
(2014) 10 MAD CK 0190

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2268 of 2013 and C.R.P. (NPD) No. 3120 of 2013 M.P. No. 1 of 2013

Velusamy

APPELLANT

Vs

P.C. Pangajam

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 16

Citation : (2015) 5 CTC 752 : (2015) 1 MLJ 73

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—C.M.A. No. 2268 of 2013 and C.R.P (NPD) No. 3120 of 2013 arise out of the same issue. Hence, both the cases are disposed of by way of this common judgment.

2. The appellants in C.M.A. No. 2268 of 2013 and the petitioners in C.R.P.(NPD) No. 3120 of 2013 are one and the same.

3. The appellants in C.M.A. No. 2268 of 2013 viz., Velusamy, Parameswari and Chitradevi, who are the revision petitioners in C.R.P.(NPD) No. 3120 of 2013 are the grand son and grand daughters of the deceased Valliammal, who was the plaintiff in O.S. No. 65 of 1997 and they are also the son and daughters of the deceased Mariammal, who was the first defendant in the said suit on the file of the Sub Court, Gobichettipalayam. The respondents in C.M.A. No. 2268 of 2013 as well as C.R.P.(NPD) No. 3120 of 2013 viz., P.C.Pangajam, M.Sri Ganesh, M.Sri Sakthivel and M.Sri Saravanan are defendants 2 to 5 in the said suit. They are the legal heirs of one P.C.Mariappan, who was the pre-deceased son of the plaintiff Valliammal.

4. The respondents in the appeal as well as revision petition, filed A.S. No. 12 of 2012 before the III Additional District Court, Erode, as against the preliminary decree dated 7.4.2011 passed in I.A. No. 389 of 2010 in O.S. No. 65 of 1997.

5. Pending appeal in A.S. No. 12 of 2012, the respondents have taken out an application in I.A. No. 662 of 2012 to include certain left out properties in the suit for partition filed in O.S. No. 65 of 1997.

6. The lower appellate Court, by order dated 1.10.2012, has allowed the said application in I.A. No. 662 of 2012 filed by the respondents herein to include the left out properties in the suit for partition. Further, the lower appellate Court, has allowed the appeal in A.S. No. 12 of 2012 by setting aside the preliminary decree passed in I.A. No. 389 of 2010 in O.S. No. 65 of 1997 by the trial Court and remanded the matter to the trial Court with a direction to include the left out properties in the plaint filed in O.S. No. 65 of 1997 and pass a fresh preliminary decree by affording an opportunity to both sides to adduce evidence.

7. Challenging the order of remand passed by the lower appellate Court by setting aside the preliminary decree dated 10.7.2002, C.M.A. No. 2268 of 2013 has been filed. Aggrieved over the order passed in I.A. No. 662 of 2012 in allowing the application filed by the respondents to include the left out properties in the suit schedule, C.R.P (NPD) No. 3120 of 2013 has been filed.

8. Now, the brief facts, which are necessary to decide the issue involved in C.M.A. No. 2268 of 2013 and C.R.P.(NPD) No. 3120 of 2013, are as follows:-

(a) Before narrating the facts of the case, for easy understanding, the genealogy of the parties is given below:-

(b) Originally, the suit in O.S. No. 65 of 1997 has been filed by the above said Valliammal, wife of Chinnu @ Chinnagounder @ Muthugounder as against defendants 1 to 5 for partition of certain properties described in schedule "A" to "F" of the plaint. In the said suit, the daughter of said Valliammal viz., Mariammal was shown as first defendant. Since the son of Valliammal viz., P.C.Mariappan, pre-deceased her on 2.8.1995, his wife and sons were shown as defendants 2 to 5.

(c) In the said suit, it has been stated by the said Valliammal that Item No. 1 of suit "A" schedule property originally belonged to the father and mother of her husband Chinnu @ Chinnagounder @ Muthugounder. Her husband obtained the said property in a family partition. Item No. 2 of suit "A" schedule property was purchased by the husband of Valliammal separately out of his own income. So far as "B" and "C" schedule properties are concerned, it is the case of the plaintiff Valliammal that the said properties were purchased by her husband Chinnu @ Chinnagounder @ Muthugounder separately out of his own income as well as the income earned by her. So far as "D" schedule property is concerned, it was purchased out of the income earned by her son P.C.Mariappan. "E" and "F" properties viz., Mahendra Tourist Van and the chit amount taken in Visalam Chit Funds are also the properties of her son P.C.Mariappan. She has filed the said suit for partition, claiming her share in these properties.

