

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3191 of 2017
and C.M.P.No.14924 of 2017

1.Senthamizhselvi J.Jayalakshmi

2.Senthamarai Kannan

3.Kanchana

4.Rathi

5.Rajesh Kannan

.. Petitioners

Vs.

1.Padmavathi

2.Chithra

3.Jeevalakshmi

4.Dhanasekaran

(Represented by his mother

1st respondent as Power Agent)

5.Hemalatha

6.Periyanayagi

7.Susila

8.Poongavanam

9.Govindammal

10.Kanniyappan

11.Kamalakannan

12.Sivagami Ammal

13.Poongothai

14.Sampath

15.Allimuthu

16.Sumathi

W/o.Settu @ Ranganathan

17.Duraikannu

18.Elumalai

19.Sumathi

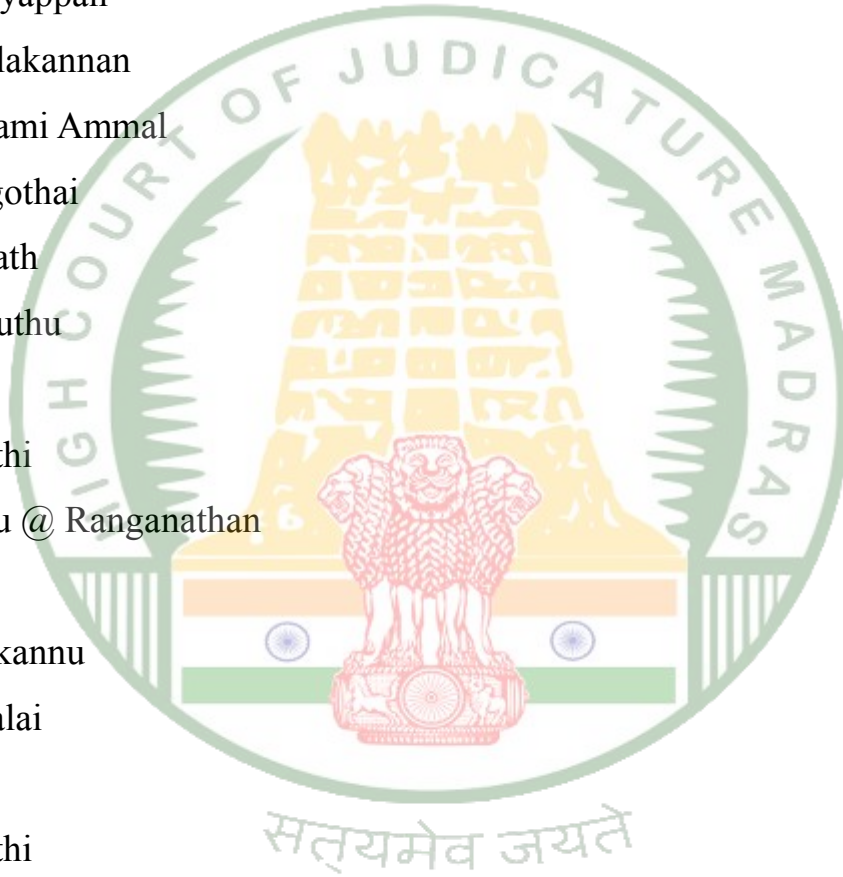
W/o.Vivekanadhan

20.Durairajan

21.Vijaikumar

22.Poonguzhali

2/10



WEB COPY

- 23.Thirumaran
- 24.Nirmala
- 25.Lakshminarayan
- 26.Govindarajan
- 27.Banumathi
- 28.Sheetha
- 29.Kasthuri
- 30.Muniyammal
- 31.Kalyani
- 32.T.Sundaraganesan
- 33.Panchalai
- 34.Parasurama Achari
- 35.K.Balakrishnan
- 36.K.Selvaraj
- 37.K.Krishnaveni
- 38.G.Ranganathan
- 39.V.Vivekanadhan
- 40.A.B.Abdul Rasal
- 41.U.Mahalakshmi
- 42.S.A.Noorusheen
- 43.G.Baskaran
- 44.E.Murugan
- 45.R.Malathi



WEB COPY

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.09.2016 made in I.A.No.4 of 2016 in O.S.No.5 of 2009 on the file of the I Additional District Court, Tindivanam.

