

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.06.2021

PRONOUNCED ON: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2034 of 2020

And

C.M.P.No. 12787 of 2020

1. Subbalakshmi

2. Sri Devi

... Respondents 1 & 2/Plaintiffs/Petitioners

-Vs-

1. Gopalraj

2. Kalavathi

... Petitioners/Third parties/Respondents 1 & 2

3. National Educational Trust
Ramanatham Village
represented by its present
Managing Trustee, Suresh
S/o. Haridoss
1/224, Main Road
Ramanathan Village
Thozhudur,
Tittagudi Taluk

4. Kannambal
5. Ramesh
6. Suresh
7. Sumathi @ Lakshmi
8. Haridoss
9. Mansur Ali Saheb
10. Basheera Bibi
11. Mohammad Rafi
12. Saleem Basha
13. Mansoor Basha
14. Razina Begum

... Respondents 3 to 8, 10 to 15/Defendants
1 to 6, 8, 11 to 15/Respondents 3 to 14

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and the decretal orders dated 2.07.2020 in I.A.No. 2192 of 2019 in O.S.No. 114 of 2017 passed by the III Additional District/Sessions Court, Cuddalore at Vridhachalam.

For Petitioners : Mrs. Hema Sampath
Senior Counsel

For RR 1 & 2 : Mr. T.R.Rajagopalan
Senior Counsel

ORDER

This Civil Revision Petition has been filed questioning the order dated 02.07.2020 in I.A.No. 2192 of 2019 in O.S.No. 114 of 2017 on the file of the III Additional District /Sessions Court, Cuddalore at Vridhachalam.

2. The plaintiffs in O.S.No. 114 of 2017 are the revision petitioners herein. The suit in O.S.No. 114 of 2017 had been filed by the plaintiffs seeking 1/8th share in the properties described in the schedule to the plaint and for a decree declaring that the suit properties are trust properties belonging to the first defendant Trust and to pass a decree to frame a scheme for the proper management of the Trust.

3. The suit had been originally filed against 8 defendants. Subsequently, the plaintiff filed an application seeking to implead one Gopalraj as 9th defendant and one Kalavathi as 10th defendant.

4. The said respondents filed a counter.

5. The application was however allowed. The said Gopalraj and Kalavathi were impleaded as 9th and 10th defendants. An amendment petition was also filed and allowed. Amendment was also carried out in the original plaint.

6. The 9th and 10th defendants also filed their written statement.

7. Issues were also framed. The suit was posted in the list of trial.

8. At that time, the counsel for the plaintiffs filed a memo stating that the 9th and 10th defendants are given up since the sale deed executed by the 7th defendant Mohammed Zakhariah by his power of attorney agent Gopalraj in favour of Kalavathi was not a registered document and at the time of filing the memo, the document had been kept pending by the Sub Registrar, Tittagudi.

9. An appeal was however filed, and the District Registrar passed orders directing registration of the said document. The said sale deed was registered as document No. 1458 of 2019 in the office of the Sub Registrar, Tittagudi.

10. Thereafter, the 9th and 10th defendants, who had been originally impleaded and later removed, filed I.A.No. 2192 of 2019 seeking to implead themselves as defendants in the suit. The learned III Additional District Judge, Vridhachalam, was pleased to allow the said application. Questioning that order, the present revision petition has been filed.

11. Mrs. Hema Sampath, learned Senior Counsel for the petitioners stated that if the said Gopalraj and Kalavathi had any grievance with respect to the claim of the plaintiffs then they should file a separate suit and cannot claim to be impleaded as defendants in the suit filed by the plaintiffs. The learned Senior Counsel in this regard relied on ***AIR 1962 Madras 346 [M.Abdul Razack Vs. S.Mohammad Shah]***. A Single Judge of this Court had, while examining Order 1 Rule 10 of the Code of Civil Procedure stated that a party can be impleaded only when he is a necessary or proper party. It had been observed as follows:-

“The power to implead a party to a suit is governed by O.1 Rule 10 of the CPC. A party can be impleaded only when he is a necessary or a proper party. It cannot be stated that a person claiming an adverse title to the estate of the deceased would be either a necessary or a proper party in a suit for administration of the estate.”

12. The learned Senior Counsel therefore stated that the order under revision should be interfered with.

13. This contention of the learned Senior Counsel was been disputed by Mr.T.R. Rajagopalan, learned Senior Counsel, who appeared for the first and second respondents. After setting out the facts which had also been stated above, the learned Senior Counsel relied on **(2005) 11 SCC 403 [Amit Kumar Shaw and another Vs. Farida Khatoon and another]**, wherein while examining the scope of Order 1 Rule 10 CPC, the Hon'ble Supreme Court had observed as follows:-

“The object of Order 1 Rule 10 is to discourage contests on technical pleas, and

to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.”

14. In the instant case, the plaintiffs had themselves thought it necessary to implead the first and second respondents herein as the 9th and 10th defendants in the suit. That application was also allowed. Amendment Petition was also filed. Amendment was also carried out. The first and second respondents were impleaded as 9th and 10th defendants. They also filed written statement. Issues were also framed. At that time, the counsel for the plaintiffs filed a memo giving up 9th and 10th defendants.

15. I am not entering into any discussion whether defendants can be struck off on a memo. However, that procedure was adopted and was urged owing to the fact that the sale deed executed by the 9th defendant herein as power agent of the 7th defendant in favour of the 10th defendant had been kept pending by the Sub Registrar, Tittagudi. Subsequently on directions by the District Registrar Vridhachalam, the sale deed was registered as document No.1458 of 2019. The first and second respondents herein therefore filed I.A.No. 2192 of 2019 seeking to implead themselves as party/defendants. The learned Judge in the course of the order had clearly observed that the petitioners herein had, at one point of time, felt the present first and second respondents were necessary parties to the suit and had therefore impleaded them as defendants. The presence of the first and second defendants would be necessary to adjudicate the issues in the suit. Moreover, as purchasers of the property, the issues in the suit cannot be answered without their presence and more importantly their rights would certainly be affected by any Judgment passed in the suit.

