

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

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

C.R.P.(PD) No.2279 of 2017
and C.M.P.No.10742 of 2017

A.Kanmani

... Petitioner

Vs.

1. M.V.Thangamuthu
2. K.Valantha Gounder
3. M.V.Duraisamy

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29.04.2017 passed in I.A.No.580 of 2016 in O.S.No.209 of 2016 on the file of the Second Additional District Court, Erode.

For Petitioner : Mr.I.C.Vasudevan

For Respondents

For R1 : Mr.A.Sundaravadhanan

R2 & R3 : Notice served

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 29.04.2017 passed by the learned Second

Additional District Judge, Erode, in I.A.No.580 of 2016 in O.S.No.209 of 2016, thereby allowing the petition filed by the first respondent to struck-off the plaint.

2. The petitioner is the plaintiff and the first respondent is the third defendant. The petitioner filed suit for partition as against her father and brothers in respect of the suit property. Immediately after receipt of the summon, the first respondent filed petition to struck-off the plaint under Order 6 Rule 16 of C.P.C., on the ground that in respect of the suit properties, there was a panchayath held by the elders and they sorted out the issues by a registered partition deed dated 06.11.2014. Accordingly, the petitioner was allotted D schedule property in the partition deed dated 06.11.2014. A,B,C portions were allotted in favour of the first respondent, father and other brother respectively. While being so, suppressing the above said partition deed, the petitioner filed suit for partition claiming 1/4th share in the suit property. The trial Court allowed the said petition and struck off the plaint, as against which the petitioner filed this present revision petition.

3. On perusal of documents, the registered partition deed dated 06.11.2014 is marked as Ex.B.6 by the first respondent herein. The petitioner denied the said partition deed by stating that now only she came to know about the partition deed and therefore, she need not to challenge the alleged partition deed. It is curious to note that the petitioner filed the present suit for partition after the settlement deed dated 28.08.2015 executed by the second respondent herein in favour of the first respondent, in respect of his share allotted in the partition deed dated 06.11.2014. Therefore, without giving any share to the petitioner herein, her father settled his entire share in favour of the first respondent herein. Originally, the petitioner was very much present before the Registrar Office and registered the partition deed dated 06.11.2014. When it being so for the very same properties, the petitioner laid the present suit and it is nothing but clear abuse of process of law and it cannot be sustained. Therefore, the Court below rightly struck down the plaint and this Court finds no illegality or infirmity in the order passed by the Court below. However the petitioner is at liberty to challenge the partition deed dated 06.11.2014 in the manner known to law, if so advised.

4. Accordingly, this Civil Revision Petition stands dismissed.
There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.03.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

