

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2325 of 2020

And

C.M.P.No. 14635 of 2020

R.M.Ravi Chandran ... 3rd Respondent/3rd Defendant/
Petitioner

-Vs-

1. V. Praba ... Petitioner/Plaintiff/Respondent
2. S.P.Velumani ... Proposed Plaintiff/Respondent
3. A.Shanmugam
4. A. Muthu ... Respondents 1 & 2/Defendants 1 & 2/
Respondents
5. Kannagi
6. S.Vasuki
7. R.S.Kalaiselvi
8. S.Sumathi ... Respondents 4, 6 to 8/Defendants 4, 6 to
8 /Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 02.11.2020 made in I.A.No. 2 of 2019 in O.S.No. 38 of 2009 on the file of the Sub Court, Tiruchengode.

For Petitioner : Ms. D.Sathya

For Respondents : Mr. S.Rajmakesh

ORDER

The present Civil Revision Petition had been filed by the third defendant in O.S.No. 38 of 2009 now pending on the file of the Sub Court, Tiruchengode, questioning the order in I.A.No. 2 of 2019 dated 02.11.2020. In a way, filing of I.A.No. 2 of 2019 had been invited by the present petitioner himself.

2. The suit in O.S.No. 38 of 2009 had been filed seeking partition and separate possession of 1/9th share in the suit properties. As stated, the suit had been instituted more than a decade ago. The trial has not yet commenced. In the year 2017, the present petitioner, who is the third defendant, filed I.A.No. 649 of 2018 seeking to implead a third party,

S.P.Velumani as the 9th defendant in the. That petition was allowed and the said individual came to be impleaded as the 9th defendant in the suit. It is for that reason that I stated that the order now under question had been invited by the petitioner himself. Subsequently, I.A.No. 2 of 2019 came to be filed by the plaintiff seeking to transpose the 9th defendant as the second plaintiff in the suit. It is also to be mentioned that the plaintiff and the 9th defendant are spouses. It is therefore contended by the learned counsel now appearing for the respondents/plaintiffs in the suit that there is no conflict of interest as between the two parties and therefore, no prejudice would be caused by the said 9th defendant being permitted to be transposed as the second plaintiff.

3. The said I.A.No. 2 of 2019 was allowed by the learned Sub Judge, Tiruchengode by order dated 02.11.2020. This order has been very vehemently challenged by the revision petitioner herein by stating the facts of the case at length. Quite honestly, it will be entirely improper on my part to render a finding with respect to any one of the facts which go to the root of the case. They have to be independently established during trial.

4. The simple issue is whether any prejudice will be caused to anyone of the parties by the 9th defendant being transposed as the second plaintiff or whether the plaintiff would get any additional advantage by such transposition of the 9th defendant or whether the present petitioner / third defendant would suffer any disadvantage if such an order is permitted.

5. It is the contention of the learned counsel for the petitioner that the third defendant would be seriously prejudiced by the 9th defendant being transposed as the second plaintiff. The learned Judge in the course of the order necessarily had to examine the basic facts. Finally it had been stated that there would be no change in the nature of the suit and no fresh cause of action would arise if the 9th defendant is transposed as the second plaintiff, since the suit had been filed for partition based on the power of attorney in the name of the 9th defendant and a sale deed executed by the 9th defendant. The application was therefore allowed.

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6. Having heard the learned counsels, I would rather that the suit proceeds as framed in the year 2009. It is a fact that the original plaintiff and the 9th defendant are spouses. It is also a fact that it is claimed that the

9th defendant is a power of attorney agent of the plaintiff. But the 9th defendant independently has no cause as against the other defendants. It is for the plaintiff to establish her right to claim 1/9th share in the suit property and seek partition and separate possession to that extent.

