

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.91 of 2016

and

C.M.P.No.490 of 2016

Balasubramanian

... Petitioner

vs.

Venkatesan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.01.2015 passed by the Second Additional District Munsif Court, Ulundurpet in I.A.No.1258/2014 in O.S.No.309 of 2007.

For Petitioner : Mr.R.Meenal

ORDER

Though the respondent has been served with notice and his name is found printed in the cause list, he has not chosen to enter appearance either in person or through counsel. The submissions made by Ms.R.Meenal, learned counsel for the petitioner are heard.

2. The respondent herein filed the above said suit O.S.No.309/2007 on the file of the trial court for partition in respect of the property comprised in plaint 'B' schedule. The second defendant in the above said suit is the

petitioner in the revision. The suit is being contested by the second defendant therein, based on his contention that already a partition had taken place. However, subsequently, the second defendant, who is the petitioner in the revision, filed an application in I.A.No.1258/2014 praying for amendment of the plaint schedule to include 11 more items of properties contending that those properties are also the properties regarding which partition has to be granted.

3. If at all the revision petitioner/second defendant wants a decree for partition allotting a share to him not only in the property described in plaint B schedule, but also in the other properties, which are now sought to be included in the plaint 'B' schedule, he could have very well incorporated a prayer in the written statement seeking partition and allotment of his share not only in the plaint 'B' schedule property, but also in the other properties now sought to be included. He could have very well provided a schedule to the written statement and sought such a relief. Instead of doing it, the petitioner has chosen to seek amendment of the pleadings of the opposite party, namely the plaintiff. At the best, the petitioner/second defendant could have pleaded for dismissal of the suit, as the suit is bad for partial partition.

4. On the other hand, if the revision petitioner/second defendant wants to have the relief for him in the present suit itself, he could have very well filed an additional written statement with the leave of the court to seek the relief of partition and allotment of a share to him not only in respect of plaint 'B' schedule property but also in respect of other properties regarding which the petitioner/second defendant now claims the relief. Hence the dismissal of the application filed by the revision petitioner cannot be found

fault with. It has got to be sustained and the revision petition deserves to be dismissed.

Accordingly, the revision petition is dismissed. However liberty is granted to the revision petitioners to file a petition for the receipt of additional written statement seeking partition of the other properties also by making payment of necessary court fee, if any. No costs. Consequently, the connected civil miscellaneous petition is closed.

30.03.2016

Index : Yes/No
Internet : Yes
asr

To

The II Additional District Munsif, Ulundurpet

P.R.SHIVAKUMAR, J.
asr/-

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