

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4359 of 2015
and M.P.No.1 of 2015

Velumani

.. Petitioner

Vs.

1.Govindasamy
2.K.Ramasamy
3.R.Kandhasamy

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India against the order dated 24.08.2015 passed in I.A.No.606 of 2015 in O.S.No.81 of 2015 on the file of District Munsif Court, Kangeyam.

For Petitioner : Mr.K.Govi Ganesan

O R D E R

Heard both sides.

2. This Civil Revision Petition has been filed challenging the impugned order passed in I.A.No.606 of 2015 filed under Order 1 Rule 10(2) of the Code of Civil Procedure in O.S.No.81 of 2015 on the file of District Munsif Court, Kangeyam, dated 24.08.2015.

3. As per the averments stated in the petition herein, the respondents 1 to 3 were the defendants in the suit for partition and for separate possession of the share for the 2 items of property in O.S.No.81 of 2015. One Appusamy, who is not a party to this Revision Petition filed a suit in O.S.No.81 of 2015, wherein, he sought for separate possession of the ½ share in the total suit property stating that the suit properties are ancestral properties. It was also stated that the defendants father Karuppanna Gounder i.e., the respondents 1 and 2's father, has entered into a partition deed on 03.06.1984, whereby, "B" Schedule property has been allotted to the first defendant viz., Govindasamy and "C" Schedule property was allotted to the 2nd defendant viz., Ramasamy; thereafter, on 20.04.1990, the 2nd defendant purchased the property from one Periyasamy S/o.Chennimalai Gounder and also he purchased some portion from the wife of Samiyappa Gounder on 23.08.2002. During the pendency of the suit, the present petitioner filed an I.A.No.606 of 2015 in the the suit in O.S.No.81 of 2015 for impleading himself as party to the proceedings stating that he is having right over the pathway and he is not a sharer in the suit property. It is further stated that the petitioner does not claim any soil right and got a right of way to reach his property. But after hearing both sides that

application has been dismissed by the trial court stating that the petitioner cannot be construed as a proper and necessary party since the petitioner is neither a sharer nor acquire any right or interest therein, against which, the present revision petition has been filed.

4. The learned counsel appearing for the petitioner would submit that he has right over the pathway and got a right of way to reach his property, as such, he is a necessary party for adjudication, however, that factum was not considered by the trial court and negated his claim. The learned counsel thus, prayed for setting aside the impugned order.

5. I have considered the submissions made by the counsel for the petitioner and perused the typed set of papers.

6. It is seen that the petitioner herein has already filed a suit in O.S.No.304 of 2007 for declaration of title and injunction in respect of A and B schedule property, but the suit has been decreed in part and the petitioner/plaintiff has been decreed as the owner of suit 'B' schedule property and the suit was dismissed as regarding

'A' schedule property. Against which, he filed A.S.No.32 of 2014 and the same is pending. In the present suit in O.S.No.81 of 2015, the petitioner herein is not a party. But as far as the the present suit viz., O.S.No.81 of 2015 filed by one Appusamy is concerned, it is for partition only between the co-owners. The Revision Petitioner, by way of filing I.A.No.606 of 2015 has claimed title over the pathway in the overall property. In the said circumstances, the trial court has rightly dismissed this application that he is not a necessary party for adjudication in this matter. Hence, I do not find any reason to interfere with the impugned order and this petition is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected M.P., is dismissed.

17.12.2015

nvsri

To

1. The District Munsif Court, Kangeyam.

R.MALA,J.

nvsri

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