

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD).No.3889 of 2018 and
C.M.P.No.21626 of 2018

N.Vadivelu (died)
Damayanthi (died)
1. Kalaiselvi
2. Selvamani
3. Shanthi
4. Paneerselvam
5.Saravanan
6.Balayogi

.. Petitioners

..Vs..

1.Gajendiran
2.Raghavan
3.Purushotham
4.Elumalai
5.Rathinam
6.Ramu
7.Gangammal
8.Neelavathy
9.Nagarathinammal
10.Ellappa Reddy

E.Saratha (died)
11.E.Raja
12.E.Srinivasan
13.S.Rani

14.S.Indira
(Respondents 11 to 14 are legal heirs
of Elumalai)

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order in I.A.No.816 of 2018 in O.S.No.466 of 1987 on the file of the District Munsif Court @ Tiruvallur dated 06.10.2018, in dismissing the application filed under Section 10 of the Code of Civil Procedure, 1908.

For Petitioners : Mr.V.Lakshminarayanan
For Respondents : Mr.A.R.Suresh (R1, R2, R5 & R8)
R3, R4, R6, R7, R9, R10, R11,
R12, R13, R14 (No appearance)

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below in I.A.No.816 of 2018 in O.S.No.466 of 1989, in dismissing the application filed under Section 10 of the Code of Civil Procedure, 1908.

2. The petitioners herein filed a suit in O.S.No.466 of 1987, before the learned District Munsif, Tiruvallur, seeking for declaration and permanent injunction against the respondents herein.

3. In the said suit, the petitioners herein filed interlocutory application in I.A.No.816 of 2018, under Section 10 of the Civil Procedure

Code read with Section 151 of C.P.C to stay the entire proceedings of the suit in O.S.No.466 of 1987, till the disposal of the S.A.No.7 of 2014 pending on the file of this Court, which was dismissed by the Court below vide order dated 06.10.2018. Challenging the same, the present Civil Revision Petition has been filed.

2.The learned counsel for the revision petitioners Mr.V.Lakshminarayanan submitted that the above said application was filed due to the reason that the brother of the revision petitioner filed a partition suit in O.S.No.49 of 2000, which was decreed, as against which A.S.No.16 of 2011 was filed and the same was allowed and as against the same, S.A.No.71 of 2014 is filed before this Court and the same is pending. Therefore under such circumstances, the above said interlocutory application has been filed to stay the entire proceedings of the suit in O.S.No.466 of 1987, till the disposal of the S.A.No.7 of 2014.

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3. The main contention raised by the learned counsel for the revision petitioners is that the suit schedule property in O.S.No.466 of 1987 is mentioned as item no.7 of the suit schedule properties in O.S.No.49 of 2000

which was filed for partition, In case, if the said property is allotted to some body else, the petitioners may not have any right over the same and therefore in such circumstances, the proceedings in O.S.No.466 of 1987, is unnecessary and it would ultimately waste the precious time of the Court. Thus, in order to avoid the same, the above interlocutory application was filed. However, without considering the said aspects, the court below dismissed the application and therefore the same warrants interference.

4. Per contra, the learned counsel for the respondents would contend that the suit in O.S.No.466 of 1987 is pending for about 30 years and further the respondents/defendants are not parties to the partition suit in O.S.No.49 of 2000 and therefore the Judgment to be passed by this Court in the Second Appeal will not bind them. He further submitted that the proceedings may go on in O.S.No.466 of 1987, pending disposal of the Second Appeal.

5. Heard both sides. Perused the records.

6. Upon hearing the submissions made on either side, this Court finds that O.S.No.466/1987 was filed by the petitioners, seeking declaration of title

and permanent injunction of the suit schedule property, with regard to Survey No.4/2. The brother of the petitioners filed O.S.No.49/2000 for partition in O.S.No.466 of 1987 against the petitioners. Further the suit schedule property in O.S.No.466 of 1987 was mentioned as item no.7 of the suit schedule properties in O.S.No.49 of 2000.

