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CRP. No.1915 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.1915, 1956 and 1959 of 2019

1.V.S. Narisiman	...Petitioner in CRP No. 1915 of 2019
1.R.Ganesan	...Petitioner in CRP No. 1956 of 2019
1.K.P.Muthusamy (died)	
2.M.Susheela	
3.M.Lathulpa	
4.M.Premalatha	
5.M.Yasodha	...Petitioners in CRP No. 1959 of 2019

(Petitioners 2 to 5 brought on records as Lrs of the deceased sole petitioner vide order of Court dated 16.08.2022 made in CMP No. 13207 & 13208 of 2022 in CRP No. 1959 of 2019(JNBJ))

1.Thirumalaisamy
2.C.Jeevanantham
3.M.Karunaiprakasam
4.M.Manickam
5.S.Chinthamani
6.D.Kaviarasu
7.D.Devika



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...Respondents in CRP No. 1915, 1956 and 1959 of 2019

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PRAYER IN CRP NO.1915 OF 2019: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order passed in E.A No.481 of 2007 in E.P No.10 of 2006 in O.S No. 400 of 1991 dated 31.10.2018 on the file of the II Additional Sub ordinate Judge, Coimbatore.

PRAYER IN CRP NO.1956 OF 2019: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order passed in E.A No.480 of 2007 in E.P No.10 of 2006 in O.S No. 400 of 1991 dated 31.10.2018 on the file of the II Additional Sub ordinate Judge, Coimbatore.

PRAYER IN CRP NO.1959 OF 2019: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order passed in E.A No.478 of 2007 in E.P No.10 of 2006 in O.S No. 400 of 1991 dated 31.10.2018 on the file of the II Additional Sub ordinate Judge, Coimbatore.

For Petitioners

(In CRP Nos. 1915 and 1956 of 2019) : Mr. R.Singgaravelan Senior counsel,
for V.L.Akshai Sanjin Kumar

For Petitioner

(In CRP No1959 of 2019) : Mr. D.Krishna Prasad
Senior counsel.
Mr.N.Damodaran

For R1 in all petitions

: Mr. Thirumalai Rajagopal

For R2 & R5

: Addressee cannot be located

For R3

: deceased

For R4,R6 & R7

: unclaimed



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in S.F No. 307, 308 & 318 which was named as "Balaji Nagar" wherein house sites No.3, 11 and 180 was purchased by the petitioners herein and other sites also purchased by other persons from the second respondent herein. Before that purchase, on 22.02.1989 the second respondent herein entered into agreement of sale with number of persons on behalf of 3 to 9 respondents who are the legal heirs of deceased Murgasa Muthaliaar. After that respondents 6 to 8 cancelled power deed dated 22.02.1989 through cancellation deed dated 13.07.1990. Furthermore, respondents 10 and 11 were minors at that time hence they were represented by their mother as a guardian Dhanabagyam, the said Dhanabagyam filed partition suit in O.S No.406 of 1990 on the file of the II Sub Court, Coimbatore, against respondents 2 to 9 demanded 16/105 shares, the said suit was compromised based on the compromise the final decree was passed on 10.10.1990 and allotted house sites Nos. 8, 10, 168, 169, 171 and 172 in Balaji Nagar to the share of 10 and 11 respondents. Thereafter, the second respondent became power agent of respondent 3, 4 and 5, through power deed dated 20.09.1990 and the respondent 6 and 9 also gave power through document dated 13.06.1990 therefore through two separate power deed the second respondent herein being a power agent of the respondent 3 to 9. Thereafter



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the second respondent executed the sale deeds dated **20.06.1991**,

07.01.1991 and 14.06.1990 in respect of house sites No. 3,11,180 as

described in the schedule in favour of the petitioners for valid consideration.

