



A.S.No.771 of 2014
and C.R.P.(NPD) Nos.3071 of 2015 & 126 of 2017
and C.M.P.(NPD) No.562 of 2017 in C.R.P.No.126 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.771 of 2014
and C.R.P.Nos.3071 of 2015 & 126 of 2017
and C.M.P.No.562 of 2017 in C.R.P.No.126 of 2017

A.S.No.771 of 2014

1.Mrs. Prema

2.Mrs. Manjula

3.Mrs.Chitra

.. Appellants

Vs.

1.Mrs.Indrani Ammal

2.A.S.Raja

3.A.S.Babu

4.M.Ravi

.. Respondents

C.R.P.(NPD).No.3071 of 2015

1.Mrs. Prema

2.Mrs. Manjula

3.Mrs.Chitra

.. Appellants



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and C.M.P.(NPD) No.562 of 2017 in C.R.P.No.126 of 2017

Vs.

1.M.Ravi
2.Mrs.Indrani Ammal
3.A.S.Raja
4.A.S.Babu

.. Respondents

C.R.P.(NPD).No.126 of 2017

1.Prema
2.Manjula
3.Chitra

.. Appellants

Vs.

1.M.Ravi
2.Indrani Ammal
3.A.S.Raja
4.A.S.Babu

.. Respondents

Prayer in A.S.No.771 of 2014: First Appeal filed under Section 96 of the Code of Civil Procedure, praying to set aside the decree dated 02.09.2013 made in O.S.No.28 of 2011 by the Additional District Court and Sessions Judge (Fast Track Court), Vellore, Vellore district.

Prayer in C.R.P(N.P.D).No.3071 of 2015: Civil Revision Petition filed under Section 115 CPC to call for the entire records in pursuant to E.A.No.04 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 vide order



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dated 24.06.2015 on the file of the First Additional District Judge, Vellore
and set aside the same.

Prayer in C.R.P(N.P.D).No.126 of 2017: Civil Revision Petition filed
under Section 115 CPC to set aside the fair and decretal order dated
09.11.2016 made in unnumbered E.A.of 2016 in E.P.No.4 of 2012 in
O.S.No.41 of 2006 on the file of the I Additional District and Sessions
Judge at Vellore.

For Appellants : Mr.B.Sundarapandian
in AS.771/2014 &
Petitioners in
CRP(NPD).3071/2015
& 126 of 2017

For Respondent No.4 : Ms.T. Sreelekha
in AS.771/2014 & for T. Rajagopal
For Respondent No.1
in CRP(NPD).3071/2015
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For Respondents 1 to 3 : No appearance
in AS.771/2014 &
For Respondents 2 to 4
in CRP(NPD).3071/2015
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COMMON JUDGMENT

[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

(1) The First Appeal in A.S.No.771 of 2014 is filed to set aside the decree and judgment passed by the Additional District Court and Sessions Judge (Fast Track Court), Vellore, in O.S.No.28 of 2011 on 02.09.2013.

2. The Civil Revision Petition in C.R.P.(NPD) No.3071 of 2015 is filed to set aside order passed in E.A.No.04 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 dated 24.06.2015 by the First Additional District Judge, Vellore.

3. Another Civil Revision Petition in C.R.P.(NPD) No.126 of 2017 is filed to set aside the fair and decretal order dated 09.11.2016 made in unnumbered E.A.of 2016 in E.P.No.4 of 2012 in O.S.No.41 of 2006 on the file of the I Additional District and Sessions Judge at Vellore.

4. Since all the above three cases are connected and the parties in the



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above matters are also same, we are inclined to dispose of the same by this
Common Judgment.

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5. Brief facts that are necessary for the disposal of this Appeal are as follows:~

The Plaintiffs in the suit in O.S.No.28 of 2011 on the file of the Additional District and Sessions Judge, Vellore, are the Appellants in this Appeal. The Appellants filed the above Suit for Partition of their 3/6th share in all the suit properties. The suit properties consists of two items. Admittedly, both the items are the absolute properties of the father of Plaintiffs by name Sagadeva Mudaliar. It is the case of the Plaintiffs that the said Sagadeva Mudaliar purchased Item No.1 of the suit property under a Registered Sale Deed dated 20.03.1958 and 2nd item of the said property were gifted by the said Sagadeva Mudaliar by his elder sister by virtue of the Settlement Deed dated 23.05.1979.

