

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.06.2021**

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.3694 of 2019
and C.M.P.Nos.24289, 21943 of 2019

- 1.Pappayee
- 2.M.Rafiullah
- 3.S.Kandasamy
- 4.R.Varalakshmi
- 5.R.Sujatha
- 6.B.Jayalakshmi

N.Subramani (Died)

7.S.Sengottayan

P.Palaniappan (Died)

- 8.E.Velusamy
- 9.R.Sekar
- 10.A.Sivakumar
- 11.A.Rajeswari
- 12.P.Selvi
- 13.M.S.Veerappan
- 14.P.Rasappan
- 15.K.Palanisamy
- 16.K.Sakthivel
- 17.K.Duraisamy
- 18.M.Pappayammal
- 19.P.Pappathi
- 20.V.M.Subramaniam
- 21.R.Balasubramaniam
- 22.R.Rajammal



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23.M.Pappathi
24.Uma Maheswari
25.S.Pavayee
26.A.Ukkirasenan
27.P.Velusamy
28.N.Palaniandi
29.N.Muthusamy
30.Ammavasai
31.Ganesan
32.Thangavel

Palaniappan (Died)

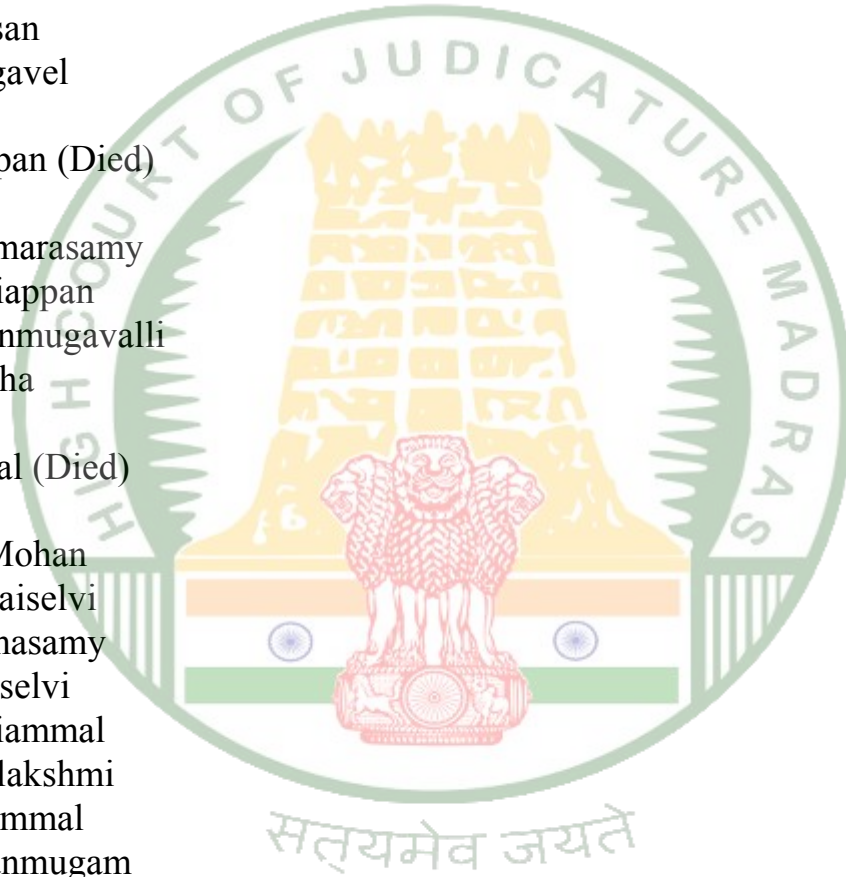
33.R.Kumarasamy
34.Palaniappan
35.P.Shanmugavalli
36.P.Sudha

Sellammal (Died)