Thereafter, the petitioners are in possession and enjoyment of the property

and also by availing loan they constructed house which was known to the

mother of first respondent herein Padmavathi and she received a sale

consideration from the second respondent/power agent and some amount

was deposited at SBI Thiruvangoor for the welfare of minor, But

Suppressing all the facts the first respondent son of Padmavathi after

attaining the majority at the instigation of the family members filed suit in

O.S No. 400 of 1991 and obtained exparte decree. Based on the above

decree the first respondent filed E.P No. 10 of 2006 and the same was

ordered. Against which the petitioners herein filed E.A No. 478, 480 and

481 of 2007 on the file of the II Additional Sub ordinate Judge, Coimbatore.

3. After considering the oral and documentary evidence executing Court finally held that plaintiff filed suit for partition in respect of ancestral property and obtained valid decree. Furthermore, father of the plaintiff namely 7th respondents herein acting against the interest of the minor and sold the property through power agent/second respondent herein to this



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claimants/petitioners as such would not bind the right of the minor plaintiff/first respondent herein since because with regard to minor share without obtaining proper permission, the power was given to the second respondent herein as such is invalid and not bind the plaintiff. Accordingly, purchase made by this claimant would not bind the minor plaintiff herein accordingly said applications were dismissed. Challenging the said findings these revision petitions has been filed by the petitioners.

4. The learned counsel for the claimant argued that lower Court ought to have appreciated the fact that the legal heirs of Murugasa Muthaliar has executed power deed and based on that power deed the agreement of sale was executed in favour of claimants even on the that date of the agreements this minor plaintiff/first respondent herein was not born. Further, the executing Court failed to appreciate the fact that mother of the minor plaintiff was representing her minor son/first respondent has signed as witness/Ex.B71 and also signed as a witness in power deed 20.09.1990 Ex.P.57 as such she was well aware of the sale agreement entered by her husband, taking advantage of the misunderstanding with her husband by suppressing all these material facts obtained exparte decree final decree by



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instigating her minor son/first respondent herien. Further, he submitted that executing Court ought to have appreciated the decree passed in O.S No. 400 of 1991 is not binding on the petitioners for the reason that the sale deed dated 20.06.1991 was executed in favour of the petitioner by the second respondent even before the filing of O.S No. 400 of 1991. Further he submitted that executing Court failed to appreciate the fact that the first respondent has filed the execution petition for taking delivery of the house sites Nos. 3, 11, 12, 161, 180, in S.F Nos. 355 and 354 of Kalapatti Panchyat, Coimbatore, which is inclusive of the petitioner's property and are not even in the possession of the respondents 2 to 11 but it is in the possession of the subsequent buyers. Learned Counsel for the revision petitioner argues that as per section 47 of CPC the right and title of the claimants/parties who claiming right over the property, is to be decided before passing order of the delivery by executing Court, but without appreciating oral and documentary evidence adduced on the side of petitioner, Court erroneously dismissed as such is unfair and liable to be set aside.

5. By way of reply, the learned counsel for the appearing for the first respondent submitted that father of the first respondent Manickam/7th



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respondent herein was acting against the interest of the minor/first respondent since because he executed power attorney in favour of the second respondent without obtaining proper permission from the Court since the property is a ancestral property of the first respondent herein. Based on the power of attorney, the ancestral property was sold to these petitioners herein and others which would not bind then minor/plaintiff and the same was rightly appreciated by the Trial Court by relying decree passed in O.S No.400 of 1999 as such is valid needs no interference of this Court.

