

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2096 of 2014 and
MP.No.1 of 2014

P.S.Venkatarajan

...Petitioner

versus

1.P.S.Govindarajan

2.Amirthavalli

3.A.R.Vaidegi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the proceedings of the learned Sub-court, Tirupattur, Vellore District, dated 05.10.2013 made in I.A.No.289 of 2013 in O.S.No.103 of 2010.

For Petitioner : Mr.A.Jenasenan

For Respondents : No appearance for R1
Mr.V.Lakshminarayanan for R2 and R3

ORDER

This Civil Revision Petition is directed against the order, dated 5 October 2013 in I.A.No.289 of 2013 in O.S.No.103 of 2010, allowing the application filed by the respondents 1 and 2 for including the property owned by Pandian Polytechnic, in which, their predecessor-in-interest was a trustee.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of respondents 2 and 3.

3. The petitioner filed a suit in O.S.No.103 of 2010 against the respondents praying for a decree of partition of properties into 12 equal shares and allotment of 5 such shares to him with separate possession. The suit was contested by the respondents by filing written statement.

4. The respondents 1 and 2 after the commencement of trial filed an application in I.A.No.289 of 2013 to amend the plaint. According to the respondents 1 and 2, Thiru.P.G.Sampath Chettiyar, the father of the petitioner was a trustee of Pandian Polytechnic Trust. The respondents 1 and 2, therefore, who are also the legal heirs wanted the property of the Trust to be included as an item to be partitioned. The petitioner opposed the application with a contention that the property owned by the Trust is not liable for partition.

5. The learned Subordinate Judge, Tirupattur allowed the application and included the trust property in the plaint schedule.

6. The impugned order is liable to be set aside for more than one reason. The application was filed by the respondents long after the commencement of trial. The respondents 1 and 2 have not given any reason justifying the delay. They have not shown due diligence.

7. Even on merits, the respondents 1 and 2 were not entitled to incorporate the Trust property as an item to be partitioned. The property belongs to a Trust. The other Trustees are not before the Court. The Trust Property cannot be divided in a suit filed by the legal representatives of Thiru.P.G.Sampath Chettiyar. In case, Thiru.P.G.Sampath Chettiyar, in his capacity as a Trustee is entitled to the property, it is always open to the parties to take appropriate proceedings in the presence of other Trustees. The present suit is a simple suit for partition to partition the property left by Thiru.P.G.Sampath Chettiyar. The learned Trial Judge, without considering the nature of property and other background facts allowed the application, as if the Trust Properties are also available for partition. I am therefore of the view that the impugned order is liable to be set aside.

K.K.SASIDHARAN, J.

(svki)

8. In the result, the impugned order dated 05.10.2013 is set aside. However, I make it clear that this order would not stand in the way of the parties from claiming the Trust by taking appropriate proceedings.

9. The Civil Revision Petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

20.10.2016

Index:Yes/No
svki

To

The Subordinate Judge, Tirupattur, Vellore District.

C.R.P.(P.D.) No.2096 of 2014

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