



WEB COPY

In the High Court of Judicature at Madras

Dated: 27.01.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, THE Chief Justice
and

The Honourable Mr. Justice M.M. SUNDRESH

O.S.A. No.14 of 2015
and M.P. No. 1 of 2015

Ravichandran

.. Appellant /Applicant/ Plaintiff

vs.

1. Bangaru Naidu
2. B. Mohan Kumar
3. Ramakrishnan
4. Vivekanandan
5. G. Munusami
6. V. Subramani
7. K.K.V. Seetharaman
8. M/s. Vanshi Foundation (P) Limited
rep. by its Director Mr.A.Mathiazhagan
No.105, F-Block, Golden Brook
III Street, Anna Nagar East
Chennai - 102.
9. B. Shanthi
10. B. Rathna Kumari

.. Respondents/Respondents/Defendants

Prayer: Original Side Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order and decree dated 13.10.2014 passed by the learned Single Judge, in A. No. 414 of 2013 in C.S. No. 437 of 2000 on the file of this Court.

For Appellant : Mr. V. Manohar

J U D G M E N T
(Made by The Hon'ble The Chief Justice)

The plaintiff filed the suit for partition in the year 2000 against his father and siblings. The Schedule of properties, of which partition was claimed, was annexed to the plaint, numbering five from Schedule-A to Schedule-E. The appellant alleged that these were joint family properties and the appellant was entitled to a share, which was being deprived by his father and brothers.



2. It is in December 2012, that the appellant sought to add two more properties as Schedules F and G, alleging that these properties were sold by his father/first respondent in favour of third parties/9th and 10th defendants in the suit. The sale deeds were executed in their favour on 05.12.1980 and were duly registered.

3. The endeavour of the appellant to include these properties in the suit was rejected by the impugned order dated 13.10.2014, predicated on a plea that the factum of sale was known to the appellant even in the year 2000 while filing the suit, but, he chose not to add those properties and now seeks impleadment, after thirty four years.

4. Learned counsel for the appellant submits before us that his concern is that having come to know of these properties, if they were not impleaded as suit properties, the defendants may take a plea of partial partition as defence to the suit. He further submits that the finding of the learned single Judge that the existence of these properties was known to the appellant in the year 2000, is also not borne out from the records.

5. We are of the view that after almost thirty four years, the appellant cannot be permitted to include in the schedule of properties those properties, which were dealt with in 1980 and sold to third parties. Such inclusion would amount to cause a sudden shadow over the title of the properties after such a long period of time and if the appellant has not cared to make necessary enquiries within a reasonable period of time about the alleged joint family properties, he cannot be held to be entitled to a share in the properties.

6. The concern of the appellant about the plea of partial partition really does not arise, since the learned single Judge has declined the request of the appellant to include these properties as suit properties. We may also note that for the reasons aforesaid, we have affirmed the conclusion of the learned single Judge, albeit for different reasons. The first defendant being the father, had already dealt with the properties and the other members cannot now state that these properties must be included in the suit before the suit can proceed to trial.

7. We may note that if, ultimately, it does emerge that these properties were joint family properties, necessary adjustments in shares inter se the family can be made, but, the appellant cannot be permitted to claim partition and share in these properties.

8. We must also express our concern at the manner the suit is proceeding, as we are told that even the written statement has not been filed after fourteen years. All must take the blame for this,



including the appellant as plaintiff. Suits cannot be kept pending just for the sake of it.

9. We direct that the trial in the suit be expedited and a schedule be laid by the learned single Judge for purposes of completion of pleadings, framing of issues, list of witnesses and affidavits of evidence being filed, as also for conclusion of trial and thereafter, for hearing, to put an end to this litigation, which has now seen more than a life sentence.

10. The learned single Judge will also explore the possibility of whether the matter can, by consent, be referred to mediation, but, post the framing of issues and after fixing a date for trial, so that only the intervening period between framing of issues and commencement of trial/evidence is utilised by the parties to explore the avenue of mediation.

11. The appeal is dismissed for the aforesaid reasons.

12. A copy of the order be placed before the learned single Judge for necessary follow-up and orders, as aforesaid, on 19.02.2015.

Sd/-
Assistant Registrar
Dated:5.2.15

True Copy

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side Section,
High Court, Madras.

+1 cc to Mr.V.Manohar, Advocate,SR.4036.

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krd 20/2

O.S.A. No.14 of 2015