

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.4045 of 2018
and C.M.P.No.22351 of 2018

1.Krishnaveni
2.Minor Buvaaneswari
Rep. by her next Friend Krishnaveni / 1st Petitioner

... Petitioners

Vs

1.Elanjiammal
2.Santosam
3.Seetha
4.Indhirani
5.Sathya

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.07.2018 made in I.A.No.160 of 2016 in O.S.No.23 of 2010 on the file of the Subordinate Judge, Gingee.

For Petitioners : Mr.D.Ravichander

For Respondents : Mrs.S.Sasikala for R1 to R5

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 25.07.2018 made in I.A.No.160 of 2016 in O.S.No.23 of 2010 on the file of the Subordinate Judge, Gingee, thereby allowing the application seeking permission to file additional written statement.

2. The petitioners herein are the plaintiffs and the first respondent herein is the 5th defendant in the said suit. The petitioners herein filed the said suit for partition and for permanent injunction.

3. Pending the said Suit, the 5th defendant was impleaded and she was permitted to file a written statement. She filed the written statement on 14.06.2013. After examination of P.W.1, the 5th defendant filed an application seeking permission to file additional written statement and the same was allowed on 25.07.2018 on the file of the Subordinate Judge,

Gingee. Aggrieved by the same, the above Civil Revision Petition has been filed.

4. The learned counsel for the petitioners herein would submit that according to the first respondent herein, the suit was already partitioned to family members and there is no other property in their partition, whereas the additional written statement states that Mannu Poosari and Chinnathambi Poosari are illegitimate children of Vedantham Poosari and that they are not entitled to the share in the joint family properties and she also claimed 4/6 share in the suit properties. Even then, the Court below allowed the application.

5. Per contra, the learned counsel for the first respondent herein would submit that the first respondent was impleaded as the 5th defendant in the said suit. She filed a written statement and she also filed an application seeking permission to file additional written statement. The Court below allowed the application permitting the first respondent herein to file additional written statement and there is absolutely no prejudice caused to the petitioners herein.

6. Heard, Mr.D.Ravichander, learned counsel appearing for the petitioners herein and Mrs.S.Sasikala, learned counsel appearing for the respondents herein.

7. A perusal of the original written statement filed by the first respondent herein revealed that the suit properties were partitioned into three shares. Suppressing the said fact, the said suit has been filed and as such she prayed for dismissal of the suit. Whereas in the additional written statement, the 5th defendant came out with a new plea that the said Mannu Poosari and Chinnathambi Poosari are illegitimate children of Vedanthan Poosari. Therefore, they are not entitled to have any share in the joint family properties.

8. As rightly pointed out by the learned counsel for the petitioners herein, the first respondent herein never disputed that they are legitimate sons of Sakkarai Poosari, that their mother Kanniammal alone is the legally wedded wife of Sakkarai Poosari and that Valliammal is his concubine.

9. Further the first respondent herein stated that the properties were already divided into 3 equal shares and an agreement dated 05.06.1976 was executed by the said Mannu Poosari and Chinnathambi Poosari and Valliammal that the suit properties were allotted to the share of Mannu Poosari. Now, she cannot turn over and deny the same and also claim that she is entitled to have 4/6th share in the suit property. It amounts to entertaining of a new plea and also the plea raised in the additional written statement which is inconsistent to the plea raised in the original written statement it cannot be allowed.

10. In support of the contention raised by the petitioner herein the Judgment reported in **(2000) 3 LW 92 M.Palaniappan -vs- Nachimuthu and another** is extracted below:

"15. Law is well settled that after filing of written statement by the defendant, the additional written statement that may be filed by defendant after the amendment of the plaint should be confined and limited to the amended portion of the plaint only. He cannot put forward pleas which

are not in answer to the fresh matter introduced by the amendment of plaint and are inconsistent with the pleas previously put forward. A defendant also cannot ignore his earlier written statement while filing written statement to amended plaint. He has a right to have his say only with respect to the matter introduced by amendment and no more."

11. The inconsistent plea cannot be allowed to be introduced in the form of additional written statement and also it cannot be permitted to be introduced as the new plea by filing the additional written statement. Without considering the above, the Court below mechanically allowed the application without any reasons.

12. Therefore, the Order dated 25.07.2018 made in I.A.No.160 of 2016 in O.S.No.23 of 2010 on the file of the Subordinate Judge, Gingee is set aside. The Court below is directed to dispose the suit within a period of **six months** from the date of receipt of a copy of this order.

13. Accordingly, this Civil Revision Petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

16.07.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

To

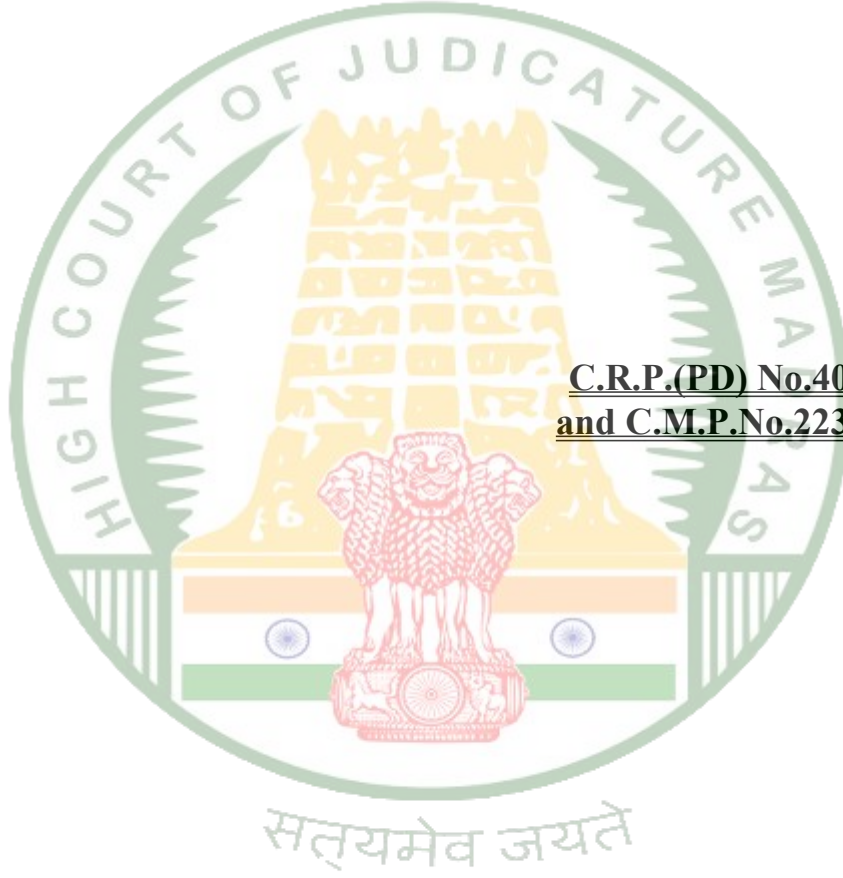
The Subordinate Judge,
Gingee.



WEB COPY

G.K.ILANTHIRAIYAN. J,

rna



C.R.P.(PD) No.4045 of 2018
and C.M.P.No.22351 of 2018

WEB COPY

16.07.2021