

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

**C.R.P. (NPD) No. 1263 of 2017
and
C.M.P. No. 5907 of 2017**

1. Kolanjiammal

2. Kannappan

... Petitioners

-VS-

Jaishankar

... Respondent

Prayer:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the fair and decretal order dated 21.02.2017 made in I.A. No. 255 of 2013 in O.S. No. 23 of 1990 on the file of the Assistant Sessions Judge/Sub Court, Ariyalur and allow the Civil Revision Petition.

For Petitioners : Mr. C.Prabakaran

For Respondents : Mr. M.V.Krishnan

ORDER

(The case has been heard through video conference)

The Civil Revision Petition has been filed against the fair and decretal order dated 21.02.2017 in I.A. No. 255 of 2013 in O.S. No. 23 of 1990 passed by the Assistant Sessions Court/Sub Court, Ariyalur.

2. Brief facts of the case:-

The Respondent is the Plaintiff and the Petitioners are the Defendants in O.S. No. 23 of 1990. The suit in O.S. No. 23 of 1990 had been instituted by the Respondent/Plaintiff before the Sub Court, Ariyalur seeking for the reliefs of partition, separate possession and mesne profits. The said suit was dismissed by judgment and decree dated 28.10.1996. Aggrieved by the same, the Respondent/Plaintiff filed A.S. No. 10 of 1997 before the Principal District Court, Tiruchirapalli, which was allowed by judgment and decree dated 27.01.1998 and thereby, decreed that the Respondent/Plaintiff is entitled to half share over the suit scheduled properties. Aggrieved against the judgment and decree passed in A.S. No. 10 of 1997, the Petitioners/Defendants filed S.A. No. 651 of 1998 and this Court was pleased to dismiss the same by order dated 28.01.2011 and thereby, confirmed the order passed in A.S. No. 10 of 1997. Subsequently, on the strength of the said order, the Respondent/Plaintiff filed an application in I.A. No. 255 of 2013 in O.S. No. 23 of 1990 before the Assistant Sessions Court/Sub Court, Ariyalur seeking for the appointment of an Advocate Commissioner to divide the suit properties into two equal shares and allot one such share to the Respondent/Plaintiff. The Petitioners/Defendants have filed counter in I.A. No. 255 of 2013 stating that some of the properties in the suit scheduled properties could not be divisible and the extent of properties

were also not mentioned properly in the earlier preliminary decree and the boundaries of many of the suit scheduled properties were also not properly mentioned and therefore, requested the Trial Court to re-determine the preliminary decree by way of proper adjudication and to pass appropriate orders. I.A. No. 255 of 2013 was allowed by order dated 21.02.2017 against which, the present Civil Revision Petition has been filed.

3. The Learned Counsel for the Petitioners/Defendants would submit that there are 20 items in the suit schedule and some of the suit scheduled properties are not divisible and the extent of the suit scheduled properties were also not mentioned clearly in the earlier preliminary decree. He would further submit that the boundaries of many of the suit scheduled properties were also not properly mentioned and thereby, the Petitioner had filed counter in I.A. No. 255 of 2013 seeking to re-determine the preliminary decree by way of proper adjudication and to pass appropriate orders, whereas the Trial Court had allowed that application causing great prejudice to the Petitioners/Defendants. He would further submit that unless and until the preliminary decree is clarified and a proper adjudication is made with regard to the suit scheduled properties, the Petitioners/Defendants would be greatly prejudiced. Hence, he would pray that the Civil Revision Petition may be allowed by setting aside the order dated

21.02.2017 in I.A. No. 255 of 2013 in O.S. No. 23 of 1990 passed by the Assistant Session Court/Sub Court, Ariyalur.

