

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.129 of 2017

C.Jeyakumari

.. Petitioner

Vs.

1.Saroja
2.Santhi
3.Amutha
4.Vijayan

R.Chandrasekar (Died)

5.Kasi Ammal
6.Ganapathy
7.Kathirvelu
8.Krishnan
9.Chockammal
10.S.Rajasekar @ S.Rajasekaran

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2016 passed in I.A.No.211 of 2015 in A.S.No.18 of 2011 on the file of the Principal District and Sessions Court, Thiruvallur.

For Petitioner : Mr.P.Sivamani

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 24.08.2016 passed in I.A.No.211 of 2015 in A.S.No.18 of 2011 on the file of the Principal District and Sessions Court, Thiruvallur.

2.The respondents 5 to 8 herein as the plaintiffs have filed a suit in O.S.No.8 of 1999 for partition and separate possession. The defendants 2 to 5/respondents 1 to 4 filed the written statement and contested the suit. Preliminary decree was passed on 14.12.2009, against which, the petitioner, who is the purchaser from one of the co-sharers, has filed A.S.No.18 of 2011. After hearing arguments, the appeal was posted for judgment. At that time, vendors of the petitioner, who are defendants 2 to 5, have filed application in I.A.No.211 of 2015 for reopen the case for marking documents in A.S.No.18 of 2011. The first appellate Court after hearing both sides, allowed the application, challenging the same, the present revision is preferred by the petitioner/7th defendant.

3. At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4. Learned counsel for the petitioner would submit that the present application is filed for permitting the defendants 2 to 5 to mark the documents. But no document was filed under Order 41 Rule 27 C.P.C. He would further submit that the defendants 2 to 5 had taken inconsistent plea in the written statement. Hence, he prays for allowing the revision.

5. On perusing the typed set of papers, it reveals that the respondents 5 to 8 as the plaintiffs filed the suit for the following reliefs:

“a) pass a preliminary decree for partition of the suit properties by metes and bounds and to allot the plaintiff's their due shares i.e., the first plaintiff of her $1/30^{\text{th}}$ share and the plaintiffs 2 to 4 of their $7/30^{\text{th}}$ share each in items one and two of the suit properties and also the plaintiffs $1/6^{\text{th}}$ share each i.e., in all $4/6^{\text{th}}$ share in item three of the suit property and for separate possession of the same;

b) granting a relief of permanent injunction thereby restraining the defendants, their men, agents, servants and others authorised on their behalf from alienating and encumbering the suit properties to any third parties without the knowledge and consent of the plaintiffs till partition is effected and the plaintiffs are allotted their due shares in the suit properties;

c) to pass a final decree thereon;”

Subsequently, defendants 6 and 7 were impleaded in the suit proceedings. The seventh defendant is the petitioner herein. After contest, the suit has been decreed and preliminary decree was passed as prayed for in the plaint. Challenging the same, the seventh defendant, who is the subsequent purchaser, has preferred an appeal in A.S.No.18 of 2011.

6. According to the petitioner, she has filed the written statement in the suit stating that the defendants 2 to 5 have executed the power of attorney deed in favour of the sixth defendant, from whom, the petitioner has purchased the same on 27.02.1995. So the second item of the suit property is belonging to the petitioner and that she has been in possession and enjoyment of

the same. But the trial Court without considering the above aspect granted preliminary decree. It is to be noted that the trial Court has not granted final decree. Challenging the preliminary decree passed by the trial Court, the petitioner has preferred an appeal. When the appeal was posted for judgment, the defendants 2 to 5 have filed I.A.No.211 of 2015 for reopen the case in A.S.No.18 of 2011 for marking of documents.

7.The first appellate Court has held that the dispute is only in respect of second item of the suit property. Since the appeal is of the year 2011, it is just and necessary to reopen the case with a view to give an opportunity to the defendants 2 to 5 and to mark the documents to avoid further litigation between both the parties. Admittedly, no document has been filed. In such circumstances, I am of the view that reopening the case will not cause any prejudice to the petitioner, since the petitioner has every right to agitate in case of filing application under Order 41 Rule 27 C.P.C. So I do not find any merits in the revision and accordingly, the revision deserves to be dismissed and it is hereby dismissed.

8.In the result, the Civil Revision Petition stands dismissed. Since A.S.No.18 of 2011 has been pending for more than five years, the learned Presiding Officer, the Principal District and Sessions Court, Thiruvallur, is directed to dispose of the appeal within a month from the date of receipt of a copy of this order. No costs.

07.02.2017

kj

Index:Yes/No

To

The Principal District and Sessions Court, Thiruvallur.

R.MALA,J.

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