6. The Plaintiffs are the daughters of Sagadeva Mudaliar, 1st



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Defendant is the wife of Sagadeva Mudaliar and Defendants 2 and 3 are the brothers of the Plaintiffs. 4th Defendant was impleaded as he claimed to have entered into an agreement of sale in respect of the suit 1st item of properties with Defendants 1 to 3. It is admitted that the 4th Defendant, on the basis of the Agreement of Sale, he had with the Defendants 1 to 3, filed a suit in O.S.No.41 of 2006 on the file of Additional District and Sessions Judge (Fast Track Court) Vellore, and obtained a Decree for Specific Performance against Defendants 1 to 3. It is also admitted that the 4th Defendant has filed an application in E.P.No.4 of 2012 in O.S.No.41 of 2006 seeking for delivery of possession of the property. It is admitted that a Sale Deed was executed in favour of 4th Defendant through Court on 23.12.2011. However, it is admitted that the petition for delivery of possession in E.P.No.4 of 2012 in O.S.No.41 of 2006 is pending as on date.

7. The Plaintiffs earlier filed an Application in I.A.No.40 of 2010 in O.S.No.41 of 2006, to implead them as parties. The said Application was dismissed on the ground that they may file a suit for partition if really they



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are having any share in the properties and that they are not necessary parties in the suit for Specific Performance filed by the 4th Defendant against the Defendants 1 to 3. Thereafter, the evidence was closed on either side. The Plaintiffs filed a Civil Revision Petition in C.R.P.No.4274 of 2010 against the Order dismissing their Application in I.A.No.40 of 2010 to implead them as parties to the suit in O.S.No.41 of 2006. The said Civil Revision Petition was also dismissed mainly on the ground that the Plaintiffs are not parties to the Agreement of Sale which was entered into between Defendants 1 to 3 and Defendant 4 and therefore, they are not necessary parties to the suit for Specific Performance to enforce the agreement entered into between the 4th Defendant and Defendants 1 to 3. This Court observed that in the Suit for Specific Performance, the issue would be only whether the agreement between the parties can be enforced or not and that the Revision Petitioners viz., the Plaintiffs in the present suit for partition who are not parties to the agreement are not bound by the decision and the Suit would not affect their right over the suit property in any manner. Therefore, the dismissal of the Application filed by the Plaintiffs in the previous suit



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filed for specific performance by 4th Defendant against Defendants 1 to 3 cannot be relied upon to contend that the plaintiff have no right over the suit properties.

8. It is also brought to the notice of the trial Court that the Plaintiffs after the grant of decree in O.S.No.41 of 2006, filed an application under Section 47 of C.P.C. The said application was also dismissed by the trial Court on the short ground that the Plaintiffs who are not parties in the suit for Specific Performance in O.S.No.41 of 2006 cannot maintain a petition under Section 47 of C.P.C.

9. The trial court though found that the suit properties Item Nos.1 and 2 are the properties of Sagadeva Mudaliar and granted decree in respect of suit 2nd Item, dismissed the suit in respect of 1st Item only by citing the dismissal of I.A.No.40 of 2010 in O.S.No.41 of 2006 whereby the petition to implead the appellants was dismissed by the trial court and dismissal of the application in unnumbered EA No.4 of 2012 in E.P.No.4 of 2012 in



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O.S.No.41 of 2006 filed by the plaintiffs under Section 47 of C.P.C. to declare the decree in O.S.No.41 of 2006 as null and void. The Application in E.A.No.4 of 2012 is filed to declare the decree in O.S.No.41 of 2006 as null and void is not maintainable since the Plaintiffs are not parties to the suit in O.S.No.41 of 2006. The said application filed under Section 47 of C.P.C.has been rightly dismissed. However, that does not preclude the Plaintiffs to file an independent suit to establish their right to seek Partition as legal heirs (daughters) of Thiru Sagadeva Mudaliar.

10. The Appellants have filed Civil Revision Petition in C.R.P.No.3071 of 2015 as against the order in E.A.No.4 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 before the I Additional District and Sessions Court, Vellore. The Appellants have also filed an unnumbered application under Order 21 Rule 97 of C.P.C. to record their objection for the delivery of property in favour of the 4th Defendant, who is the Plaintiff in O.S.No.41 of 2006 pursuant to the decree for specific performance. The said application was also dismissed by the I Additional District and



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Sessions Judge, Vellore, on the ground that the Petitioners' application filed under Section 47 C.P.C.in E.A.No.4 of 2012 is dismissed and that the petitioners are not in physical possession of the suit property.

