

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3540 of 2015

and

M.P.No.1 of 2015

Easwaran

.. Petitioner

Vs

1.Poovathal

2.Sarasathal @ Saraswathi

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.08.2015 passed in I.A.No.872 of 2015 in O.S.No.106 of 2005 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.K.Govi Ganesan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 10.08.2015 passed in I.A.No.872 of 2015 in O.S.No.106 of 2005 on the file of the District Munsif Court, Avinashi.

2.The respondents 1 and 2 as plaintiffs filed a suit in O.S.No.106 of 2005 for partition and separate possession of 1/10th share in the suit properties stating that their father Subiya Gounder died intestate leaving behind the two sons, wife and daughters. Since it is an ancestral properties they are claiming 1/15th share in the suit properties. During the life time of their mother Pattammal, she executed a registered will of her share and so, they are entitled 1/10 share in the suit properties. The second defendant filed a written statement and contested the suit. During the pendency of the suit, the first defendant died and his legal heirs were impleaded. The main defence is that during the life time of their father, there was a partition in the properties in the year 1984 and in pursuance to that, there was mutation of revenue records and that factum was known to the plaintiffs/respondents. To prove the oral partition, the document sought for by the second defendant is necessary. Therefore, the second defendant filed an application in I.A.No.872 of 2015, but the Trial Court has dismissed the same. Against which, the present Civil Revision Petition has been filed.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The learned counsel for the petitioner/second defendant would

submit that he has already filed Ex.P1, wherein it was specifically mentioned by the Assistant Director, Land Records, Chepauk, Chennai that the documents sought for the petitioner/second defendant were not yet traced and as soon as the documents were traced, they are ready to furnish a copy of the same. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

5.Considered the submission made by the learned counsel for the petitioner and perused the typed set of papers.

6.The respondents 1 and 2/plaintiffs filed a suit for partition claiming 1/10th share in the suit properties. There was an oral partition during the life time of their father in the year September 1984, in which their father Subiya Gounder was allotted a share in the properties. The said Subiya Gounder died intestate leaving behind the two sons, wife and daughters. The plaintiffs' mother executed a will in respect of her share in favour of the plaintiffs/respondents 1 and 2.

7.Now the only point to be decided is whether the application filed by the petitioner/second defendant to issue summons to the Assistant Director, Land Records, Chepauk, Chennai to produce the documents mentioned in the

petition is necessary for disposal? On perusal of the impugned order, it is seen that this petitioner has filed an application before the Assistant Director, Land Records, Chepauk, Chennai seeking some documents in which it was specifically stated that the documents were more than 30 years old and now they are searching the documents and as soon as they traced out the documents, they will furnish a copy of the documents. Admittedly, the documents are yet to be traced out. In such circumstances, no purpose would be served in issuing summons to the Assistant Director, Land Records, Chepauk, Chennai to produce the documents. Further, once it was admitted that the properties are joint family properties the person pleaded partition must prove the same. He may very well obtain a certificate from the Revenue Department and file it to prove the same. Furthermore, the petitioner has stated that in the year 1984 itself, there was a partition and in pursuance to the oral petition, they are enjoying the properties and therefore, they can file so many documents dealing with the properties to prove the partition. In such circumstances, I am of the view that the Trial Court has considered all the aspects in all perspective and no purpose would be served to summon the Assistant Director, Land Records, Chepauk, Chennai to get the document. Further, the petitioner can very well file an application and seek for a certified copy if it was traced out. Hence, I do not find any merits in the Civil Revision Petition and the same is deserves to be dismissed.

8.In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed. No costs.

04.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Avinashi.

R.MALA. J.,

cse

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