For Petitioners : Mr.V.Manohar

For R1 to R5 : Ms.Akshaya
for Mr.D.Ravichander

ORDER

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

Civil Revision Petition is filed against the fair and decretal order dated 16.09.2016 made in I.A.No.4 of 2016 in O.S.No.5 of 2009 on the file of the I Additional District Court, Tindivanam.

2.The petitioners are the plaintiffs and the respondents 1 to 24 are the defendants in O.S.No.5 of 2009. The petitioners filed the said suit for partition and other relief. The respondents 1 to 5 filed O.S.No.3 of 2008 for partition. Both the suits were jointly tried. The petitioners let in

evidence and closed their side. On the side of the defendants, D.W.1 and D.W.2 were examined. The suit was posted for further evidence on behalf of the defendants. D.W.3 filed proof affidavit. At that stage, the petitioners filed I.A.No.4 of 2016 in O.S.No.5 of 2009 for impleading the respondents 25 to 45 as defendants in the suit.

3.According to the petitioners, the proposed parties are descendants of Ramasamy Naicker. They sold the properties, when the properties were not divided by metes and bounds. They are not entitled to sell the properties. The petitioners have already impleaded the purchasers as party defendants in the suit. The vendors are co-parceners of the undivided suit properties and they were not impleaded as defendants. Hence, they are necessary parties to decide the issue in the suit.

4.The respondents 1 to 5 and 6 to 9 filed separate counter affidavits and opposed the said I.A. The learned Judge considering the averments made in the affidavit, counter affidavit and the arguments of

the counsel for the parties, dismissed the I.A. holding that the purchasers are already on record and the petition is not filed with bonafide intention. The learned Judge has also held that impleading proposed parties as defendants is not required for effective and complete adjudication and to settle the questions involved in the suit.

5. Against the said fair and decretal order dated 16.09.2016 made in I.A.No.4 of 2016 in O.S.No.5 of 2009 on the file of the I Additional District Court, Tindivanam, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioners contended that the proposed parties are co-parceners of the undivided suit properties and the learned Judge without properly appreciating the materials, dismissed the I.A. on the ground that the purchasers are already on record and the proposed parties are not necessary for adjudication. The learned Judge failed to see that joint trial of suits filed by the petitioners as well as the

the defendants is being conducted and it is necessary to place the correct facts before the Court. The learned Judge ought to have shown sufficient indulgence, while considering the application to implead the proposed parties and prayed for allowing the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 5 and perused the materials available on record.

8. From the materials available on record, it is seen that the respondents 1 to 5 filed O.S.No.3 of 2008 for partition, whereas the petitioners have also filed O.S.No.5 of 2009 for partition for the very same properties. Joint trial is being conducted. The petitioners impleaded the purchasers of the properties as defendants 10 to 24. At that time, the petitioners did not implead the persons, who sold the properties. The petitioners have not given any reason for not impleading them at that time itself. When the trial is in progress, when D.W.3 filed proof affidavit and when the suit was posted for cross-examination of D.W.3,

the petitioners have come out with the present I.A. A person can implead as party defendant in the suit, if he is a necessary party or proper party. A necessary party is a person without whose presence, issue in the suit cannot be decided fully. On the other hand, a proper party, in the facts and circumstances of the case, need not be impleaded as party defendant. In the present case, according to the petitioners, the proposed parties have already sold the properties to the respondents 17 to 24. The petitioners have already impleaded the purchasers as defendants 17 to 24 and they are already on record. When the purchasers are already on record, the proposed parties, who sold the properties, at this stage are not necessary parties, as it is for the purchasers to defend their purchase that their purchase is valid and legal. The learned Judge has considered all the above materials properly and dismissed the I.A. by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