(d) The first defendant viz., Mariammal, who is the daughter of the plaintiff

Valliammal, filed a written statement by paying necessary Court Fee to allot her share in the partition suit. The second defendant P.C.M.Pankajam, wife of deceased P.C.Mariappan, filed a written statement for herself and also on behalf of defendants 3 to 5, who are the sons of the second defendant, by opposing the prayer of the plaintiff Valliammal stating that though "B" and "C" properties were purchased in the names of plaintiff Valliammal and her husband Chinnagounder, the said properties were purchased only from the income of her husband late P.C.Mariappan and as such, neither the plaintiff nor the first defendant is entitled to any share in the said properties. It is the further case of defendants 2 to 5 that the son of the first defendant viz., Karuppasamy @ Velusamy misappropriated the amount of late P.C.Mariappan and purchased certain properties. Therefore, the suit is not maintainable and the same is liable to be dismissed.

(e) In the said suit, originally, an ex parte preliminary decree was passed in the year 2001, since the respondents herein, who are defendants 2 to 5 have failed to contest the suit. Subsequently, the ex parte decree passed in the year 2001, was set aside. Again, the respondents herein failed to contest the suit. Therefore, again ex parte preliminary decree was passed on 10.7.2002 in O.S. No. 65 of 1997, allotting shares to the plaintiff Valliammal as claimed by her in the suit. After passing the second ex parte preliminary decree dated 10.7.2002, the first defendant Mariammal, the daughter of the plaintiff Valliammal died on 23.1.2003. Subsequently, the plaintiff Valliammal had also died on 4.3.2006. Since the plaintiff and first defendant had died, the appellants / revision petitioners, who are the son and daughters of deceased Mariammal and grand children of plaintiff Valliammal have taken out an application in I.A. No. 41 of 2008 to pass a final decree based on the ex parte preliminary decree dated 10.7.2002 by adjusting the shares to the parties on the death of Valliammal and Mariammal. Since in the ex parte preliminary decree dated 10.7.2002, the shares were allotted to the parties as they stood before the death of the plaintiff Valliammal and the first defendant Mariammal, the appellants / revision petitioners were advised to take steps to pass an additional second preliminary decree by incorporating necessary adjustment of shares on the death of the above said plaintiff and first defendant.

(f) Therefore, in the year 2010, the appellants / revision petitioners, who are the son and daughters of deceased first defendant Mariammal and grand children of plaintiff Valliammal, have taken out applications in I.A. Nos. 385 and 386 of 2010 for impleading themselves as the legal representatives of the deceased Valliammal as well as deceased Mariammal, the plaintiff and first defendant respectively and another application in I.A. No. 389 of 2010 to pass an additional preliminary decree by declaring their shares. In the said applications, the respondents herein, who are the legal representatives of the deceased P.C.Mariappan, the defendants 2 to 5 in the suit filed a counter stating that the appellants herein are not the direct legal representatives of the deceased plaintiff Valliammal and as such they are not entitled to implead themselves as the legal

heirs of plaintiff Valliammal. The only decree holder namely Valliammal has alone obtained a preliminary decree without opting for final decree, thereby on her death, the preliminary decree expired with the death of preliminary decree holder. Hence, the appellants herein are also not entitled to opt for a final decree on the basis of the ex parte preliminary decree dated 10.7.2002. Moreover, the petitioners (appellants herein) can opt for one stand to add them as the legal heirs for one of the deceased alone and not for the two deceased persons. Further, in the counter, they have stated that the father of the first appellant viz., Arumugam was not impleaded as party to the suit and therefore, the suit is bad for non-joinder of necessary parties. Further, they have stated that the appellants herein can file only a separate suit for partition, that too, only for their shares, if any, inherited through their mother Mariammal and thus, they sought for the dismissal of the applications.

