

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.259 of 2017

and

C.M.P.No.1140 of 2017

Periyannan

.. Petitioner

Vs.

1.Tamilmaran

2.Selvi

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.09.2015 made in I.A.No.557 of 2015 in O.S.No.10 of 2007 on the file of the Principal Sub Court, Villupuram.

For Petitioner : Mr.Prabhakaran
for Mr.R.Balakrishnan

For R1 : Mr.C.Prabakaran

For R2 : Not ready in notice

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 10.09.2015 made in I.A.No.557 of 2015 in O.S.No.10 of 2007 on the file of the Principal Sub Court, Villupuram.

2.Heard the learned counsel appearing for the petitioner as well as the learned Counsel appearing for the 1st respondent and perused the entire materials on record.

3.The petitioner is 3rd defendant in O.S.No.10 of 2007 on the file of the Principal Sub Court, Villupuram. The 1st respondent is 6th defendant in the said suit. The 2nd respondent / plaintiff filed the said suit for partition against the petitioner and five others, who are the mother, sisters and brothers. The 1st respondent did not file any written statement. He was set exparte on 02.11.2007. Subsequently, the 1st respondent filed I.A.No.557 of 2015 under Order IX Rule 7 to set aside the exparte order dated 02.11.2007. According to 1st respondent, the 2nd respondent filed the said suit against the mother of parties as 1st defendant, sisters as defendants 2, 4 & 5 and elder brother as 3rd

defendant / petitioner herein. On receiving the suit summons, the petitioner informed the 1st respondent that 1st respondent need not engage separate counsel and he will defend the suit on behalf of 1st respondent also.

4.Since the petitioner is elder brother of 1st respondent, 1st respondent believed petitioner's word that he is contesting the case on behalf of 1st respondent also. Only on 20.07.2015, the 1st respondent came to know that he was set exparte in the suit on 02.11.2007 and the petitioner is contesting the case separately claiming exclusive title to some of the suit properties against the interest of 1st respondent. The 1st respondent also filed written statement along with I.A.No.557 of 2015 and submitted that his absence on 02.11.2007 is neither wilful nor wanton. The counsel for 2nd respondent / plaintiff made endorsement that I.A. may be allowed on terms. The learned Judge considering the averments in the affidavit and endorsement made by the counsel for plaintiff, ordered the I.A.

5.Against the said order dated 10.09.2015 made in I.A.No.557 of 2015, the petitioner, who is the 3rd defendant in the suit has come out with the present Civil Revision Petition.

6. According to the petitioner, the 1st respondent did not implead all the defendants as parties in the I.A. including the petitioner. The 1st respondent filed the present I.A. after 8 years. The petition filed under Order IX Rule 7 C.P.C. is governed by Article 137 of Limitation Act. The I.A. is barred by limitation and prayed for allowing the Civil Revision petition.

7. The contention of the learned counsel appearing for the petitioner that I.A. filed by the 1st respondent is barred by limitation as per Article 137 of Limitation Act is contrary to the judgment of the Hon'ble Apex Court reported in ***AIR 1959 SC 809, (S.K.Sahgal, Additional Collector, Banaras Vs. Maharaj Kishore Khanna)***. In the said judgment, the Hon'ble Apex Court held that an application filed by the party in a pending suit will not be governed by Article 137 of the Limitation Act. In paragraph No.10 of the said judgment, the Hon'ble Apex Court held as follows:

“(10). ... It has long been recognised by the Courts in our country that a right to continue a proceeding which is pending is a right which arises from day to day and no question of any bar of limitation with regard to the enforcement of such a right arises: see Kedar Nath Dutt V. Harra

*Chand Dutt, ILR 8 Cal 420, Subba Chariar V.
Muthuveeran Pillai, ILR 36 Mad 553.”*

In view of the judgment of the Hon'ble Apex Court referred to above,
the claim of the petitioner is not acceptable and the Civil Revision Petition is
without merits.

8.For the above reason, this Civil Revision Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed. No costs.

04.10.2021

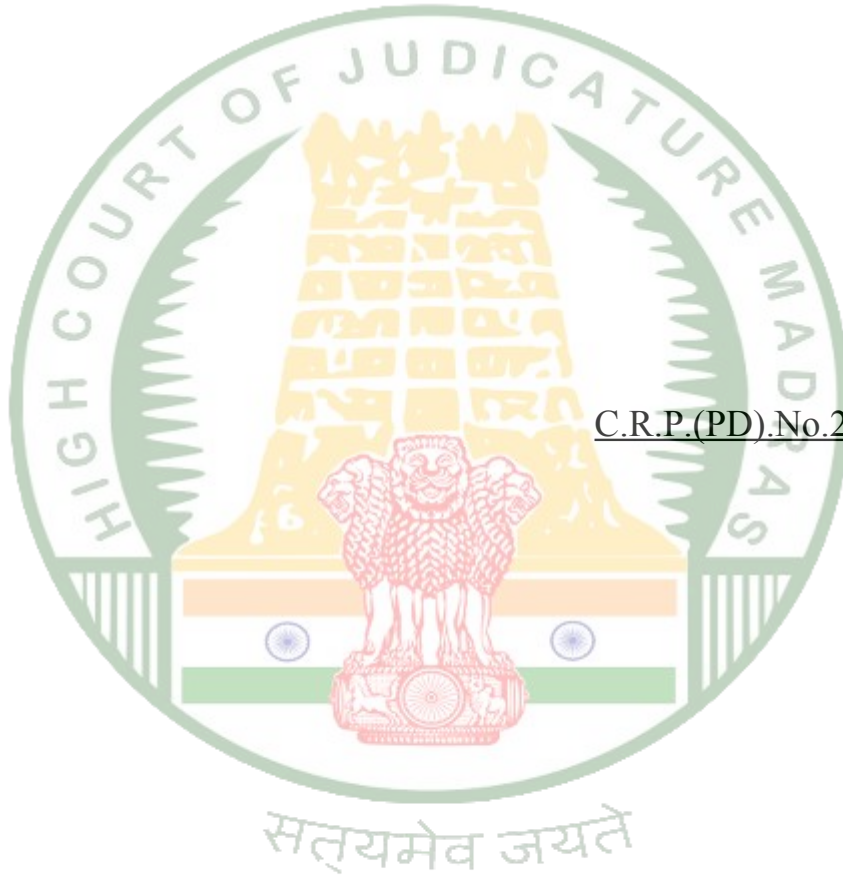
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Index : Yes / No
Internet : Yes / No

To

The learned Principal Subordinate Judge,
Villupuram.

V.M.VELUMANI, J.
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