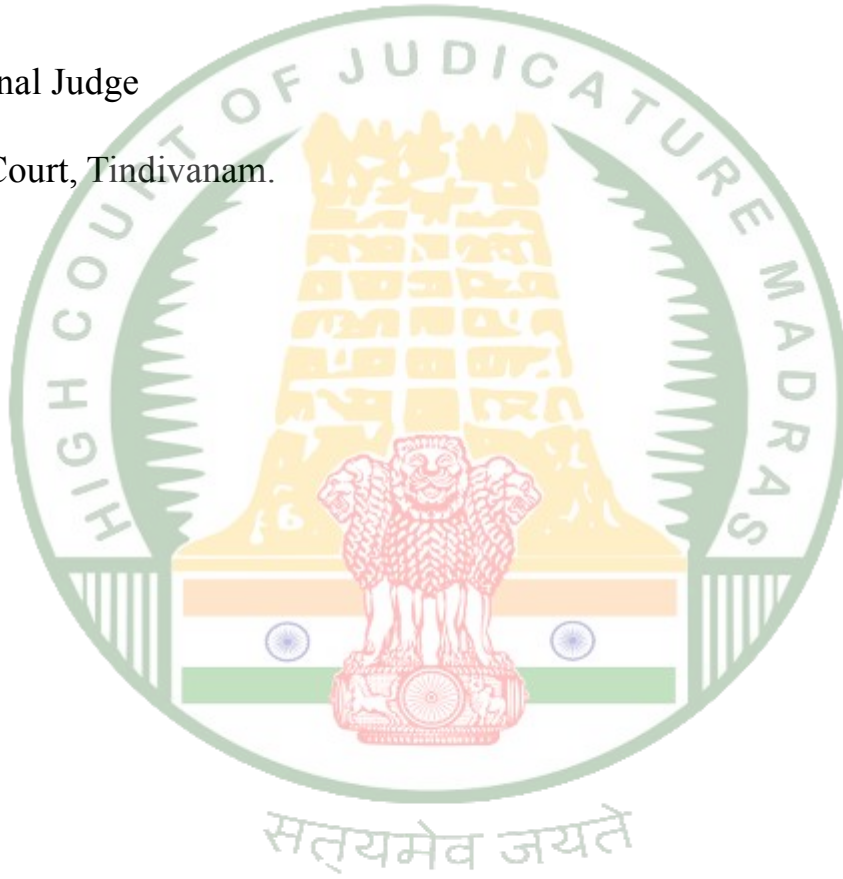
19.08.2021

kj

To

I Additional Judge

District Court, Tindivanam.

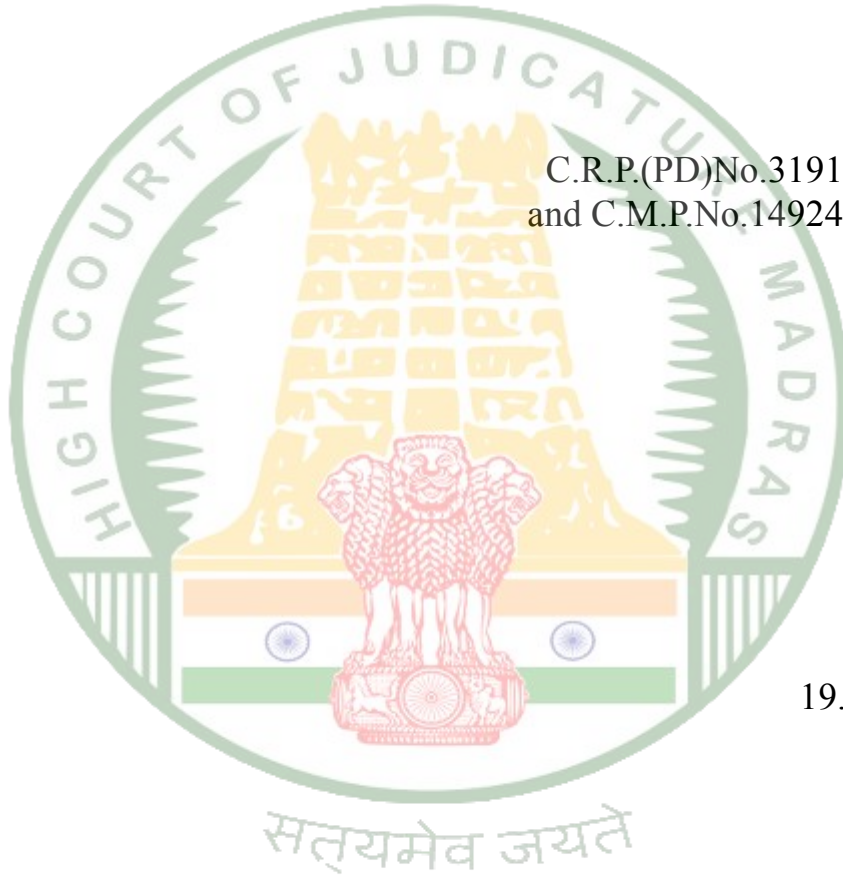


WEB COPY

V.M.VELUMANI, J.

C.R.P.(PD)No.3191 of 2017

kj



C.R.P.(PD)No.3191 of 2017
and C.M.P.No.14924 of 2017

19.08.2021

WEB COPY