

C.R.P.(NPD)Nos.3931, 3932, 3934 & 3935 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

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

C.R.P.(NPD)Nos.3931, 3932, 3934 & 3935 of 2018

Mukthabai (Deceased)

1. Srinivasalu Naidu
2. R.Lakshmi
3. B.Dharmendran

... Petitioners
in all CRPs

Vs.

P.K.Balasaraswathy

... Respondent
in all CRPs

Prayer in CRP.No.3931 of 2018:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.04.2018 made in I.A.No.14465 of 2017 in O.S.No.313 of 2007 passed by the learned III Assistant Judge, City Civil Court at Chennai.

Prayer in CRP.No.3932 of 2018:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.04.2018 made in I.A.No.14464 of 2017 in I.A.No.16666 of 2009 in O.S.No.313 of 2007 passed by the learned III Assistant Judge, City Civil Court at Chennai.

Prayer in CRP.No.3934 of 2018:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.04.2018 made in I.A.No.14467 of 2017 in O.S.No.313 of 2007 passed by the learned III Assistant Judge, City Civil Court at Chennai.

Prayer in CRP.No.3935 of 2018:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.04.2018 made in I.A.No.14466 of 2017 in I.A.No.16666 of 2009 in O.S.No.313 of 2007 passed by the learned III Assistant Judge, City Civil Court at Chennai.

For Petitioners
in all CRPs : Mr.G.Ilangovan

For Respondent
in all CRPs : No appearance

ORDER

These Civil Revision Petitions are directed as against the fair and decreetal orders dated 20.04.2018 passed by the learned III Assistant Judge, City Civil Court at Chennai, in I.A.Nos.14465, 14464, 14467 & 14466 of 2017 in O.S.No.313 of 2007 respectively, thereby dismissing the petitions to implead the petitioners as legal heirs of the

deceased plaintiff in the preliminary decree and final decree application and also to amend suit schedule property in the preliminary decree and final decree application.

2. In all the above Civil Revision Petitions, the petitioners are the proposed plaintiffs and the respondent is the defendant. The deceased plaintiff filed the suit for partition in O.S.No.313 of 2007 and the same was decreed by the judgment and decree dated 10.12.2007. Aggrieved by the same, the respondent herein filed Appeal Suit in A.S.No.801 of 2010 before this Court and the same was also dismissed by the judgment and decree dated 13.07.2017. In the mean time, the deceased plaintiff filed final decree application in I.A.No.16666 of 2009 and the same was decreed by the final decree dated 27.09.2011.

3. After passing the final decree, the sole plaintiff died leaving behind the petitioners as her legal heirs. Therefore, the petitioners filed the petitions to implead themselves as plaintiffs in the preliminary decree as well as the final decree. They also filed petition to amend the suit

schedule property to include the survey number and boundaries. The trial Court dismissed all the petitions as against which the present Civil Revision Petitions have been filed.

4. It is seen from the records, in the final decree application, an Advocate Commissioner was appointed and he inspected the suit property and filed his report stating that the suit property cannot be dividable, since the suit property is consisting of ground floor plus first floor. He also suggested that the suit property may be allotted as the first floor to one party and the ground floor to another party. After passing the final decree, the original plaintiff died and as such the petitioners being the legal heirs of the deceased plaintiff, they filed the present applications to implead themselves as proposed plaintiffs in the preliminary decree as well as the final decree. The petitioners also stated that they came to know that the suit property has not been properly described in the plaint. In the plaint, simply stated the door number and address of the suit property. On verification, the petitioners found the survey number and the boundaries and also the measurements. Therefore,

they filed petition to amend the suit schedule property to include the survey number and boundaries.

5. However, the Court below dismissed all the applications for the reason that when the original plaintiff was alive, the final decree was passed. Therefore, the applications to implead the proposed plaintiffs are not maintainable. Insofar as the amendment petitions are concerned, the Court below dismissed the same for the reason that after passing the final decree, the sole plaintiff died. Therefore, the legal heirs of the sole plaintiff could not file application to include the description of the property viz., survey number, extension of the property and boundaries.