6. The plaintiff/first respondent herein claiming right over the property based on the decree passed in O.S No.400 of 1999 the said suit was filed by his mother Padmavathi as a guardian of this first respondent against the defendants 1 to 10, the first defendant is the power agent, second respondent is wife of the late Murugash Muthaliar, defendant 2 to 8 are legal heirs of the deceased said Murugash Muthaliar, who contested the said in which she claimed that suit property is Hindu joint family property in which Murugash Muthaliar and his four sons equally entitled to 1/5 share after his demise the plaintiff being the son of Murugash Muthaliar defendant also having share along with his father having equal share along with father's share of 8/35. As per the plaint averments after marriage there is no cordial



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relationship with father-in-law family, as her husband failed to look after the family and chased out her mother along with minor son from the matrimonial house. In spite of advice given by the elders his father not changed his attitude and he developed illegal intimacy with other ladies failed to maintain his wife Padmawathi and his minor plaintiff herein. Subsequently, they came to know that his father entered into sale agreements with first respondent. Hence she issued notice in the year of 1991 for which there is no reply hence suit O.S 400 of 1991 for partition was filed and also known from the first defendant reply that there was suit filed by his father 406 of 1990 and also came to know that agricultural property property was converted into house site and also there is no necessity to sale the property and any sale with regard to the plaintiff's share would not bind him. Besides, the plaintiff/first respondent was not benefited by the sale made by his father hence praying for division of the property Power agent raised objection that the legal heirs Murugash Muthalier 2 to 8 respondent entered into an sale agreement with respect of family property including suit property for valid sale consideration, and same was received by all the defendants, and possession was handed over to him on 01.02.1989 thereafter property was converted into house site based on the



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agreement.

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7. Furthermore, as per the sale agreement he paid valid sale consideration to 6th defendant/the father of the plaintiff herein and this was very well known to his wife/mother of the minor plaintiff/Padmavathi. In fact, at the time of the agreement period mother of the minor plaintiff gave birth to the male child/first respondent for medical expenses and to develop his land by digging bore well sale proceeds were utilized by minor plaintiff and his father. Furthermore, out of sale proceeds a sum of Rs. 20,000/- was deposited in SBI 12.07.1990 deposited in State Bank of India, Koliambarai in A.C No. 698508 in the name of the minor plaintiff from that he received interest to maintain minor child. By relying all these facts he contend that it is proved that the sale proceeds were utilized for the Welfare of the minor and same was known to his mother Padmavathi. The father and mother of the plaintiff are in cordial relationship, in order to obtain more money from this second respondent and also from purchasers they filed collusive suit. Furthermore, suit O.S 406 of 1990 was filed by minor child of the fourth respondent one of the son of Murugasa Muthaliar and the suit also filed by Guardian mother of those children namely Dhanabackiam. Thereafter, said



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suit entered into compromise and the same was withdrawn. Thereafter power of attorney was executed on 13.06.1990 in his favour of the second respondent herein by the father of the first respondent in that document mother of the minor child Padmavathi signed as identifying witness. Even other defendants executed power of attorney in favour of this defendants on 20.09.1990 in that document also Padmavathi signed as one of the witness. So, she was very well aware about the power of attorney in favour of this defendants. So neither this defendants nor his father go against the welfare of the minor child. On the other hand, Padmavathi utilized the money deposited in the SBI, Koolalipalam for the welfare of the minor son with the knowledge as his guardian.

8. The defendants 9 and 10/first respondent herein filed their objection submitted that as per the contention of the 9 and 10 defendant they admits the relationship but denied the plaintiff's claim. They submitted that they filed suit O.S No. 406 of 1990 for partition 8/105 share in which plaintiff's father was one of the defendants, compromise decree was passed based on that 6 house site was allotted (site No. 8,10,168,169,171 and 172) thereafter they enjoyed the property except that plaintiff has no right



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because it is not a joint family property furthermore till date said judgement in force. In fact, at the instigation of the plaintiff's family members he filed vexatious suit prayed to dismiss this petition.

9. Before the Trial Court on the side plaintiff P.W.1 and P.W.2 were examined. On the side of the defendants there is no evidence was adduced and remains exparte. No oral and documentary evidence objection was filed by the defendants. Finally, the Trial Court held that is the suit property as a third party/first defendant power of attorney has no right in the joint family property, other defendants who are legal heirs not raised objection, since property belongs to ancestors Murugasa Muthaliar father of the plaintiffs entitled to 1/5 share in which as a co-sharer this plaintiff is entitled to 8/70 share lawfully. Accordingly, preliminary decree was passed. Now to divide the property he filed execution application.

