



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.308 of 2016 (PD)

and

C.M.P. (MD) No.1270 of 2016

1.R.Ramalakshmi
2.K.R.Valli Sankar
3.K.R.Krishnamoorthy
4.K.R.Veerabagumoorthy
5.S.Devi

.. Petitioners
Vs.

1.Valli
2.Ramalakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the fair order and decretal order dated 25.11.2014 made in I.A.No.7 of 2014 in A.S.No.4 of 2013 on the file of the I Additional District Court, Thoothukudi.

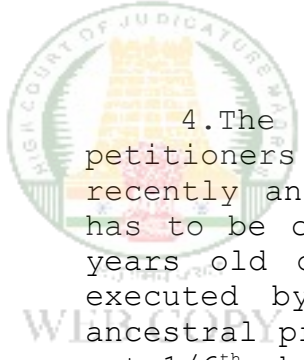
For Petitioner : Mr.T.Antony Arul Raj

ORDER

The petitioners are the defendants whereas the respondent is the plaintiff in O.S.No.91 of 2007.

2.The respondent filed a suit in O.S.No.91 of 2007 on the file of the Subordinate Judge, Thoothukudi for partition claiming 1/6th share in the property. The petitioners, who are the defendants in the suit filed written statement and stated that the property in question is purchased by their father. After trial, the suit was decreed. Against the said judgment and decree, the petitioners have filed A.S.No.4 of 2013 on the file of the I Additional District Court, Thoothukudi. Pending Appeal Suit, the petitioners filed I.A.No.7 of 2014 seeking to receive the additional documents and to file the additional written statement. According to the petitioners, they found out that their father got the property by partition effected in partition deed dated 05.06.1930 and it is only an ancestral property. Further, the respondent got married before 25.03.1989 before the Tamil Nadu Act came into force and she is entitled to only 1/24th share and not 1/6th share. The respondent filed counter statement stating that the petitioners are taking inconsistent stand in the additional written statement. Having admitted in the written statement that the property is purchased by her father and it is not open to the petitioner now to allege that the property is ancestral property.

3.The learned appellate Judge considered all the materials on record, considering the rival submissions dismissed the application filed by the petitioners. Against that, the present Civil Revision Petition has been filed.



4.The learned counsel for the petitioners submitted that the petitioners came to know about the partition deed dated 05.06.1930 only recently and therefore, their stand in the additional written statement has to be considered to decide the appeal. The document is more than 83 years old document and therefore it has to be presumed to be genuine executed by the parties concerned. Once the property is held to be ancestral property, the respondents are entitled to only 1/24th share and not 1/6th share.

5.Heard Mr.T.Antony Arul Raj, learned counsel appearing for the petitioners.

6. I have carefully perused the entire materials on record and arguments of counsel for the petitioners.

7.From the materials, it is seen that the petitioner has taken a specific stand in the written statement that the property in question was purchased by their father Ramasamy Iyer and the respondent is having share in the property and therefore, the contention of the petitioners that they came to know only recently that property is ancestral property allotted to the share of their father in the partition dated 05.06.1930 cannot be accepted at this stage. The learned appellate Judge has given valid reason for dismissing the application filed by the petitioners. There is no irregularity in the said order warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(writ)

/True copy/

Sub AssistantRegistrar

To
The I Additional District Court,
Thoothukudi.

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C.R.P (MD) No.308 of 2016 (NPD)
05.02.2016