37.K.C.Mohan
38.C.Kalaiselvi
39.P.Ramasamy
40.Tamilselvi
41.Palaniemmal
42.Mahalakshmi
43.Veerammal
44.C.Shanmugam
45.Thangarajan

S.N.Nallusamy (Died)

46.Nallammal
47.S.Selvaraj
48.Pappayee
49.P.Sakthivel
50.Santhi
51.Krishnamurthy
52.M.Shanmugam



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53.M.Kandasamy

(Cause title accepted vide Court order dated 16.10.2019 made in
C.M.P.No.21943 of 2019 in C.R.P.SR.No.100113 of 2019)

... Petitioners

Vs

1.Manickam

2.Selvi

3.Palaniammal

4.Mani

5.Kandasamy

6.Natesan @ Mani

7.State of Tamil Nadu

Represented by its District Collector,
Namakkal District.

8.The Chief Educational Officer,
Namakkal, Namakkal District.

9.The District Revenue Officer,
Namakkal, Namakkal District.

10.The Revenue Divisional Officer,
Tiruchengode, Namakkal District.

11.The Tahsildar,
Paramathi Velur Taluk,
Padavettipalayam,
Paramathi, Namakkal District.

12.P.Muthusamy

13.Perumal

14.Thaniasari

Palaniappan (Died)

15.Sivaji

16.R.Ashokan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 17.12.2018 made in I.A.No.414 of 2018 in O.S.No.16 of 2018 on the file of the Court of Sub Court, Paramathi, Namakkal District.

For Petitioners : Mr.N.S.Sivakumar

For Respondents : M/s.K.Velangani for R1 to R6
Dr.S.Suriya, Government
Advocate (Civil Side) for R7 to R11
M/s.T.Dhanyakumar for R13 and R14
No Appearance for R12, R15, R16

ORDER

The Revision Petition has been filed questioning the order dated 17.12.2018 in I.A.No.414 of 2018 in O.S.No.16 of 2018 which Civil Suit is pending on the file of the Sub Court, Paramathi, Namakkal District.

2. O.S.No.16 of 2018 had been originally filed as O.S.No.123 of 2008 before the Sub Court, Namakkal and on constitution of Sub Court

at Paramathi had been transferred and re-numbered as O.S.No.16 of 2018. The said suit had been filed seeking a preliminary decree for partition and the division of the suit properties and allotment of the shares to the respective plaintiffs and to put the plaintiffs in possession of their shares and also for mandatory injunction against the third and fifth defendants namely the District Revenue Officer, Namakkal and the Tahsildar, Paramathi to issue patta to the plaintiffs with respect to the extent of land belonging to them and also for a declaration that the seventh and eighth defendants do not have any right or title over the property and for costs.

3. Written statements have been filed by the parties.

4. In that suit, I.A.No.414 of 2018 came to be filed by third parties to the suit seeking to implead themselves as defendants in the suit.

5. It is the contention of the petitioners in I.A.No.414 of 2018 that they are also purchasers and that they are the legal heirs of a power of attorney agent namely Shanmugam, who had unfortunately expired and that they are directly interested in the progress of the suit. This

application came to filed after evidence on the side of the plaintiffs had been recorded and substantial evidence on the side of the defendants had also been recorded and the matter was posted for recording evidence on the side of the seventh defendant. The said application came up for consideration before the learned Sub Judge, Paramathi. By an order dated 17.12.2018 said application was allowed.

6. The said order had been quite seriously questioned by Mr.N.S.Sivakumar, learned counsel for the petitioners who claimed that a detailed counter had been filed, but very unfortunately the learned Sub Judge appears to have skirted the issues and had straight away held that the petitioners in the Interlocutory Application can be categorized as necessary parties and therefore had allowed the said application. It had also been stated that the respondents had not raised serious objections to them being implead as the party / defendants.

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7. It is pointed out by Mr.N.S.Sivakumar that these observations by the learned Judge were not factually correct, and that very serious objections had been taken and that none of the objections had been considered or answered or even examined by the learned Judge.

