



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.03.2016

CORAM:
THE HONOURABLE MS.JUSTICE V.M. VELUMANI

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CRP (MD).No.690 of 2016

R. Rajshree : Revision Petitioner/Plaintiff

Vs.

1. R. Rajam @ Rajalakshmi
2. R. Raj Anand
3. R. Rajanikanth
5. M. Raj Lalli : Respondents/Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal and executable order dated 29.01.2016 passed in I.A.No.140 of 2015 in O.S.No.85 of 2007 on the file of I Additional District Judge, Madurai.

For Petitioner : Mr.M.P. Dhamodaran

ORDER

The Civil Revision Petition is filed against the fair and decreetal order, dated 29.01.2016 passed in I.A.No.140 of 2015 in O.S.No.85 of 2007 on the file of I Additional District Judge, Madurai.

2. The revision petitioner is the plaintiff. The respondents are defendants.

3. The revision petitioner filed a suit in O.S.No.85 of 2007 for partition. The respondents filed a written statement and contested the matter. After framing issues, trial commenced. The petitioner filed I.A.No.140 of 2015 for amendment to include the petition mentioned properties in the schedule of properties, under Order 6 Rule 17 of CPC. According to the petitioner, the properties were purchased by the second respondent after filing of the suit, from and out of the profit from the business. The respondents filed a counter affidavit and submitted that the second respondent purchased the petition mentioned property individually in the name of the second respondent and his wife, by availing loan on 05.03.2012 and there is no nexus to the suit properties in the partition suit. The second property sought to be included is also purchased by the second respondent's wife by availing loan on 05.03.2012, dated 23.08.2010. The properties were purchased individually by availing loan. The petitioner is aware of purchase and however, he did not file petition to include the said



properties till 2015. Only to prolong the issue, the petitioner has filed the present petition. The learned Judge considering the facts and circumstances dismissed the application filed by the petitioner. Against the said order, the petitioner has filed the present revision.

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4. The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that the respondents failed to prove that second item of petition mentioned property was purchased from their individual income. The learned Judge ought to have seen that all the properties were purchased only from and out of income derived from the joint family business. The learned Judge did not consider the order of the Hon'ble Apex Court that all the properties are to be included in the suit for partition. He has also relied on a Judgment reported in **2015(2) MWN (Civil) 556, (Shasidhar & others Vs. Ashwini Uma Mathad and another)** relevant para 24, wherein, it has been held as follows:-

24. We may consider it apposite to state being a well settled principle of law that in a suit filed by a co-sharerer, coparcener, co-owner or joint owner, as the case may be, for partition and separate possession of his/her share qua others, it is necessary for the Court to examine, in the first instance, the nature and character of the properties in the Suit such as, who was the original owner of the suit properties, how and by which source he/she acquired such properties, whether it was his/her self-acquired property or ancestral property, or joint property or coparcenary property in his/her hand and, if so, who are /were the coparceners or joint owners with him/her as the case may be. Secondly, how the devolution of his/her interest in the property took place consequent upon his/her death surviving members of the family and in what proportion, whether he/she died intestate or left behind any testamentary succession in favour of any family member or outsider to inherit his/her share in properties and if so, its effect. Thirdly whether the properties in suit are capable of being partitioned effectively and if so, in what manner? Lastly, whether all properties are included in the Suit and all co-sharerers, coparceners, co-owners or joint-owners as the case may be, are made parties in the suit? These issues, being material for proper disposal of the partition suit, have to be answered by the Court on the basis of the family tree, inter relations of family members, evidence adduced and the principles of law applicable to the case.



5. I have heard the learned counsel appearing of the petitioner and perused the materials on record.

6. Admittedly, the properties sought to be included were purchased subsequent to the filing of the suit, by the second respondent and his wife in the year 2010 and 2012. The petitioner did not take any steps to include the said properties in the suit for partition. The suit is of the year 2007. Already trial commenced and evidence being recorded. At that stage, the petitioner has come out with an application and it is a belated one. The respondents have denied that the properties sought to be included were purchased out of income from the joint family business. If the petitioner succeeds in the suit and his share is allotted to him, he will be entitled to mesne profits accrued from the date of the suit. This Court directed the trial Court to dispose of the suit within the time frame and the intention of the petitioner is only to drag on the proceedings. The Judgment relied on by the counsel for the petitioner is not applicable to the facts of the present case.

7. In such circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Execution Petition. Further, the learned Judge has exercised his power conferred on him in a proper perspective and there is no irregularity or illegality warranting interference by this Court.

8. In the result, the Civil revision petition is dismissed confirming the impugned order dated 29.01.2016 passed in I.A.No.140 of 2015 in O.S.No.85 of 2007 on the file of I Additional District Judge, Madurai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

trp
To
The I Additional District Judge, Madurai.

RG.JGB-DP/ 13.04.2016 3P.2C

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