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C.R.P.(PD).No.1633 & 2035 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 23.02.2022**

**C O R A M**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(NPD).Nos.1633 & 2035 of 2020**

**and**

**C.M.P.No.9997 of 2020**

**[C.R.P.(NPD).No.1633 of 2020]**

K.Jaya

...Petitioners/Respondent/Defendant.

-V-

Padma

...Respondent/Petitioner/Plaintiff.

**[C.R.P.(NPD).No.2035 of 2020]**

Padma

...Petitioners/Plaintiff/Petitioner

-V-

Jaya

...Respondent/Defendant/Respondent.



C.R.P.(PD).No.1633 & 2035 of 2020

**Prayer in C.R.P.(NPD).No.1633 of 2020** : Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.06.2020 made in I.A.No.3 of 2019 in O.S.No.25 of 2009 on the file of the learned Principal District Court, Namakkal by allowing the Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.V.K.Vijayaragavan

**Prayer in C.R.P.(NPD).No.2035 of 2020** : Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.3/2019 in O.S.No.25/2019 dated 15.06.2020 in so far as it is against the petitioner herein on the file of the Principal District Judge, Namakkal.

For Petitioner : Mr.V.K.Vijayaragavan

For Respondent : Mr.N.Manoharan



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## **COMMON ORDER**

This Civil Revision Petition No.1633 of 2020, is filed challenging the order passed by the Principal District Judge Nammakal. In I.A.No.3 of 2019 and O.S.No.25 of 2009.

2. The said petition is a final decree proceeding, wherein the plaintiff had sought for appointment of an Advocate Commissioner to divide the suit schedule properties and to allot half the share to her and also for determining the profits lawfully due to her from the schedule A and C Properties and thereafter pass a final decree in terms of the report of the Advocate Commissioner.

3. The revision petitioner who is the defendant had challenged the said order on the ground that the Learned



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Judge has overlooked the provisions of Section 44 of the Code of Civil Procedures which provides that it is only a District Collector who can effect the division and not an Advocate Commissioner. The grievance of the appellant/revision petitioner was that the Court below had not considered any of the judgements provided by her.

4. When the revision had initially come up before this Court, the learned Judge before whom the matter had come up was not inclined to follow the decision reported in **2020 (5) CTC 689 - Kaliyannan Vs. Sangeetha and others**, where a learned Judge of this Court had held that Section 54 of the CPC, would not apply to a ryotwari tenant and the decree need not be sent to the District Collector for division of the property.



5. Since the learned Judge had not agreed with this view, he had directed the matter to be placed before the Hon'ble Chief Justice for placing the matter before the Hon'ble Division Bench to determine the procedure that is required to be followed in respect of Section 54 of the CPC and Order 20 Rule 18 of the CPC in Partition Suits. The Hon'ble Division Bench before which the reference was laid, answered the reference as follows:

*"If a suit is filed for partition in respect of Estate as defined in the Tamil Nadu Estate land Act, 1908 or under any other Estate Laws which are mentioned under Section 7 of Tamil Nadu Court Fee and Valuation Act as stood before the amendment by Act of 2017, the Civil Court after passing the decree declaring the rights of the parties interested in the property shall send the said decree to the Collector as per Order 20 Rule 18(1) of CPC to*



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*divide the property by following the provisions of Sections 54 of CPC. Where a suit is filed in respect of ryotwari land and other immovable properties or movable properties, the Court by following the procedures prescribed under Order 20 Rule 18(2) has to pass preliminary decree and thereafter pass final decree."*

6. Therefore in the light of the above pronouncement, the Civil Revision Petition No.1633 of 2020 has to necessarily be dismissed.

7. As regards C.R.P. No.2035 of 2020, the same is filed by the plaintiff challenging the order in I.A.No.3 of 2019 wherein the learned Principal District Judge Nammakal disallowed the application with reference to mesne profit.



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8. It is informed by the learned counsels that the preliminary decree has been challenged in A.S.No.469 of 2019, therefore, the learned counsel for the petitioner fairly conceded that C.R.P. No.2035 of 2020 may be closed as the petitioner would work out his remedy in the cross-appeal filed by them before this Court.

9. The above Revision Petitions are therefore ordered accordingly. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

**23.02.2022**

Index : Yes/No  
Internet : Yes/No  
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To  
The learned Principal District Court,  
Namakkal



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**P.T. ASHA, J,**  
shr

**C.R.P.(PD).No.1633 & 2035 of 2020**  
**and**  
**C.M.P.No.9997 of 2020**

**23.02.2022**