11. The Appellant have preferred C.R.P.No.126 of 2017 against the order of dismissal of unnumbered E.A.file under Order 21 Rule 97 of C.P.C. The trial Court miserably misdirected itself by dismissing the suit by citing dismissal of impleading petitions and the Application under Section 47 of C.P.C.in the earlier suit, two interlocutory applications even though the plaintiffs substantial right to claim 1/6th share to each of them is not in dispute. It is seen that Defendants 1 to 3 remained exparte and the Plaintiffs right to claim equal share along with the Defendants 1 to 3 is not in dispute. The 4th Defendant filed written statement in the suit filed by the Appellants referring to the agreement, Defendants 1 to 3 had executed in his favour agreeing to sell the property for a sum of Rs.10,20,000/-. It is the case of the 4th Defendant that he has paid a sum of Rs.10,00,000/- to Defendants 1 to 3 and the balance amount of Rs.25,000/- alone has to be



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paid to the Defendants 1 to 3. Relying upon the suit filed by the 4th Defendant against the Defendants 1 to 3, it is contended by the 4th Defendant that the application filed by the present plaintiffs for impleading them as parties was dismissed holding that they are not necessary parties to the suit and that the Revision Petition filed by the Plaintiffs was also dismissed by this Court. Hence, the 4th Respondent prayed for dismissal of suit.

12. It is further contended that the Defendants 1 to 3 alone have set up the plaintiffs to file a suit for partition. The trial Court accepted the stand taken by the 4th Defendant in the written statement that the suit for partition is not maintainable in respect of the 1st item by referring the dismissal of application filed by the plaintiffs to implead them in the specific performance suit filed by the 4th Defendant against Defendants 1 to 3. The trial Court also relied upon the order in E.A.No.4 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 dismissing the application filed by the plaintiffs under Section 47 of C.P.C.to declare the Judgment and Decree



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in O.S.No.41 of 2006 as null and void.

13. The trial Court failed to see that this Court dismissed the Revision Petition filed by the Plaintiffs only on the ground that they are not parties to the Agreement of Sale and that the sale agreement is not binding on the plaintiffs. This Court also gave liberty to the Plaintiffs to file suit for partition to establish their right. In such circumstances, the order that was passed in the suit for specific performance, dismissing the petition filed by the Plaintiffs to implead them as necessary parties cannot be cited as reason to dismiss the suit for partition. Since the independent right of Plaintiffs has been recognised by this Court by holding that the Agreement of Sale is not binding on the Plaintiffs, the right of Plaintiffs to file suit for partition is preserved. The trial Court has committed a serious error in dismissing the suit relying upon the dismissal of previous application filed by the Plaintiffs to implead them as parties.

14. Similarly, an Application under Section 47 of C.P.C. can be filed only by a person who is a party to the suit. Application under Section 47 of



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C.P.C. can be filed questioning the execution, discharge or satisfaction of the decree either on the ground of want of jurisdiction or on any other ground and the Court on the application shall decide all questions arising between the parties to the suit in which the decree was passed, or their representatives. Section 47 of C.P.C. without any ambiguity indicate that an application can be filed only by the party to the suit or their representatives thereto relating to the execution, discharge or satisfaction of the decree. The application filed by the Petitioner was dismissed only by holding that the Appellants who are not parties to the earlier suit for Specific Performance, cannot maintain a petition under Section 47 of C.P.C. Therefore, the dismissal of the appellants application filed to declare the nullity of the decree passed in O.S.No.41 of 2006 cannot stand in the way of plaintiffs establishing their right to equal share in the suit 1st Schedule property which is the absolute property of Plaintiffs' father by name Sagadeva Mudaliar. The finding of the trial Court rejecting the Plaintiffs right to equal share in the property of their father is arbitrary, patently illegal and perverse.



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15. For the above reasons, the Plaintiffs are entitled to succeed as they are admittedly the legal heirs/daughters of Sagadeva Mudaliar who died intestate, leaving behind the Plaintiffs and Defendants 1 to 3 as his legal heirs. No other ground to disqualify the appellants from claiming any right from the property of their father raised by the defendants in the Suit for Partition.