(g) The trial Court, by order dated 7.4.2011, allowed the applications in I.A. Nos. 385 and 386 of 2010 by impleading the appellants / revision petitioners as the legal heirs of deceased plaintiff Valliammal as well as the deceased first defendant Mariammal. The trial Court has also allowed I.A. No. 389 of 2010 by order dated 7.4.2011 and passed a second preliminary decree by allotting the shares to the appellants / revision petitioners as follows:-

" iii. that 33.5/120 share in "A" schedule, 15.5/30 share in "B" schedule, 8/15th share in "C" schedule, 0.5/5 share in "D" schedule and 0.5/5 share in "F" schedule and Rs. 20,000/- in schedule is hereby allotted to the petitioner"

(h) Aggrieved over the said order, the respondents herein have filed C.R.P. Nos. 2687 to 2689 of 2011 before this Court. This Court, by order dated 26.7.2011, dismissed all the civil revision petitions, by observing that as against the second preliminary decree for partition, the respondents herein have a right of regular first appeal and in the first appeal itself, the respondents are entitled to canvass the correctness of the second preliminary decree passed by the trial Court.

(i) Thereafter, defendants 2 to 5 have filed an appeal in A.S. No. 12 of 2012 as against the second preliminary decree passed in I.A. No. 389 of 2010. Pending appeal, they have filed an application in I.A. No. 662 of 2012 to include certain left out properties referred to the schedule to the affidavit filed in support of the application, in the suit for partition in O.S. No. 65 of 1997 and to try the suit by re-opening the second preliminary partition decree dated 7.4.2011.

(j) In the affidavit filed in support of the said application, inter alia it has been stated that the first appellant herein viz., Velusamy, son of Mariammal, managed to purchase the house site in his own name on 10.2.1992 from the income of P.C.Mariappan, the husband of second defendant P.C.M.Pankajam and father of defendants 3 to 5, by taking advantage of the fact that the deceased P.C.Mariappan was not an educated person. Similarly, it was alleged by the respondents herein that the first appellant had purchased various properties and put up construction thereon. Further, the first appellant herein had purchased the

agricultural lands and put up house constructions in the house sites purchased by him in his name from the income of P.C.Mariappan. He had also converted their father's business fraudulently in his name. Thus, they sought for inclusion of certain left out properties in the schedule to the plaint, which the first appellant is managing and to re-open the second preliminary decree dated 7.4.2011 and pass further orders.

(k) The said application was resisted by the first appellant stating that the properties mentioned in the schedule to the application in I.A. No. 662 of 2012 are his separate properties and they are not joint family properties. Thus, he sought for the dismissal of the said application.

(l) The lower appellate Court, after hearing the submissions made on either side, allowed the appeal in A.S. No. 12 of 2012 by setting aside the second preliminary decree dated 7.4.2011 passed in I.A. No. 389 of 2010 in O.S. No. 65 of 1997 and remanded the matter to the trial Court to find out as to whether the properties, which were sought to be included in the suit schedule properties, belong to P.C.Mariappan, i.e., the husband of the second defendant and father of defendants 3 to 5 and also to find out as to whether the first appellant herein had transferred the property belonging to P.C.Mariappan in his name. The lower appellate Court has also allowed the application in I.A. No. 662 of 2012 by observing that though a preliminary decree has already been passed, the same cannot be a bar to add certain left out properties in the suit schedule properties. Aggrieved over the said judgment and decree passed in A.S. No. 12 of 2012, C.M.A. No. 2268 of 2013 has been filed and aggrieved over the order and decretal order passed in I.A. No. 662 of 2012, C.R.P (NPD) No. 3120 of 2013 has been filed.

9. Now, it is the main submission of the learned counsel appearing for the appellants / revision petitioners that when the suit was originally filed by the deceased Valliammal as against her daughter Mariammal, the first defendant and respondents 1 to 4 herein, who are the legal heirs of the deceased P.C.Mariappan (son of deceased Valliammal), only six items have been shown as schedule of properties. In the plaint, it is the specific case of the plaintiff Valliammal that Item No. 1 of the suit "A" schedule property belonged to her husband, which he derived by way of family partition. Item No. 2 of suit "A" schedule property was purchased by her and by her husband. Suit "B" and "C" schedule properties were purchased in the name of plaintiff and her husband and the other properties were purchased by their son P.C.Mariappan out of the income earned by him by running a Canteen in Indira Theatre. In the said plaint, the first defendant / the daughter of plaintiff Valliammal filed a written statement by paying necessary Court Fee to allot her share in the suit properties. Since the son of the plaintiff namely P.C.Mariappan predeceased her mother, the respondents herein who are the deceased P.C.Mariappan's wife and sons, were added as defendants 2 to 5 in the suit by the plaintiff. In the said suit, since the defendants 2 to 5 failed to contest, an ex parte preliminary decree was passed in

