

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM :

THE HON'BLE MR.JUSTICE **C.V. KARTHIKEYAN**

C.R.P.(PD) Nos.3902 of 2019 and 1030 of 2020
and

C.M.P.Nos.25741 of 2019 and 1030 of 2020

Sujatha

.. Petitioner
in C.R.P.(PD) Nos.3902 of 2019
and 1030 of 2020

Vs.

1. R. Suresh Babu

2. R. Gajalakshmi

3. A. Rekha

4. A. Lakshmanan

5. A. Xavier

6. Shivalal Ratnakar

7. V.S. Bhuvaneswari

8. T. Ravikumar

9. R. Amudha

10. T. Mohakrishnan

11. T. Gopalakrishnan
 12. A. John Christopher Rajan
 13. Sai Usha
 14. Rajesh Vaswani
 15. Bhavana Vawani
 16. Muthukumar
 17. T. Nirmala Devi
 18. M/s. Astral Poly Technik Ltd,
Registered office at No.207/1, Astral House,
B/H, Rajpath Club, Office:S.G. Highway,
Ahmedabad - 380 059
 19. Tamilnadu Industrial Corporation Ltd., (THC) Hosur,
Represented by its Branch Manager,
Registered Office No.692, Anna Salai, Kamaraj Colony,
Branch No.7, 2nd Cross, 2nd Floor, Kamaraj Colony,
Hosur - 635 109.
 20. M/s. C.R.N. Granites, represented by its Partner,
S.F. No.260/2, Jothi Nagar, Gopasandram
Kamandhoddhi Post, Hosur Taluk,
Krishnagiri District.
 21. H.C. Harinath
 22. V. Chitra
- .. Respondents
in C.R.P.(PD) Nos.3902 of 2019
and 1030 of 2020

Prayer in C.R.P.(PD) No.3902 of 2019: Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 11.12.2018 made in I.A.No.147 of 2018 in O.S.No.3 of 2014 on the file of the Additional District Court, Hosur.

Prayer in C.R.P.(PD) No.1030 of 2020: Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 31.01.2020 made in I.A.No.1 of 2019 in O.S.No.3 of 2014 on the file of the Additional District Court, Hosur.

For Petitioner : Mr. K.Venkatasubaab
For Respondents : M/s. G. M. Anantha Kumar
for R1
R2 to R22 - No appearance

COMMON ORDER

The third defendant in O.S.No.3 of 2014 now pending on the file of learned Additional District Judge at Hosur is the revision petitioner herein.

2. The said suit in O.S.No. 3 of 2014 has been filed by the first respondent herein seeking 5/16th share in the suit properties. It is thus a suit for partition and separate possession. The plaintiff/respondent also admits that the Revision Petitioner/third defendant is also entitled to the other 5/16th undivided share in

the suit properties. For good measure, the revision petitioner/third defendant had also paid one half court fee as envisaged under Section 37 sub clause 2 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. This would mean that she has a right to claim partition and separate possession. It would also mean that on the passing of a preliminary decree, she has a right to file an application seeking final decree to be passed. In effect, though she is termed as the third defendant, owing to the fact that she has paid necessary court fees, she is also a de facto plaintiff. That is the premise under which any partition suit proceeds.

3. This suit had also proceeded in the same normal manner in which any other partition suit proceeds, namely by stagnating in one particular position for a long period of time and then slowly meandering around without any direction.

4. It is the contention of the revision petitioner/third defendant that the plaintiff/first respondent herein had colluded

with the purchasers of the property and is therefore not interested in proceeding further with that suit. The revision petitioner/third defendant therefore filed I.A.No.147 of 2018 seeking to transpose herself as a plaintiff in the suit. That application came up for consideration and by an order dated 11.12.2018, the said application was dismissed. At that particular point of time, the revision petitioner herein did not feel it necessary to file any revision. It is the contention of the learned counsel for the revision petitioner that at that particular point of time the revision petitioner was of the bona fide impression that transposition as a plaintiff was not required since she felt that the plaintiff will be taking care of the interest of all the parties and would proceed further with the suit. But that hope failed owing to the fact that the plaintiff filed I.A.No.2 of 2020 to withdraw the suit. Various other circumstances had arisen necessitating the revision petitioner to again file an application in I.A.No.1 of 2019 to transpose herself as a plaintiff.

5. The learned Additional District Judge was quite frustrated with the said application since it was a second application and holding that the earlier application for the same relief had been dismissed, without going deeply into the merits and expressing displeasure at the non appearance of the counsel for the petitioner for several hearing dates proceeded deliver order and dismissed the said application.

6. In effect, questioning dismissal of two separate applications for the same relief namely under Order 1 Rule 10 (3) of the C.P.C., for transposition of the third defendant as a plaintiff the two revision petitions have been filed.

