

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.No.125 of 2017

and

C.M.P No.561 of 2017

and

Caveat Nos. 4824 to 4827 of 2016

Neelamegam

... Petitioner

vs.

1. E. Davamani
2. E. Gunamani
3. E. Jagadeesan
4. E. Lakshmisekar
5. E. Saroja
6. E. Jayaseelan
7. E. RaniEthiraj alias E. Rani
8. E. Amudha
9. E. Bhaskar
10. E. Sridhar
11. E. Arul
12. E. Devatha
13. E. Karnal
14. E. Ebi
15. E. Chandra
16. E. Rajan
17. E. Ponmudi

Rep. by their power of attorney

E. Karnal

167, Old No.64, Konnur High Road

Ayanavaram, Chennai -23.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.12.2016 passed in E.A. SR. 57901/16, E.P.No.1247 of 2015 in O.S.No. 4747 of 1977 on the file of IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.C.Jagadish

For respondents : Mr. R.Balakrishnan

ORDER

This Civil Revision Petition arises against the fair and final order dated 14.12.2016 passed in E.A.SR. 57901/16, E.P.No.1247 of 2015 in O.S.No. 4747 of 1977 on the file of IX Assistant City Civil Court, Chennai.

2. The petitioner has filed an application under Section 47 of CPC, before the IX Assistant Judge, City Civil Court, Chennai for executing the relief of E.P, against the judgment debtor, who are the successors, in the interest of T.S. No. 71/1, which is the suit property and for dismissal of the Execution Petition.

3. Learned counsel for the petitioner submitted that the petitioner is the son of Late M. Gurunathan, who is the plaintiff in O.S.

No.530/1948. One K. Ethirajan, joint patta holder of T.S. No.71/2 filed a suit for partition and separate possession of his alleged $\frac{1}{2}$ share in respect of T.S. No. 71/2 in O.S. No. 4797/1977. The petitioner further submits that though the entire extent measured $7\frac{1}{2}$ grounds in Paimash No.972, which is equivalent to T.S. No.71, later sub divided as 71/1 and 71/2, pursuant to the decree passed in O.S. No.404/1957. A preliminary decree was passed for partition in favour of Late K. Ethirajan on 18.07.1993. The petitioner and other legal heirs of Late Gurunahan filed A.S. No.384 of 1984 against the judgment and decree passed in the said suit. The said appeal suit was also dismissed. The S.A. No. 649/1987 filed before the High Court was also allowed against which Late K. Ethirajan approached the Hon'ble Supreme Court in C.A. No. 8720/1997. Again an appeal in A.S. No.519/2008 was filed against the decree passed on 12.09.2007 and the same was allowed. The S.A. No.714 of 2012 preferred before this Court was dismissed and so the petitioner along with other legal heirs of Late Gurunathan filed an SLP, but withdrew the same, since the Review filed before this Court is still pending. In the meantime, the respondent filed E.P. No.801 of 2008 for delivery of possession based on the final decree passed on 12.09.2007.

4. According to the petitioner, the respondents/ decree holder claims joint patta and partition of the property only in respect of T.S. No. 71/2, 71/S and not in favour of 71/1. The Advocate Commissioner had measured the property in T.S. No. 71/1, by wrongly identifying it with Door No.96. Although the same was not considered by the Advocate Commissioner, Trial Court and the Appellate Court, this Court has recognised the purchaser G. Venkatesan as a person who had purchased the property in T.S. No.71 Part and so allowed him to enjoy his portion from the share in T.S.No.71/1. Therefore, the Execution Petition could not be executed. According to the petitioner, Door No.64 A is not the subject matter of the suit property. However, the respondents, in Execution Proceedings has stated as Present Door No.163, New Door No.64 A and present Door No.167, in the schedule property. Hence, the petitioner filed an application under Section 47 of CPC. The Trial Court without numbering the said application, passed orders on merits, without giving an opportunity to the parties concerned. Therefore, this revision petition has been filed.

5. On the contrary, learned counsel for the respondents would submit that the said application was dismissed, by considering

the facts and circumstances of the case. However, the respondents have not filed their counter affidavit in the aforesaid application.

6. Heard Mr.C.Jagadish, learned counsel appearing for the petitioner and Mr. R.Balakrishnan, learned counsel appearing for the respondent and perused the records.

7. In the light of facts and circumstances of the case, the Court below, without giving an opportunity to the petitioner as well as the respondents has dismissed the application, at the unnumbered stage. Hence, I have no hesitation to set aside the impugned order and pass the following orders :-

- (a) the order dated 14.12.2016 passed in E.A. SR. 57901/16, E.P.No.1247 of 2015 in O.S.No. 4747 of 1977 on the file of IX Assistant City Civil Court, Chennai is hereby set aside.
- (b) The Executing Court is directed to number the said application, if it is in order and to decide the matter afresh. The respondents undertake to file counter affidavit within a period of one week and thereafter the Executing Court is directed to dispose of the matter on merits, as expeditiously as possible, within a period of four weeks thereof, without being influenced by any observation

made in this order, after providing an opportunity to the parties concerned.

- (c) On instructions, both the learned counsel for the parties, undertake to co-operate with the proceedings , as ordered by this Court.

8. In the result, the Civil Revision Petition is allowed as indicated above. The Connected Miscellaneous Petitions are closed. No order as to costs.

09.03.2017

Index : yes / no

[Issue order copy today i.e.20.03.2017]

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To
The IX Assistant City Civil Court,
Chennai

D.KRISHNAKUMAR, J.

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