8. It is only be appropriate that the learned Judge once again re-applies his Judicial mind to the averments made in the affidavit filed in support of the said application and also to the averments made in the counter affidavit and thereafter comes to a conclusion whether the said applicants in I.A.No.414 of 2018 need to be impleaded as party / defendants.

9. Let me not devolve deeply into the facts, since there may be a possibility of encroaching upon the merits of the case which exercise is the prerogative of the learned Sub Judge who has to decide the issues in accordance with the evidence recorded, and to give a definite finding in respect I.A.No.414 of 2018 and render a finding whether the parties are necessary for adjudication of the issues and whether, any finding in the suit in their absence would directly affect their interest.

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10. After hearing the learned counsel for the petitioners and also the learned counsel for the respondents, I am of the opinion that the order under Revision has to be set aside. The matter is remitted to the learned Sub Judge to re-examine the issues raised and to give a finding on merits

on the averments made in the affidavit and also in the counter affidavit in I.A.No.414 of 2018. The learned Judge should re-hear the said application and if required give an opportunity to the counsels to once again putforth their respective pleas. I am confident that the learned counsels who appear before the trial Court who not take unnecessary adjournments to advance arguments before the learned Court.

11. With the said observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

23.06.2021

Internet: Yes/No
Index: Yes/No
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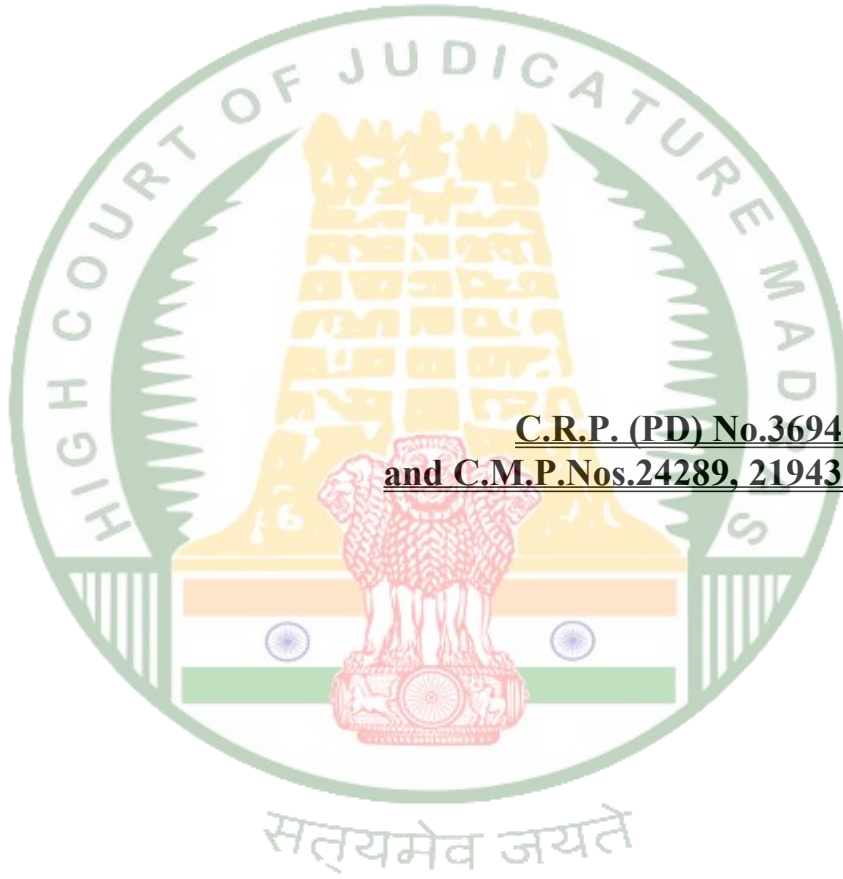
To

The Sub Court,
Paramathi, Namakkal District.

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C.V.KARTHIKEYAN,J.

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