10. The revision petitioners herein Narasiman, Ganesan, Muthusamy claiming that they have purchased house sites No. 11, 3, 180 (short "house sites") respectively in Balaji Nagar, Kalapatti Pachayat, Coimbatore from the second respondent(power agent of the legal heirs (including father of plaintiff) of the original owner late Murugasa Muthaliar) herein by virtue of registered sale deeds dated 14.06.1990, 07.01.1991 and 20.06.1991. On



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perusal of the records originally the said house sites are situated in S.F. No.

354 and 355 in which A schedule property was allotted to Murugasa Muthaliar. The contention of the petitioner herein/claimant is that the property in S.F No. 354 and 355 was converted as house site and purchased by them for valid consideration from power agent/Jeevanantham/second respondent herein based on the said power deed was executed by the legal heirs of Murugasa Muthaliar in which, as a guardian of the plaintiff/first respondent, his mother Padmavathi has signed as witness. According to the revision petitioners, that they have purchased a house sites for valid consideration through registered registered sale deeds dated 14.07.2010, 07.01.1991, 20.06.1991 from the second respondent, who is power agent of respondent 6 to 9 herein. Including the father of the minor plaintiff/first respondent herein in above suit O.S No. 400 of 1991 ever since they are in possession of the suit property. Further, they claimed that along with these house sites dry land 3.86 acres in S.F No. 354, 355 in Kalapatty Village were partitioned. In fact, vast extent of dry land of 3.86 acres in S.F NO. 354, 355 Kalaipatty Village was originally belongs to share of Murugasa Muthaliar through partition deed dated 11.04.1961, the said Murugasa Muthaliar having 6 sons, daughters and his wife he died leaving behind the



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above as a legal heirs. Thereafter all were given power to the Jeevananthan (power agent)/Second respondent herein, the said power holder converted land into house site and got the DTCP plan approval in the year 1989 along with other adjacent lands which was named as Balaji Nagar, in which, the above said house sites were purchased by these petitioners.

11. But on seeing the plaint averments in suit O.S No. 400 of 1991 plaintiff/first defendant herein claimed that as a minor he was under the care and custody of his mother Padmavathy since his father Manickam/fourth respondent herein has not taken care of him and also his mother was forcefully sent out from the matrimonial home. Thereafter, she was living along with her parents and minor plaintiff/first respondent herein, further he also contends that his father had illegal intimacy with other women and also attempted to cause encumbrance over the joint family properties without considering the welfare of the minor plaintiff/first respondent herein. Hence he filed the suit for partition claiming $\frac{1}{2}$ share in his father's share of $\frac{8}{35}$ in entire joint family property Further he came to know that O.S 406 of 1990 was pending between other co-sharers. Therefore, he approached the Court for division of properties. Thus, so the case of the plaintiff is that his father Manickam/fourth respondent herein attempted to create a encumbrance over



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the property belongs to joint family property in which he is having share along with his father's share 8/35. The suit property described in the schedule denotes that total extent of 3.86 acres along with Terrace/house. Before the Trial Court, the power of attorney/Jeevanantham/second respondent alone contested the suit, but the father of the first respondent and his father's brother were remains exparte and other co-sharers also remains exparte. On considering the evidence on record, the Trial Court decreed the suit in favour of the plaintiff/1st respondent herein.

12. Furthermore, in the said suit alleged purchaser of the property also not added as party since because they are not legal heirs of the joint family. Therefore, the Trial Court ignoring that earlier final decree in O.S No.406 of 1990 which was passed based on compromise decree between the plaintiffs family and other co-sharers. As per the contention of petitioners amount which were given to the share of the father of the minor plaintiff also utilized for the welfare of the minor child by depositing sale consideration of Rs.20,000 in SBI Kolilamparai on 12.07.1990 YSC NO. 698508 and the welfare of the minor child also protected by the said sale. Based on this preliminary decree passed in O.S No. 400 of 1991 and final decree also effected wherein house sites of Balaji Nagar namely Plot NO.