4. The Learned Counsel for the Respondent/Plaintiff would submit that originally the suit was dismissed against which, the Respondent/Plaintiff filed A.S. No. 10 of 1997 before the Principal District Court, Tiruchirapalli and the First Appeal was allowed by judgment and decree dated 27.01.1998. He would further submit that in the First Appeal, the Petitioners/Defendants have not raised any objection in respect of the boundaries. He would further submit that subsequently, he has also filed S.A. No. 651 of 1998 against the order passed in A.S. No. 10 of 1997 and even in the Second Appeal, no such objections were raised by the Petitioners/Defendants. He would further submit that the objections were raised only in I.A. No. 255 of 2013 filed by the Respondent/plaintiff seeking to appoint Advocate Commissioner to divide the suit scheduled properties into two equal shares and allot one such share to the Respondent/Plaintiff. He would further submit that the Trial Court taking into consideration that these objections were not raised in the First Appeal and Second Appeal, had rightly held that the suit scheduled properties have to be partitioned into two equal shares and appointed the Advocate Commissioner also. He would further submit that there was no error in the order passed by the

Trial Court. He would further submit that only in order to harass the Respondent/Plaintiff and to delay the partition, the present Civil Revision Petition has been filed. Hence, he would seek for dismissal of the Civil Revision Petition.

5. Heard the Learned Counsels and perused the materials placed on record.

6. The Petitioners/Defendants, who have not raised any objection during the hearing of the First Appeal or during the hearing of the Second Appeal, could not raise their objections in the present Civil Revision Petition. Therefore, the Trial Court had rightly allowed the application for appointment of Advocate Commissioner to divide the suit scheduled properties into two equal shares and allot one such share to the Respondent/Plaintiff. Viewed from that perspective, there does not appear to be any infirmity or error in the order dated 21.02.2017 in I.A. No. 255 of 2013 in O.S. No. 23 of 1990 passed by the Assistant Sessions Court/Sub Court, Ariyalur, warranting any interference by this Court in the exercise of discretionary process under Article 227 of the Constitution.

7. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

08.07.2021

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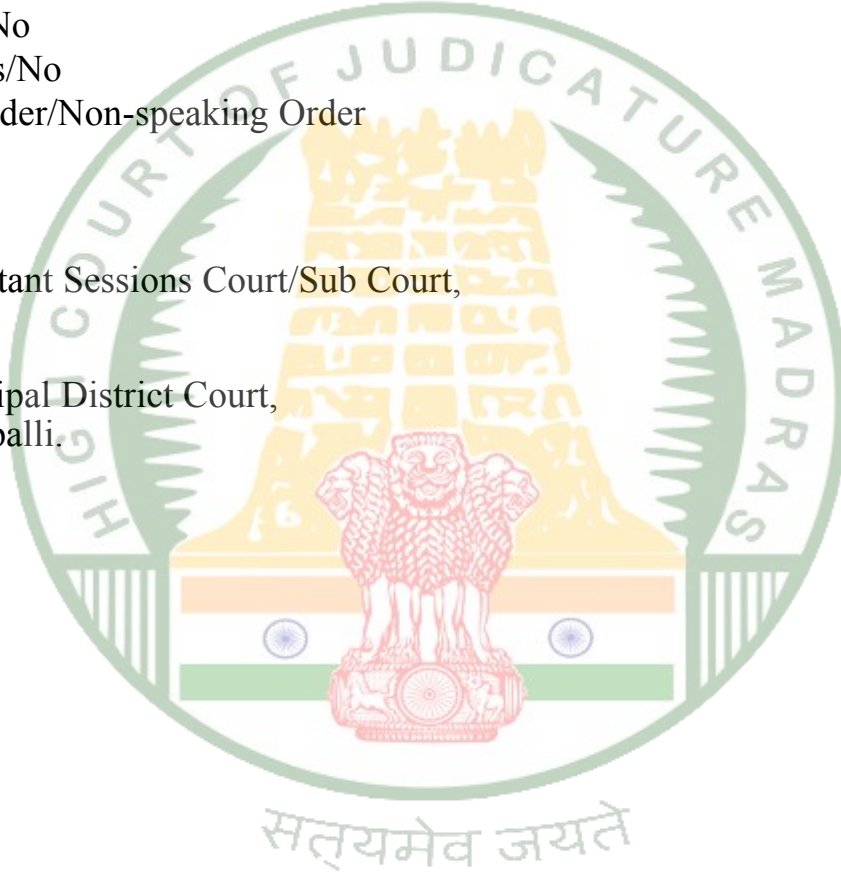
Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Assistant Sessions Court/Sub Court,
Ariyalur.
2. The Principal District Court,
Tiruchirapalli.



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A.D. JAGADISH CHANDIRA, J.

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