7. Quite animated arguments were putforth but let me reduce the issue to simple terms.

8. The Revision Petitioner is the third defendant in a suit for partition. She had been impleaded by the plaintiff as a third defendant owing to the fact that she is entitled for a share in the

properties mentioned in the schedule to the plaint. According to the plaintiff, she is entitled to an undivided 5/16th share. The plaintiff also seeks 5/16th undivided share to be separated and allotted to him. The revision petitioner as a defendant herein had also paid necessary court fees as envisaged under the provisions, in effect giving her the right to claim 5/16th share and also move importantly seeking a right to be put in possession of such share on the property being divided into metes and bounds. She also has a right to file an application seeking to pass a final decree in the suit consequent to a preliminary decree being passed.

9. Viewed from any angle, she is also a defacto plaintiff in the suit. I do agree that an earlier application had been filed for the very same relief to transpose her as a plaintiff and had been dismissed. But in a suit for partition, the right of the parties emanate from their birth and subsists and exists till their death. That is a very important concept. During the pendency of the suit, various extraneous circumstances naturally would arise owing to the adversial nature of litigation among the parties who

are also family members.

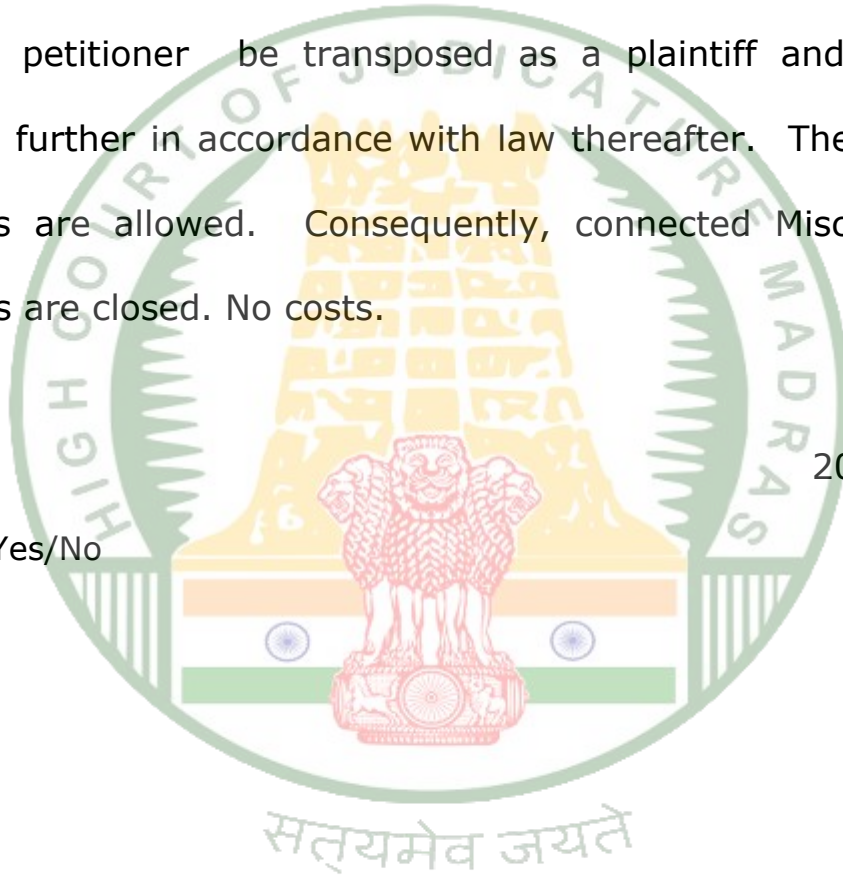
10. But that should not prevail on the mind of the court. The only aspect which should be examined is whether a party can claim a right to an undivided share over the properties mentioned in the schedule of the plaint. The third defendant herein admittedly has an right to claim 5/16th share in the property. Either as a defendant or as a plaintiff she still has a right to claim 5/16th share. Merely because she is categorized as a third defendant, that right does not extinguish. It cannot be brushed away. The plaintiff is certainly not the dominus litis in a suit for partition particularly when the defendant had also paid necessary court fee. Therefore I find every reason to interfere with both the orders passed below and the revision petitioner herein, if in her interests feels that it would be advantageous to be transposed as a plaintiff, there is no shift in the cause of action, there is no shift in the nature of shares to be divided, there is no shift in the nature of adjudication to be decided by the learned Judge. The issues remain the same, namely whether the present

revision petitioner is entitled to an undivided 5/16th or not. Similarly, whether the plaintiff is entitled to an undivided 5/16th share. Viewed from this angle, I would interfere with both the orders below and allow the revision petitions and direct that the revision petitioner be transposed as a plaintiff and the suit proceed further in accordance with law thereafter. The Revision Petitions are allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