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3,11,160,161,170 in S.F No. 354 and 355 and Kalapatti village was allotted

to the share of the minor plaintiffs, to take delivery said property allotted to the plaintiff the final decree also passed, based on that E.P was filed E.P No.10 of 2006, wherein, paper publication was issued through which the petitioners herein came to know about the suit proceedings and filed obstruction applications in E.P. No. 478, 480 and 481 of 2007 in that claim petition the obstructers contended that they have purchased the suit property from the power agent Jeevananthan/second respondent herein the said document was marked as Ex.P.15 power of attorney given to the said Jeevananthan/Second respondent herein dated 13.06.1990 one day prior to Ex.P.3 to prove the division of the property as well as conversion of the house plots the plan approval has been as marked Ex.B67. The fact reveals that prior to the present suit already there was suit filed by the Dhanabackiam on behalf of the minor child in O.S No. 406 of 1990 claiming partition of share as legal heir of Murugasa Muthaliar. Admittedly Dhanabackiam is a wife of Duraisamy who is one of the son of the said Murugash Muthaliar in that suit father of this plaintiff is fourth respondent herein namely Manikam also one of the party, other legal heirs and his power agent also parties to the said suit. In that suit the Dhanabackiam



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challenged the sale agreement executed by the legal heirs of Murugasa Muthaliar dated 12.09.1989/ Ex.22 in favour of the present power agent Jeevanantham. Thereafter, compromise was arrived in that suit and share was allotted to that plaintiff based on that compromise decree was passed. Accordingly, compromise was entered into between them based on compromise final judgement was passed on 10.10.1990. On perusal of the said final decree the entire suit property of Murugasa Muthaliar was divided into plots along with this house site of the Balaji Nagar which was allotted to the legal heirs. Before entering into the said compromise, power of attorney was executed on 13.06.1990 in favour of this Jeevanantham/second respondent herein by the sons of Murugasa Muthaliar and their sisters the said power deed dated 13.06.1990 was relied by the obstructer stating that mother of the plaintiff namely Padmavathi signed as identifying witness. Therefore as rightly pointed out by the petitioner's counsel mother of the minor plaintiff/first respondent was signed as witness of the power deed given to the second respondent herein along with her husband and other other sharers.

13. As per the Averments of the said power of attorney reveals that power was given for dividing the suit property into house plots which was



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belongs to the Murugasa Muthaliar along with other extent belongs to third party was divided into house plots as per the DTCP plot approval in the year 1989. Hence, at the time of executing said power of attorney dated 13.06.1990 the present suit property with other property were converted into house sites approved by DTCP. But on seeing the plaint schedule the present plaintiff/first respondent herein described the suit schedule as 3.84 acres as if shown as dry land without mentioning about the conversion of dry land into house site, in fact in the year 1989 itself properties were converted into house sites and the said fact also known to his mother Padmavathi, recitals clearly reveals from the power deed of the 1990 wherein she signed as identifying witness. Further, contention of the plaintiff is that his father was not taken care of his family including his mother hence he came forward with suit for partition. If at all his father not taken care of him and his mother the plaintiff should have filed suit much prior to the present suit more particularly at the time of executing power deed but the power deed executed in the year 1990 prior to the suit, moreover the property were divided as house site in the year 1989 that apart all those period mother of the plaintiff not raised any objection.