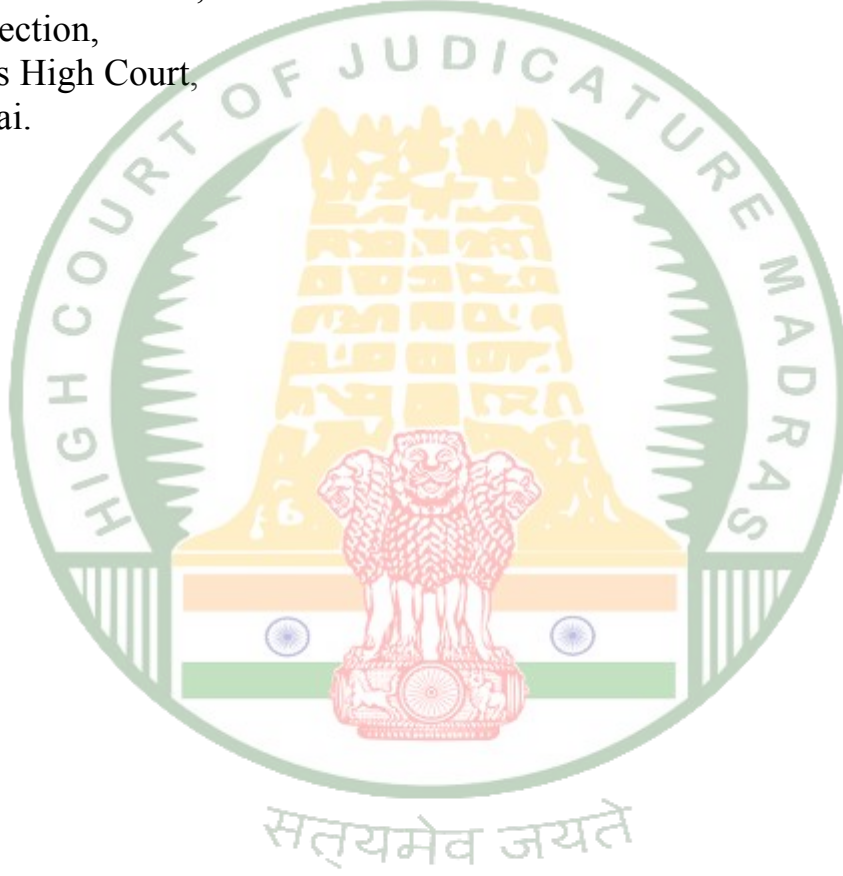
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To

1. The Second Additional District Judge,
Erode
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

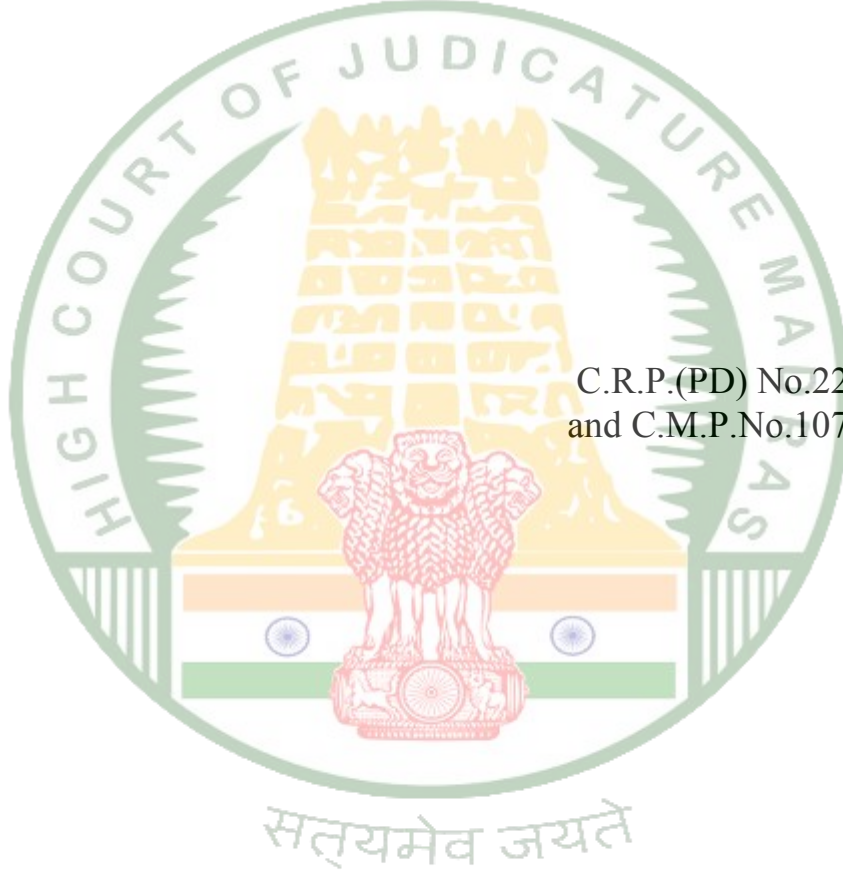


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G.K.ILANTHIRAIYAN, J.

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