the Civil Revision Petition is allowed. It is made clear that the Court below is directed to restore the suit in O.S.No.93 of 2009 and proceed with the trial. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2021

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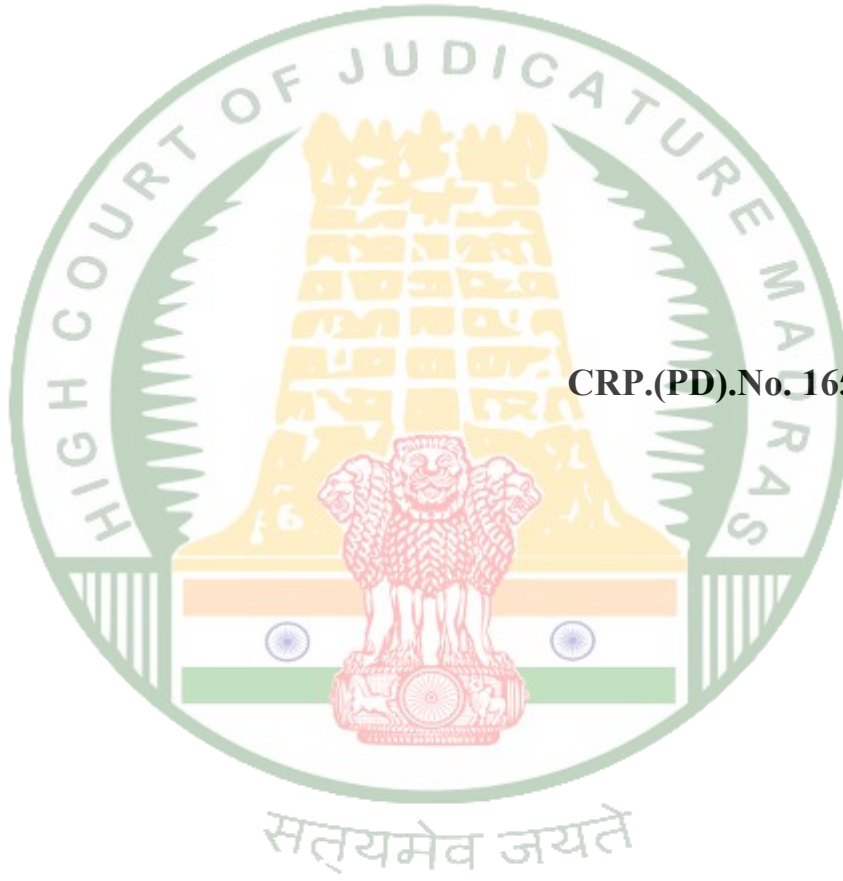
To

The Sub Court, Sankari.

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G.K.ILANTHIRAIYAN,J.

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