



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.387 of 2016 (PD)

and

C.M.P. (MD) .No.1699 of 2016

P.Ponmudi .. Petitioner/Petitioner/2nd Defendant
Vs.

1.P.Santhanam
2.M.Rajeswari
3.P.Muthuramalingam
4.C.Amaravathy
5.P.Karupiah

.. Respondents/Respondents/Plaintiffs

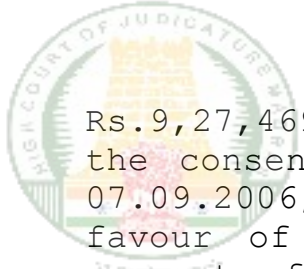
Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.12.2015, made in I.A.No.930 of 2013 in O.S.No.110 of 2013 on the file of the Sub Court, Sivagangai.

For Petitioner : Mr.C.Kalai Arasu

O R D E R

This Civil Revision Petition is filed against the fair and decretal order dated 10.12.2015, made in I.A.No.930 of 2013 in O.S.No.110 of 2013 on the file of the Sub Court, Sivagangai.

2. The petitioner is the second defendant in the Suit. The respondents filed a Suit in O.S.No.110 of 2013 for partition. The Suit property originally belonged to one Paramasamy Thevar, who is the father of the petitioner, respondents and the defendants 3 to 6. The first defendant took possession, for arrears of lease rent payable by said Paramasamy Thevar, with regard to the weekly market, through Court proceedings. Subsequently, he offered to pay the amounts due and payable by him and requested the first defendant to reconvey the property. The first defendant/Municipality accepted the letter and agreed to reconvey the property on payment of Rs.9,27,469/-. Before the said transaction could be completed, the said Paramasamy Thevar died. The acceptance letter of first defendant was received by the fourth defendant. The petitioner in consultation with other legal heirs offered to pay the amounts to the Municipality to reconvey the property. The Municipality refused to accept the petitioner's request. The petitioner filed W.P.No.1274 of 2006 for a direction to the Sivagangai Municipality to accept the said amount of



Rs.9,27,469/- as per the communication dated 15.11.2005 as well as the consent letter dated 24.11.2005. This Court by order dated, 07.09.2006, directed the Municipality to execute the sale deed in favour of the petitioner in respect of the Suit property, on payment of Rs.9,27,469/- from the date when the petitioner makes payment. The other legal heirs have given no objection letter on receiving a sum of Rs.25,000/- each from the petitioner. The petitioner sent a letter along with the no objection letter of the other legal heirs, as per the order of this Court.

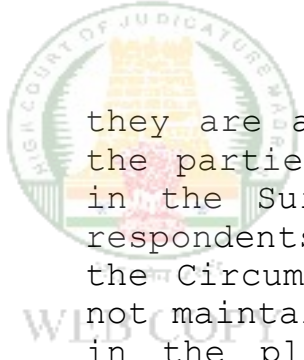
3. Subsequently, the other legal heirs filed W.A.No.464 of 2009 alleged that they have not added as parties in the writ proceedings. This Court by order, dated 15.04.2013 in W.A.No.464 of 2009, directed the parties to approach the Civil Court to establish their right in the Suit properties. In the circumstances, the respondent filed a Suit for partition. The petitioner filed I.A.No.930 of 2013 for rejection of plaint, on the ground that property is still in possession of the first defendant/Municipality and the property is not in joint name and Suit for partition is not maintainable and there is no cause of action has arisen for filing of Suit. The court fee paid is not proper.

4. The respondents filed counter affidavit stating that this Court in W.A.No.464 of 2009, directed the parties to establish their share in the Civil Court. Therefore the Suit is maintainable. The learned Judge considering the facts and materials on record, dismissed the I.A.No.930 of 2013 filed by the petitioner. Against the said order, the petitioner has come up with this present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the learned Judge failed to see that the Suit for partition is not maintainable as there is no co-ownership. No cause of action has arisen for the Suit. The petitioner filed W.P.No.1274 of 2006 and this Court directed the Municipality to execute the sale deed on receiving a sum of Rs.9,27,469,-. The learned Judge failed to see no objection letter given by the respondents. The petitioner has complied with the order of this Court made in W.P.No.1274 of 2006. Hence, there is no cause of action arises for partition of the Suit.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. From the records, it is seen that there were some legal proceedings between the first defendant/Sivagangai Municipality and Paramasamy Thevar and possession was taken up by the first defendant/Sivagangai Municipality. In the Writ Petition filed by the petitioner, he was directed to pay the arrears of a sum of Rs.9,27,469/- and the respondents filed Writ Appeal alleging that



they are also have a share in the property. This Court directed the parties to approach the Civil Court to establish their right in the Suit property. As per the direction of this Court, the respondents filed a Suit in O.S.No.110 of 2013 for partition. In the Circumstances, I.A.No.930 of 2013 filed by the petitioner is not maintainable. Further, for rejection of plaint, averments made in the plaint alone has to be considered by the Court, while considering the application for rejection of plaint or dismiss the application. The defence of the defendant is not a criteria for rejection of plaint.

8. In the result, there is no irregularity or illegality in the said order, warranting interference by this Court. Therefore, this Civil Revision Petition is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To
The Subordinate Judge, Sivagangai.

+One cc to Mr.C.Kalai Arasu, Advocate, SR.No.10724

PJL
RL/3C/JGB/DP/22/3/2016

C.R.P (MD) No.387 of 2016 (PD)
and
C.M.P. (MD) .No.1932 of 2016

24.02.2016