the year 2001. The said ex parte decree was subsequently set aside. Again respondents 2 to 5 had failed to contest the suit. Hence, again, an ex parte preliminary decree was passed on 10.7.2002. Subsequent to the passing of the preliminary decree, the first defendant Mariammal died on 23.3.2003 and the plaintiff Valliammal died on 4.3.2006. Thereafter, the appellants / revision petitioners, who are the son and daughters of the first defendant, have filed I.A. Nos. 385 and 386 of 2010 to implead themselves as the legal representatives of the deceased plaintiff as well as the deceased first defendant. They have also filed an application in I.A. No. 389 of 2010 to pass a second preliminary decree incorporating the necessary adjustments of shares due to the death of Valliammal and Mariammal. It is the further submission of the learned counsel appearing for the appellants / revision petitioners that the said application was opposed by the respondents herein by filing a counter statement. The only stand taken by the respondents herein in the said counter is that the appellants / revision petitioners have to file only a separate suit for partition in respect of their shares, if any, since the ex parte preliminary decree holder had expired. However, in the said counter statement, they have not stated anything about the properties which the first appellant is managing now. Only after filing the appeal in A.S. No. 12 of 2012, the respondents have filed I.A. No. 662 of 2012 contending that certain properties, which the first appellant is now managing, were purchased only from the income of the late P.C.Mariappan, the husband of the first respondent / second defendant. Therefore, the said left out properties have to be included in the schedule of the plaint. The lower appellate Court had also accepted the said contention of the respondents in spite of the objections made by the appellants / revision petitioners and allowed the said application and remanded the matter to the trial Court. Further, it has been submitted by the learned counsel appearing for the appellants / revision petitioners that the said application had been filed after a lapse of 16 years from the date of filing of the suit, only with a view to drag on the proceedings. Moreover, after 16 years from the date of filing of the suit, for the first time, the respondents have come forward with a new case as if certain properties, which the first appellant is presently managing, are the properties purchased from the income of her husband and the said properties were left out in the suit filed by the deceased Valliammal. If the said application is allowed, it would amount to start a trial afresh from the beginning. It is the further submission that already two ex parte preliminary decrees were passed. However, on those occasions, the respondents have not raised this ground. Therefore, the order passed by the lower appellate Court is not legally sustainable. It is the further submission of the learned counsel appearing for the appellants / revision petitioners that only if there is any change in law or if death of any one of the parties to the suit alternates the rights and shares of the parties to the suit, then only the question of passing second preliminary decree arises. In the instant case, after the death of the plaintiff and the first defendant, the second preliminary decree has been passed in I.A. No. 389 of 2010 re-adjusting the shares by the trial Court. Therefore, at this stage, the question of adding new properties does not arise for the purpose

of passing another preliminary decree. Thus, he prays for setting aside the judgment and decree dated 1.10.2012 made in A.S. No. 12 of 2012 and to set aside the order and decretal order dated 1.10.2012 made in I.A. No. 662 of 2012.