7. The main contention raised by the revision petitioners is that if the rights of the suit schedule property will be decided in the partition suit and if the said the suit is decreed as prayed for and in case the property may be allotted to any one of the co-sharers other than the plaintiffs, then the continuation of the present suit is unnecessary and therefore it will be appropriate to stay the proceeding. He further submitted that the suit was filed by the revision petitioners herein and the interest of the respondents are not going to be affected any way. सत्यमेव जयते

8. It is true that the suit was pending for the past 30 years, due the reason that at some point of time, suit was dismissed for default, which was restored and thereafter the petitioner's father passed away and his legal heirs were impleaded. However, taking into consideration the submission of the learned counsel for the petitioners that in case if the suit property is going to be

allotted for the co-sharers other than plaintiffs, then the entire adjudication in O.S.No.466 of 1987 is no way going to be benefited to both the parties, but the court below have not considered this aspect and simply dismissed the application filed by the petitioners.

9. In view of the above, this Court is of the opinion that in the interest of both the parties, it would be appropriate to stay the proceeding in O.S.No.466 of 1987, until the disposal of the Second Appeal filed before this Court in S.A.No.71 of 2014.

10. Accordingly the order passed by the Court below in I.A.No.816 of 2018 in O.S.No.466 of 1987 dated 06.10.2018 is set aside and the further proceedings in O.S.No.466 of 1987 pending on the file of District Munsif, is stayed until the disposal of S.A.No.71 of 2014.

In the result, this Civil Revision Petition is allowed . No costs.
Consequently, connected M.P. is closed.

23.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The District Munsif Court @ Tiruvallur

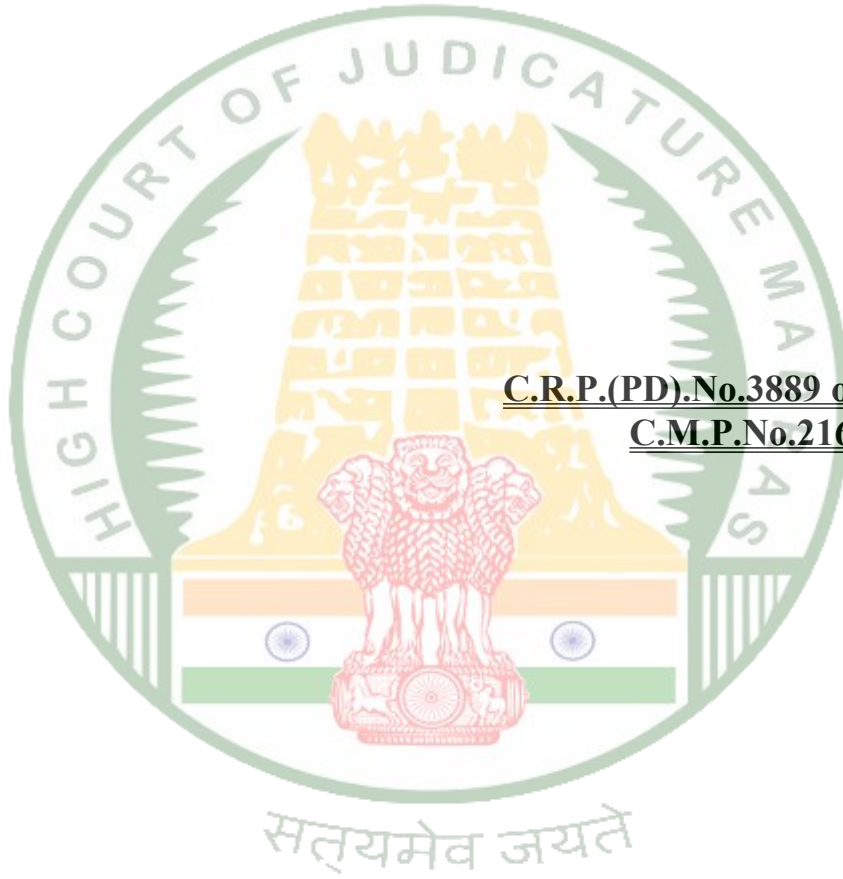


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KRISHNAN RAMASAMY,J.

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