16. Therefore, the decree of the lower Court in O.S.No.28 of 2011, insofar as Item No.1 of the suit property is set aside and therefore, the suit in O.S.No.28 of 2011 on the file of the Additional District and Sessions Court, Vellore stand decreed in respect of the suit 1st item also. The appeal in A.S.No.771 of 2014 is allowed.

C.R.P.(NPD) Nos.126 of 2017 and 3071 of 2015:

17. This Civil Revision Petition is filed against the order passed in E.A.No.4 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 dated



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24.06.2015. As indicated earlier, the 4th Defendant in the suit in O.S.No.28 of 2011, earlier filed suit for Specific Performance of an agreement of sale, in O.S.No.41 of 2006 against Defendants 1 to 3. The suit was decreed for specific performance in favour of 4th Defendant in O.S.No.28 of 2011, who is the plaintiff in O.S.No.41 of 2006.

18. It is admitted that the Revision Petitioners are not parties to the suit in O.S.No.41 of 2006. The Revision Petitioners have filed a suit in O.S.No.28 of 2011 for partition of their 1/6th share to each of the plaintiff and the said suit was dismissed in respect of the 1st item only on the premises that the suit for specific performance filed by the 4th Defendant in the suit against the Defendants 1 to 3 has been decreed.

19. This Court has now granted decree in O.S.No.28 of 2011 declaring 1/6th share of each of the Revision Petitioners in suit property 1st item, which is the subject matter of the suit for specific performance in O.S.No.41 of 2006. After the decree in O.S.No.41 of 2006 in favour of the



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4th Defendant in O.S.No.28 of 2011, the Revision Petitioners filed an application under Order 21 Rule 97 of C.P.C.to record the obstruction of the Revision Petitioners for the delivery the property in favour of the 1st Respondent/Decree Holder in O.S.No.41 of 2006. The said application was rejected by the Executing Court only on the ground that the Application filed by the Revision Petitioners in E.A.No.4 of 2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 and O.S.No.28 of 2011 was already dismissed. This Court has already held that the Plaintiffs are entitled 1/6th share to each of them in the suit for partition. It is further held that the 4th Defendant in O.S.No.28 of 2011 is the Plaintiff in O.S.No.41 of 2006. The decree for partition is binding on all the Defendants including the Plaintiff in O.S.No.41 of 2006. It is already held by this Court in the earlier Civil Revision Petition and now that the decree passed for specific performance in O.S.No.41 of 2006 is not binding on the Appellants who are the Plaintiffs in O.S.No.28 of 2011. In that view of the matter, the Appellants in A.S.No.771 of 2014 who are the Plaintiffs in O.S.No.28 of 2011 are entitled to file application under Order 21 Rule 97 of CPC, resisting or obstructing



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delivery of possession of property. By virtue of the Specific Performance decree the 4th Defendant can only step into the shoes of Defendant 1 to 3 claiming 3/6th share in the suit properties.

20. Having regard to the admitted facts the application filed under Order 21 Rule 97 of C.P.C. by the Revision Petitioners has to be allowed. Accordingly, C.R.P.No.126 of 2017 is allowed and the order passed by the learned I Additional District and Sessions Judge, Vellore in unnumbered E.A.in E.P.No.4 of 2012 in O.S.No.41 of 2006 dated 09.11.2016 is set aside.

21. It is admitted before this Court that the Execution Petition is filed seeking delivery of possession. Therefore the Order of learned I Additional District and Sessions Judge, Vellore, dismissing the application filed by the Revision Petitioners under Order 21 Rule 97 CPC is unsustainable, especially having regard to the findings in the Judgment and decree in A.S.No.771 of 2014. However, the Civil Revision Petition filed to set



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aside the order passed in the application under Section 47 of C.P.C. by the
learned I Additional District and Sessions Judge, Vellore, in E.A.No.4 of
2012 in E.P.No.4 of 2012 in O.S.No.41 of 2006 is dismissed.

22. In the result, A.S.No.771 of 2014 is allowed; C.R.P.(NPD)
No.3071 of 2017 is also allowed and C.R.P.(NPD) No.126 of 2015 is
dismissed. No costs.

[S.S.S.R., J.] [P.B.B.,J.]
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