10. Per contra, learned senior counsel appearing for the respondents submitted that even in the original written statement filed by the respondents herein, who are defendants 2 to 5, they had taken a specific defence that the entire income of late P.C.Mariappan were misappropriated by the first appellant herein and certain properties, which presently he is managing, were purchased by him from the income of late P.C.Mariappan. In fact, one of the sons of late P.C.Mariappan filed a suit in O.S. No. 4599 of 1997 for declaration and possession of the properties, which the first appellant is now managing. Therefore, right from the year 1997, it is the case of the respondents that the properties, which the first appellant is managing, were purchased from the income of late P.C.Mariappan. Therefore, these properties have to be necessarily added in the schedule to the plaint. Further, learned counsel appearing for the respondents submitted that though the father of the first appellant viz., Arumugam was alive, he was not impleaded as one of the parties in I.A. Nos. 385 and 386 of 2010, which were filed by the appellants / revision petitioners to implead themselves as legal representatives of the deceased plaintiff as well as the deceased first defendant. It is mandatory to implead all the sharers as parties to the partition suit. But, without impleading the father of the first appellant, they have filed I.A. No. 389 of 2010 to pass second preliminary decree and the trial Court has also passed a preliminary decree. Therefore, on that ground also, the order passed in I.A. No. 389 of 2010 is liable to be set aside. In this regard, learned counsel appearing for the respondents has relied upon the unreported judgment of this Court delivered in C.R.P. (PD) (MD) Nos. 2694 and 2695 of 2012 dated 3.1.2013 and submitted that in the similar situation, this Court has set aside the order of the lower Court and remanded back the matter to the lower Court to enable all the parties to adduce additional documentary evidence as well as oral evidence.

11. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

12. In view of the submissions made on either side, the questions that fall for consideration are --

(i) Considering the facts and circumstances of the case on hand, whether the order passed by the lower appellate Court in allowing I.A. No. 662 of 2012 to include certain left out properties in the schedule to the plaint, after passing a second preliminary decree is correct ?

(ii) Whether the order of remand passed by the lower appellate Court in remanding the matter to the trial Court by setting aside the second preliminary decree is legally sustainable?

13. The suit was filed by the plaintiff Valliammal for partition. In the said suit, originally, six properties were shown in the schedule of properties as schedule

"A" to "F". It is the case of the plaintiff Valliammal that Item No. 1 of the suit "A" schedule property belonged to her husband, which he derived by way of family partition. Item No. 2 of suit "A" schedule property was purchased by her and by her husband. Suit "B" and "C" schedule properties were purchased in the name of plaintiff and her husband and the other properties were purchased by their son P.C.Mariappan, who had pre-deceased her, out of the income earned by him by running a Canteen in Indira Theatre. The first defendant Mariammal is the daughter of the plaintiff Valliammal. The first defendant had not opposed the prayer of partition and she had paid the necessary Court fee and prayed to allot her share in the suit property. Only the respondents herein, who are defendants 2 to 5, the legal heirs of deceased P.C.Mariappan, are the contesting parties. Since they failed to contest the suit, an ex parte preliminary decree was passed in the year 2001. Subsequently, on an application filed by the respondents herein, the said preliminary decree was set aside. But, again, another ex parte preliminary decree was passed on 10.7.2002, since the respondents once again failed to contest the case. In the meanwhile, after passing the preliminary decree, the first defendant died on 23.1.2003 and the plaintiff died on 4.3.2006. Therefore, the appellants / revision petitioners, who are the son and daughters of the first defendant impleaded themselves as the legal representatives of the first defendant as well as the plaintiff, had taken out an application in I.A. No. 389 of 2010 to pass a fresh preliminary decree stating that the shares have to be adjusted between the parties on account of the death of the plaintiff Valliammal and the first defendant Mariammal. The respondents have opposed the said application by filing a counter. But, in the said counter, they have not stated anything about the properties, which now they sought to be impleaded as additional properties in the partition suit. Hence, a preliminary decree was passed by the trial Court on 7.4.2011 by adjusting the shares in the property to the appellants herein. Challenging the said order, the respondents herein have filed C.R.P. Nos. 2687 to 2689 of 2011 before this Court. This Court, by order dated 26.7.2011, dismissed all the civil revision petitions, by observing that as against the preliminary decree for partition, the respondents herein have a right of regular first appeal and in the first appeal itself, the respondents are entitled to canvass the correctness of the preliminary decree passed by the trial Court. Thereafter, defendants 2 to 5 have filed an appeal in A.S. No. 12 of 2012 as against the preliminary decree dated 7.4.2011 passed in I.A. No. 389 of 2010. Pending appeal, after 16 years from the date of filing of the suit, for the first time, now they have come forward with a new plea by filing an application in I.A. No. 662 of 2012, that certain properties, which are being managed by the first appellant, were purchased from the income earned by P.C.Mariappan, the father of the respondents herein and the same was omitted to be included in the suit by the plaintiff deceased Valliammal and as such the same has to be included in the schedule of the properties in the suit filed in O.S. No. 65 of 1997. The lower appellate Court allowed the said application and set aside the second preliminary decree dated 7.4.2011 and remanded the matter to the trial Court to try the suit by re-opening the second preliminary partition decree dated 7.4.2011. But, I find