14. After executing power deed property was sold to the various



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purchasers including these petitioners. Before filing suit the petitioners had purchased the property for valid consideration. Furthermore, as per the contention of the power holder Jeevanantham/second respondent herein a sum of Rs.1,01,462 was given to the plaintiff's father as a share of sale consideration and at the request of mother of the plaintiff some portion of amount was utilized for medical expenses of her delivery and also portion of amount was utilized for digging bore well in the lands belongs to the plaintiff's father Manickam and also deposited a sum of Rs.20,000/- on 12.07.1990 in SBI, Kolilamparai in YSC No.698508 and the said deposited amount was also utilized by the plaintiff/first respondent herein. Hence as a guardian of the plaintiff/first respondent herein the said deposited amount was utilized by her mother but the Trial Court simply ignoring all the objection raised by the power of attorney. Admittedly, while filing suit the power of attorney was given to the Jeevanantham was in force, so on the date of filing of the suit the co-sharers remains exparte. Hence as a power of attorney of the Co shares Jeevantham filed written statement but the Trial Court brush aside the objection raised by the Jeevanantham/first defendant that he is not a co-sharer as such suit is un-sustainable one. Moreover sale consideration paid by the power of attorney was utilised for the welfare of



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minor plaintiff by this mother. Moreover, in earlier suit proceedings in O.S No.406 of 1990 the father of the plaintiff Manickam also one of the party and compromise was arrived with consent of all legal heirs of Murugasa Mudaliar to implement the division of the property power deed was executed in favour of the second defendant herein before that in the year 1989 itself the sale agreement entered by all the co-sharers. When the first defendant started to sell the property through power of attorney deed the present suit was filed. While so not only these petitioners but also other purchasers also purchased the house site in the Balaji Nagar. Further, having signed as identifying witness in the power deed the mother of the plaintiff is very well aware of all these proceedings. However, the plaintiff/first respondent has not including any of the other purchasers except this petitioners. on the other hand minor plaintiff/first respondent filed suit as if properties are dry land but in the year 1989 itself the property was converted into house site all those facts was not considered by the executing Court as well as Trial Court. So the father of the plaintiff gave power of attorney to the second defendant in that power deed his mother Padmavathi signed as identifying witness and portion of the sale consideration was utilized for the welfare of the minor child. All these facts were known to the parents of the plaintiff in order to



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get money from the purchasers the plaintiff's father and mother remains
exparte in the suit.

15. Further, the learned counsel for the petitioners relied the judgment of the Supreme Court in the case of Asgar and others Vs Mohan Varma and others reported in 2020 16 SCC 23:

46. In view of the settled position in law, it is evident that the appellants were entitled, though they were strangers to the decree, to get their claim to remain in possession of the property independent of the decree, adjudicated in the course of the execution proceedings. The appellaants in fact set up such a claim. They sought a declaration of their entitlement to remain in possession in the character of lessees. Under Order 21 Rule 97 CPC, they were entitled to set up an independent claim even prior to their dispossession. Under Order 21 Rule 101 CPC, all questions have to be adjudicated upon by the Court dealing with the application and not by a separate suit. Upon the determination of the questions referred to in Rule 101, Order 21 Rule 98 empowers the Court to issue necessary order. The consequence of the adjudication is a decree under Order 21 Rule 103.

16. The ratio laid down in above referred case supporting case of the claimants, the present application filed by the petitioners under Section 47 of CPC as such is maintainable but executing Court failed to consider above legal aspects. The petitioners are the bonafide purchasers for valid consideration. As discussed above, order passed by the executing Court is



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totally erroneous un-fair and liable to be set aside. When there is error in the order of the executing Court this court is empowered to interfere with that order by invoking Article 227 of constitution of India. Accordingly, claim applications are allowed with respect to house sites No. 3,11,180 . Hence, findings rendered by the Trial Court in E.A No. 478, 480 and 481 of 2007 in E.P No. 10 of 2006 is hereby set aside. Thus E.A No. 478, 480 and 481 of 2007 is allowed.

17. In result, these Civil Revision petitions are allowed. No cost. Consequentially, connected miscellaneous petition is closed.

05.06.2023

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T.V.THAMILSELVI,J.

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