

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.1220 of 2009

and

M.P.No.1 of 2009

1.E.P.Palanisamy
2.K.P.Ramamoorthy

.. Petitioners

Vs

1.Annapoorani
2.Jayanthi
3.T.Kumaravel
4.Bagyalakshmi
5.Rathinam @ Nagarathinam
6.Rangammal
7.Mahalakshmi

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 09.02.2009 made in I.A.No.41 of 2008 in O.S.No.610 of 2007 on the file of the Subordinate Court, Coimbatore.

For Petitioners : Mr.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.A.S.Balaji (For R3, R6 and R7)
No appearance (For R1, R2, R4 and R5)

ORDER

The Civil Revision Petition is filed against the order dated 09.02.2009 made in I.A.No.41 of 2008 in O.S.No.610 of 2007 on the file of the Subordinate Court, Coimbatore.

2.The respondents as plaintiffs filed a suit for partition and separate possession and also declaring the will dated 22.08.2003 executed by late Perumal Gounder as true and valid and binding upon her legal heir stating that the property is owned by one late Perumal Gounder. His first wife was one Visalakshi. She died leaving behind two children, namely, defendants 1 and 3. The first plaintiff is the second wife of late Perumal Gounder and the second plaintiff is the daughter of the first plaintiff. During the pendency of the suit, the petitioners have filed an application in I.A.No.41 of 2008 to implead themselves as parties to the proceedings stating that they entered sale agreement with defendants 1 and 2 on 29.05.2007 and for adjudicating the matter they are the necessary parties. But the Trial Court after hearing both sides, has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.Learned counsel for the petitioners submitted that since they entered sale agreement with the co-owners they are entitled to the remedy and hence

they are necessary parties to the proceeding. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

4. Resisting the same, the learned counsel for the respondents 3, 6 and 7 would submit that the petitioner are the third parties to the family and hence they are not necessary parties to the suit for partition. He further submitted that no right has been conferred under the sale agreement even though it is a registered one. So, the petitioners are neither necessary nor proper parties and the Trial Court has rightly considered the same and came to the correct conclusion. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The second wife and the daughter of late Perumal Gounder filed a suit for partition and declaration that the will executed by late Perumal Gounder is true and valid and on that basis, they are entitled to $1/3^{\text{rd}}$ share in the suit property and also for injunction restraining the defendants from alienating or encumbering the suit property till the disposal of the suit stating that the property originally owned by one late Perumal Gounder and he had two wives,

viz., Visalakshi and Annapoorani/first plaintiff. The said Visalakshi died leaving behind her two children, namely, the defendants 1 and 3 as the legal heirs. The first plaintiff is the second wife and the second plaintiff is the daughter of the late Perumal Gounder. During the lifetime of Perumal Gounder, he executed a will dated 22.08.2003 wherein the said late Perumal Gounder has bequeathed $1/3^{\text{rd}}$ share in the suit property in favour of the first plaintiff. After the death of the said Perumal Gounder, the will has been properly probated and that has been informed to the legal heir of the late Perumal Gounder through his first wife. Hence, the plaintiffs were constrained to file a suit. The first defendant filed a written statement and contested the suit. In the written statement, it was admitted that the plaintiffs are the legal heirs of the late Perumal Gounder.

7. Now the point to be decided is that whether the petitioners who are the agreement holders were necessary parties to the suit for partition. It is true that the document is a registered sale agreement and came into existence before filing of the suit. But the sale agreement has not conferred any title to the suit property. According to the learned counsel for the respondents 1 and 2/plaintiffs, in the sale agreement time has been fixed as one month but they had not performed their part of contract and filed an application to implead themselves as parties to the proceeding. Considering the same, in the suit for

partition the agreement holders has not say in the matter because the agreement has not conferred any title to the suit property and so far, the petitioners have not filed any suit for specific performance also. In such circumstances, I am of the view that the petitioners are neither proper nor necessary parties for adjudicating the suit for partition. Therefore, the Trial Court has rightly considered all the aspects in proper perspective and came to the correct conclusion. Hence, the impugned order passed by the Trial Court is hereby confirmed and consequently the Civil Revision Petition is hereby dismissed as devoid of merits.

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

11.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Coimbatore.

R.MALA. J.,

cse

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