that though the suit was filed in the year 1997, in the written statement filed in the year 2001, the respondents have not taken any plea about the properties which the appellant is presently managing. Only a passing reference was made in the written statement that the first appellant is managing certain properties, which belonged to P.C.Mariappan. Even in the counter filed by the respondents in the application filed by the appellants to pass a second preliminary decree in I.A. No. 389 of 2010, they have not taken a plea that the properties managed by the first appellant were purchased from the income earned by P.C.Mariappan. Further, I find that when the trial Court has passed the preliminary decree based on the application filed by the appellants herein in I.A. No. 389 of 2010, aggrieved over the said order, the respondents herein have filed civil revision petitions before this Court in C.R.P. Nos. 2687 to 2689 of 2011. Even in C.R.P. Nos. 2687 to 2689 of 2011 filed before this Court as against the order passed in I.A. No. 389 of 2010, they have not put forth any specific case about the properties which the first appellant is presently managing. Further, along with I.A. No. 662 of 2012, no documentary evidence was produced by the respondents herein in support of their contention that the properties which are being managed by the first appellant, were purchased from the income of P.C.Mariappan. When an application was filed to include certain left out properties by setting aside the preliminary decree already passed, it is the bounden duty of the party, which is seeking to include the properties in the suit schedule, to produce sufficient materials about the properties which is sought to be included. But, in the instant case, no documents were produced by the respondents along with the application filed by them in I.A. No. 662 of 2012. Further more, it is not the case of the respondents that the properties, which the first appellant is managing, are joint family properties. Hence, in my considered opinion, in the absence of any documentary evidence, allowing the application in I.A. No. 662 of 2012 to include certain properties in the partition suit merely based on a bald statement made by the respondents herein, that too, after a period of 16 years from the date of filing of the suit, is not sustainable. Hence, the fair and final order passed in I.A. No. 662 of 2012 in A.S. No. 12 of 2012 dated 1.10.2012 on the file of the III Additional District Court, Erode at Gobichettipalayam, is set aside.

14. Further, I find that it is admitted by the learned counsel appearing for the respondents that the appellants have not impleaded their father as one of the parties in I.A. No. 389 of 2010. As per Section 15 of the Hindu Succession Act, a property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16, i.e., upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Therefore, the husband of the first appellant viz., Arumugam is also one of the sharers in respect of the properties in question. Hence, I am of the opinion, the appellants / revision petitioners, who are the son and daughters of the first defendant deceased Mariammal alone are not entitled for the shares of their mother and her husband is also entitled for the share of his wife. Under such circumstances, the

respondents ought to have impleaded the husband of the first defendant as one of the defendants. Therefore, the preliminary decree passed by the Court below in I.A. No. 389 of 2010 without impleading the husband of the deceased first defendant / the father of the appellants is liable to be set aside. Since this Court has come to the conclusion that the father of the first appellant ought to have been impleaded as one of the parties in I.A. No. 389 of 2010, by confirming the order of remand alone, this Court directs the appellants / revision petitioners to file an appropriate application before the trial Court to implead their father Arumugam. On filing such application, the trial Court is directed to allow the same and after hearing both the parties, pass fresh preliminary decree by re-working the shares, within a period of four months from the date of receipt of a copy of this judgment.

15. C.M.A. No. 2268 of 2003: In the result, the civil miscellaneous appeal is partly allowed, by confirming the order of remand alone dated 1.10.2012 passed in A.S. No. 12 of 2012 by the III Additional District Court, Erode at Gobichettipalayam. No costs. Consequently, connected miscellaneous petition is closed.

16. C.R.P.(NPD) No. 3120 of 2013: In the result, the fair and final order passed in I.A. No. 662 of 2012 in A.S. No. 12 of 2012 dated 1.10.2012 on the file of the III Additional District Court, Erode at Gobichettipalayam, is set aside and the civil revision petition is allowed. No costs.