7. The petitioner herein had as stated impleaded the 9th defendant as a necessary party to the suit. The 9th defendant may tender evidence and his evidence may be supportive of the evidence already tendered by the plaintiff but it would also be better that he does not join as a plaintiff and remains as a 9th defendant. Since trial has not commenced and the 9th defendant has also not filed written statement, it would only be appropriate that the parties are invited to complete the pleadings and commence adducing evidence in the suit. The 9th defendant may take an independent stand. The plaintiff may take an independent stand. Let both of them stated their respective stands in the witness box and let that be tested during cross examination.

8. The reason of the learned Judge that there is no shift in the cause of action and that the parties would not be put to any grievance may not be entirely correct since the crucial aspect to be considered is whether the 9th defendant, if transposed as plaintiff has any cause against the

defendants in the suit. It has to be examined whether the 9th defendant can claim any relief against the defendants. Strictly, he cannot and does not. He may be the power of attorney and the husband of the plaintiff. Still, it is for the plaintiff to establish her case for partition and for separate possession. Therefore, the order under revision requires to be interfered with.

9. I am informed that the matter is posted for filing written statement of the 9th defendant. The learned Judge may stipulate a fixed time limit within which, the written statement is to be filed and thereafter frame issues and invite the parties to adduce evidence. Let the parties to the suit be granted opportunity to adduce evidence with respect to the facts to their knowledge and let the learned Judge decide the issues framed in accordance with the evidence advanced.

10. With these observations, this Civil Revision Petition is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No.

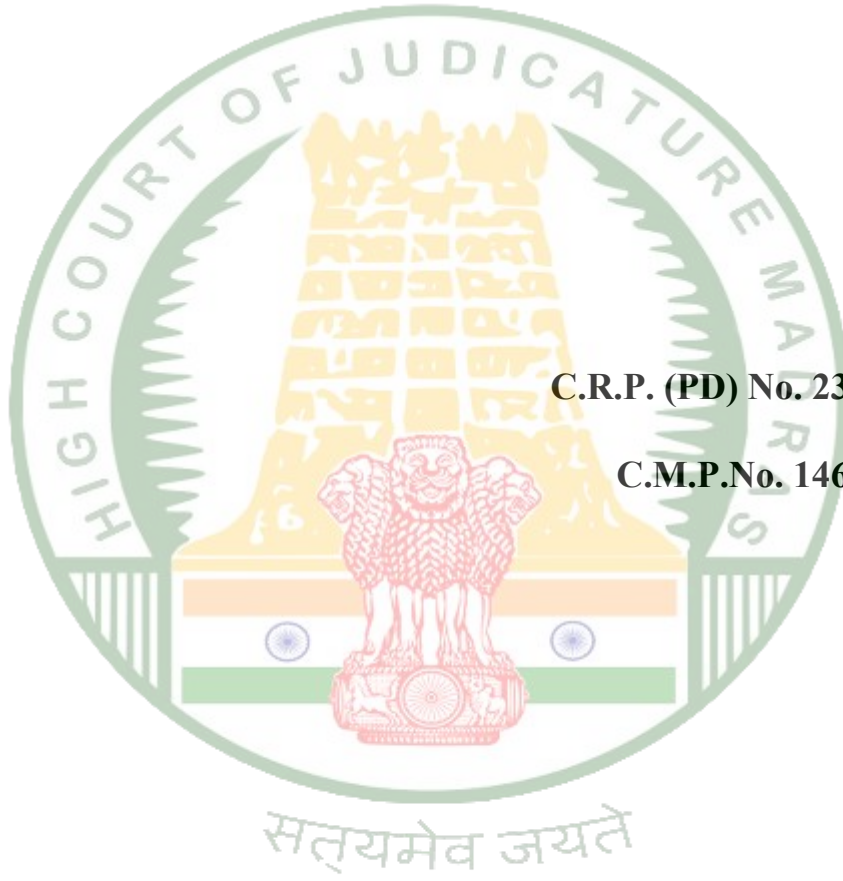
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C.V.KARTHIKEYAN, J.

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