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C.R.P.[NPD].Nos.4000 & 40001 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].Nos.4000 & 4001 of 2019
and CMP.No.920 of 2019

- 1.Thenmozhi
- 2.Mahadeven

. . . Petitioners in both CRPs

Versus

1. M.V.Thirugnanasambandam
- 2.Karthikeyan
- 3.Mangayakarasi
- 4.Kannagi
- 5.Kalaiarasi
- 6.Kumar
- 7.Palani
- 8.Padmalatha

. . . Respondents in CRP 4000 of 2019

1. M.V.Thirugnanasambandam
- 2.Kalaiarasi
- 3.Mangayakarasi
- 4.Kannagi
- 5.Karthikeyan
- 6.Vijayalakshmi
- 7.Kumar
- 8.Palani
- 9.Padmalatha

. . . Respondents in CRP 4001 of 2019



C.R.P.[NPD].Nos.4000 & 40001 of 2019

Prayer in CRP.No.4000 of 2019: Petitions filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 20.06.2018 made in CMA.No.4 of 2014 on the file of the Subordinate Judge, Ranipet, Vellore District against the fair and final order dated 01.07.2017 made in EP.No.33 of 2012 in O.S.No.240 of 2004.

Prayer in CRP.No.4001 of 2019: Petitions filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 20.06.2018 made in CMA.No.2 of 2015 on the file of the Subordinate Judge, Ranipet, Vellore District against the fair and final order dated 17.04.2015 made in I.A.No.24 of 2012 in O.S.No.265 of 2004.

For petitioner : Mr.K.V.Ananthakrishnan
For respondents : Mr.M.Padmanabhan for R1 & R2
No appearance for R3 & R4
R4 and R6 - Died

COMMON ORDER

(i) Civil Revision Petition in C.R.P.No.4000 of 2019 has been filed by the plaintiffs 2 and 3 challenging the order dated 20.06.2018 made in C.M.A.No.4 of 2014 on the file of the Subordinate Judge, Ranipet, Vellore District, confirming the order dated 01.07.2014 made in E.P.No.33 of 2012 in O.S.No.240 of 2004 filed under Order XXI, Rule 35 of CPC dismissing the application filed by the legal heirs of the plaintiff/decreed-holder – M.G.Thirunavukkarasu for delivery of possession of the schedule mentioned

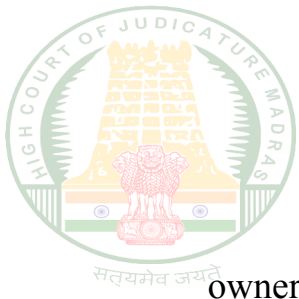


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property; and
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(ii) Civil Revision Petition in C.R.P.No.4001 of 2019 has also been filed by the plaintiffs 2 & 3 challenging the order dated 20.06.2018 made in C.M.A.No.2 of 2015 on the file of the Subordinate Judge, Ranipet, Vellore District, confirming the order dated 17.04.2015 made in I.A.No.24 of 2012 in O.S.No.265 of 2004 appointing Mr.R.Pandurangan, Advocate as Commissioner, at the instance of the 14th defendant, to inspect the suit property with the assistance of Surveyor and divide the suit 1 st item of properties into 21 equal shares and allot 6 shares to the 14th defendant and divide the other landed properties into 18 shares and allot 3 such shares to the 14th defendant with correct measurements and specific boundaries by taking into account the feasibility of enjoyment.

2. The confusion had arisen due to the disposal of two different suits by common judgment by the trial court. The suit in O.S.No.240 of 2004 was filed for specific performance of agreement of sale executed by the other co-



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owner in favour of the plaintiff-M.G.Thirunavukkarasu while the other suit in O.S.No.265 of 2004 was filed by one of the other co-owner - T.Kalaiarasi for partition of suit properties into 28 equal shares and allot one such share to the plaintiff – M.G.Thirunavukkarsu. The said Thirunavukkarasu died after the appeal suit in A.S.No.44 of 2006. The legal heirs of the deceased sole plaintiff/decreed holder Thirunavukkarasu viz., (i) Thenmozhi D/o Thirunavukkarasu and (ii) Mahadevan, Son of Thirunavukkarasu were brought on record as plaintiffs 2 and 3 in the execution proceedings.

3. Both the suits were tried together and a common judgment was passed on 30.08.2005. The suit in O.S.No.240 of 2004 which was filed for specific performance was decreed in respect of 4/7 share and the other suit in O.S.No.265 of 2004 which was filed for partition was decreed for the remaining extent of the properties.

4. When an execution petition was filed by the decree holders to enforce the specific performance of contract, the same was dismissed by the



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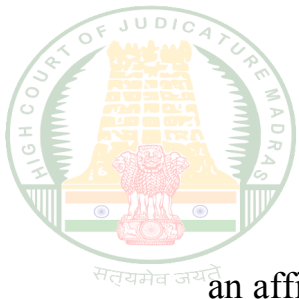
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executing court by order dated 01.07.2014 on the ground that the final decree was not yet be passed and the division of properties have not been effected. Challenging the the order dismissing execution petition and as confirmed by the appellate court, C.R.P.No.4000 of 2021 has been filed.

5. In the meanwhile, an advocate commissioner was appointed in the final decree proceedings at the instance of the 14th defendant. Challenging the appointment of Advocate Commissioner, the legal heirs of the decree-holder have filed an appeal in C.M.A.No.2 of 2015 which came to be dismissed by the appellate court by order dated 20.06.2018. Challenging the same, C.R.P.No.4001 of 2019 has been filed.

6. Heard both sides and perused the materials placed on record.

7. Today, an affidavit has been filed by the respondents to the effect that they are not willing to sell the property and the property is divisible. Therefore, the partition may be effected. The revision petitioners have filed



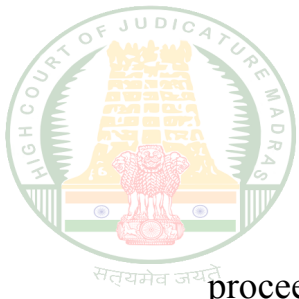
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an affidavit to the effect that they are also intending to go for partition, if the Trial Court appoints an advocate commissioner, divides the property and allot 15/21 shares in favour of the plaintiff in O.S.No.240 of 2004 and the remaining 6/21 shares shall be allotted in favour of the other co-owner.

8. As both sides have submitted that the property is now divisible, the Order of the Trial Court in EP.No.33 of 2012 is set aside and the Executing Court is directed to appoint an advocate commissioner, divide the property and allot 15/21 shares in favour of the plaintiff in O.S.No.240 of 2004 and the remaining 6/21 shares to be allotted in favour of the other co-owners as per their entitlement. Accordingly, the CRP.No.4000 of 2019 is allowed.

9. Since, the other CRP.No.4001 of 2019 is filed challenging the order dated 20.06.2018 made in CMA.No.2 of 2015 on the file of the Subordinate Judge, Ranipet, Vellore District is concerned, as this Court has directed this Court to proceed in respect of the division of house property, the revision in CRP.No.4001 of 2019 is dismissed. The Trial Court shall



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proceed with the final decree proceedings as per its own merits.

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No costs. Consequently, connected miscellaneous petition stands closed.

28.01.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To

1. The Sub Judge
Subordinate Court, Ranipet, Vellore District

2.The District Munsif
District Munsif Court, Walaja



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N. SATHISH KUMAR, J.

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