16. I therefore hold that the order under Revision need not be interfered with and I hold that this Civil Revision Petition should be dismissed and it is accordingly dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

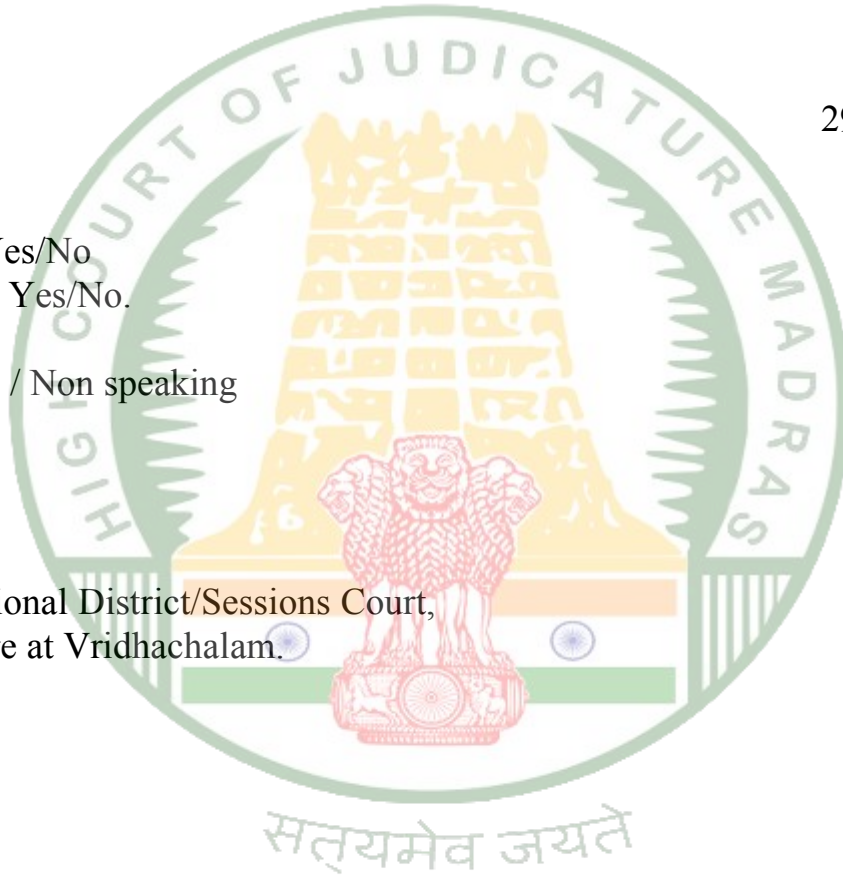
Internet: Yes/No.

Speaking / Non speaking

To

III Additional District/Sessions Court,
Cuddalore at Vridhachalam.

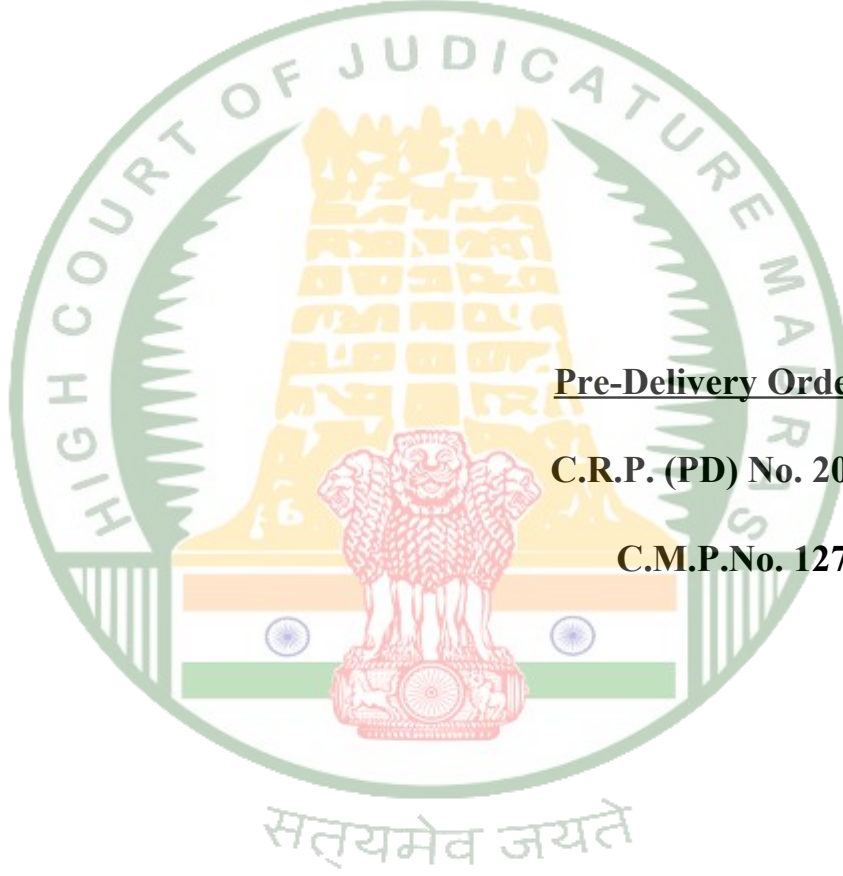
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in

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