20.07.2021

Index : Yes/No

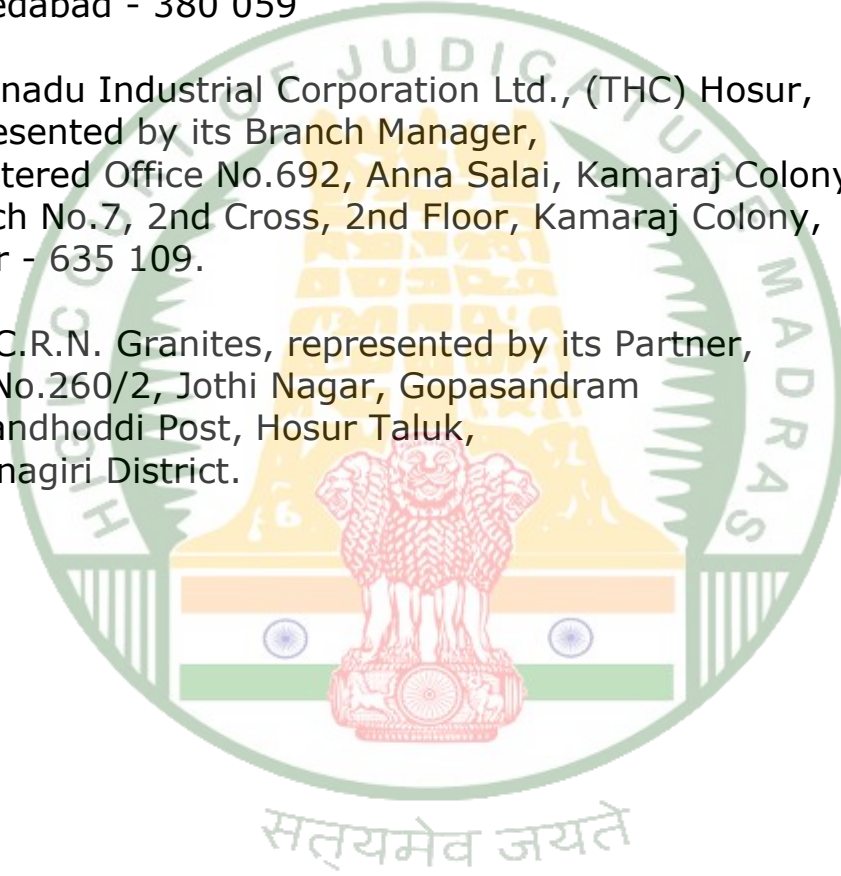
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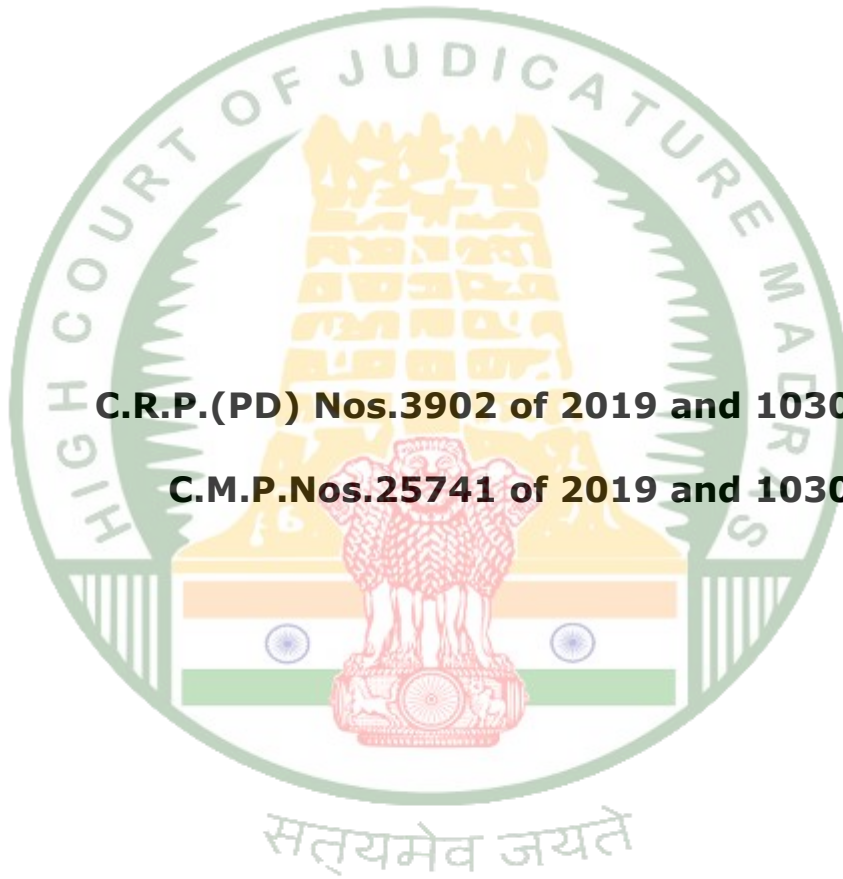
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C.V. KARTHIKEYAN, J.

mrn



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