6. Admittedly, when the sole plaintiff was alive, the final decree was passed in I.A.No.16666 of 2009 on 27.09.2011. Thereafter, the sole plaintiff died on 13.01.2015 leaving behind the petitioners as her legal heirs. Though the Advocate Commissioner filed his report, for all purposes the petitioners have to be impleaded as proposed plaintiffs. There is no dispute in respect of the legal heirship of the deceased

plaintiff. That apart, the Advocate Commissioner also filed report stating that the suit property ad measuring 1680.58 sq.ft. Therefore, the amendment sought for by the petitioners would not cause any prejudice to the respondent. For all practical purposes, the petitioners ought to have been impleaded as proposed plaintiffs and the schedule of the property has also to be amended with survey number and boundaries with proper extent. Therefore, the orders passed by the Court below are perverse and liable to be set aside.

7. In view of the above discussion, the orders dated 20.04.2018 passed by the learned III Assistant Judge, City Civil Court at Chennai, in I.A.Nos.14465, 14464, 14467 & 14466 of 2017 in O.S.No.313 of 2007 respectively are hereby set aside. The Court below viz., the learned III Assistant Judge, City Civil Court, Chennai is directed to implead the petitioners as plaintiffs in the suit in O.S.No.313 of 2007, and to amend the suit schedule property and proceed further in accordance with law.

8. Accordingly, all the Civil Revision Petitions are allowed.

There shall be no order as to costs.

29.07.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The III Assistant Judge,
City Civil Court, Chennai.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

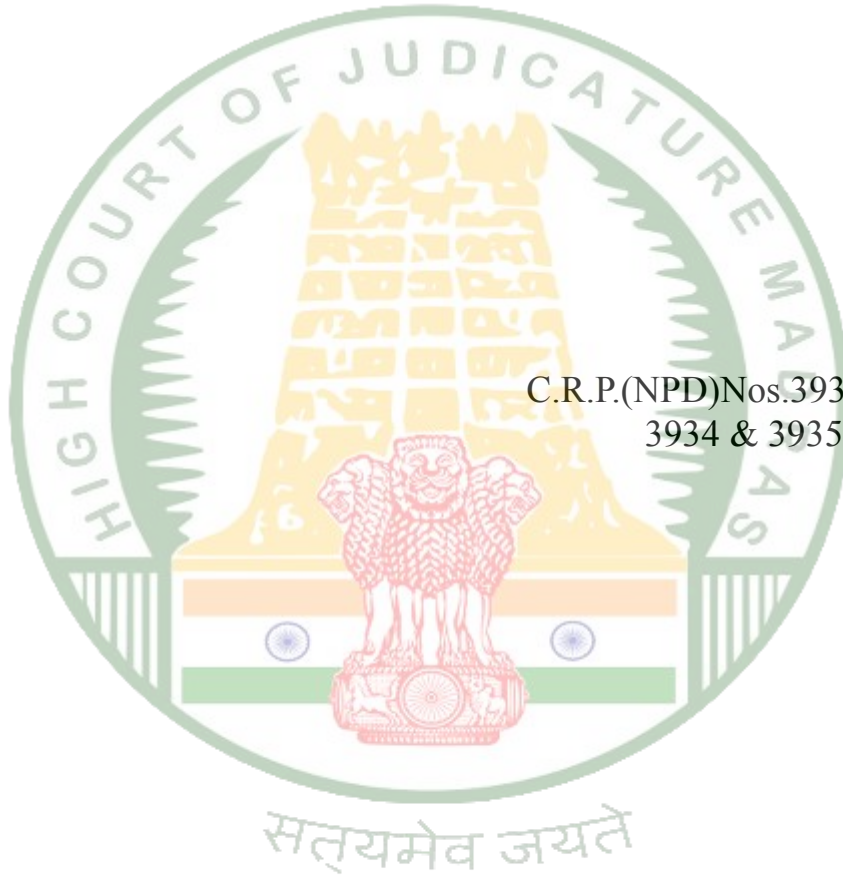


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G.K.ILANTHIRAIYAN, J.

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