

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.431 of 2016

&

C.M.P.No.2244 of 2016

1.L.V.Palanisamy
2.P.Sampoornam

... Petitioners

vs.

1.L.V.Velusamy
2.V.Srikanth
3.Dhanabakiam
4.Vasu @ Viswanathan
5.S.Ravichandran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 29.09.2015 in I.A.No.854 of 2015 in O.S.No.335 of 2014 on the file of Principal Sub-Court, Erode.

For Petitioners : Mr.Kaithamalai Kumaran

ORDER

The arguments advanced by Mr.Kaithamalai Kumaran, learned counsel for the petitioners are heard.

2. The Civil Revision Petition stands listed today for admission. The petitioners figure as defendants 1 and 2 in O.S.No.335 of 2014 filed by the first respondent herein on the file of the Principal Sub-Court, Erode for partition of the suit properties. Respondents 2 to 5 in the Civil Revision Petition are none other than the purchaser from the petitioners herein / defendants 1 and 2 and legal heirs of one Sengottian, the other brother of the first petitioner and the first respondent. They filed written statements admitting plaint averments that the suit properties were the joint family properties in which the first respondent/plaintiff, first petitioner/first defendant and the deceased Sengottian did have shares. However, they contended that the suit filed by the first respondent/plaintiff was bound to be dismissed, because according to them, a partition took place by way of a compromise deed dated 28.03.1997 and that hence, none of the properties remained common to enable the first respondent/plaintiff to seek partition. Under the said circumstances, the first respondent/plaintiff filed I.A.No.854 of 2015 under Order XVIII Rule 1 CPC to direct the defendants to lead evidence in proof of their plea of partition by way of a compromise deed.

3. The learned trial Judge, after hearing both sides, holding that in view of the admission made by the defendants that the properties

were the joint family properties, nothing needed to be proved by the plaintiff to seek partition and on the other hand, the defendants who set up an earlier partition as defence, had to lead evidence first in proof of their case of an earlier partition. It is as against the said order of the learned trial Judge, dated 29.09.2015 allowing I.A.No.854 of 2015 and directing the defendants to lead evidence in proof of the alleged partition, the petitioner herein, who are defendants 1 and 2 in the original suit, have come forward with the present revision.

4. Upon hearing the submissions and after perusing the grounds of revision as well as the copies of the documents produced in the typed-set of papers, this Court is not able to find any defect or error in the order passed by the trial Court. The trial Court rightly held that the admission of the defendants that the property was the joint family property would cause the shifting of burden on the defendants, who have set up a prior partition as defence to the prayer made in the plaint and that hence, the defendants should be called upon to lead evidence first in point of time to prove their case of prior partition. The Civil Revision Petition does not even merit admission and the same deserves to be dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Principal Sub-Court
Erode

P.R.SHIVAKUMAR.J.,

gpa

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