

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1553 of 2017
& C.M.P.No.7211 of 2017

Manimegalai

.. Petitioner

Vs.

1. Sumathi
2. Dhanam

Govindammal(died)

3. Pazhaniammal
 4. Vennila
 - 5.Thilagam
 - 6.Valar
 - 7.Indira
 - 8.Narmadha
 - 9.Shanthi
 - 10.Marry
 - 11.Arun
 - 12.Sivakumar
- (Lunatic represented by Court
Guardian Mr.S.Ranganathan, Advocate
Sub-Court, Uthangarai
Krishnagiri District.)

13.Sathya
Respondents

..

PRAYER: Civil Revision Petition filed under Article 227 of the

Constitution of India, against the fair and decreetal order dated 08.03.2017 passed in I.A.No.6 of 2017 in O.S.No.187 of 2014 on the file of the Sub Court, Uthangarai, (Before transfer, O.S.No.53 of 2004, on the file of the Sub Court, Krishnagiri).

For Petitioner : Mr.P.Mani
For R1 to R4 &
R6 to R11 : Mr.V.Raghavaachari

For R13 : Mr.P.B.Sampath Kumar

For R5 & R12 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.03.2017 passed in I.A.No.6 of 2017 in O.S.No.187 of 2014 on the file of the Sub Court, Uthangarai, (Before transfer, O.S.No.53 of 2004, on the file of the Sub Court, Krishnagiri).

2. The petitioner is the 2nd defendant, the respondents 1 to 11 are the plaintiffs and the respondents 12 & 13 are the 1st & 3rd defendants in O.S.No.187 of 2014. The respondents 1 to 11 have filed the suit in O.S.No.187 of 2014 for partition of the properties mentioned in the schedule to the plaint. Mr.SivaKumar, 12th respondent/first defendant is a mentally challenged person and an

Advocate viz., Mr.S.Ranganathan was appointed by the Sub Court, Uthangarai, Krishnagiri District as his guardian. During trial, the counsel for 12th respondent stated that some of the properties are not included in the schedule to the plaint and if a decree is passed, it will be only a partial partition. In view of the same, the learned Judge by order dated 24.11.2016, suo motu, reopened the case and sent notice dated 24.11.2016 to all the parties to include remaining family properties if any, which are omitted in the plaint as stated in the evidence by both the parties. On receipt of the said notice, the respondents 1 to 11 filed I.A.No.6 of 2017 to include Survey No.77/2A of Kilkuppam Village as item No.14 in the schedule to the plaint.

3. The 12th Respondent filed counter affidavit and submitted that there are other properties and parties, but they are not impleaded in the suit and hence, prayed for dismissal of the application.

4. The petitioner filed counter affidavit and submitted that the property in Survey No.77/2A now sought to be included as 14th item in the schedule to the plaint was gifted by one Muruga

Goundar, father of the respondents 1 to 11, to the petitioner in the year 1973 and the petitioner sold the property to one Krishnamoorthi in the year 2011. The same was admitted by the respondents 1 to 11 in their cross examination that the said property is not a joint family property, therefore, it is not liable for partition.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, allowed the application for amendment.

6. Against the order dated 08.03.2017 made in I.A.No.6 of 2017, the present civil revision petition is filed by the petitioner/second defendant.

7. Heard both sides and perused the materials available on record.

8. The contention of the learned counsel for the petitioner is that the property now sought to be included in the schedule to the plaint was gifted to the petitioner in the year 1973 itself by Muruga

Goundar, father of the respondents 1 to 11. The petitioner sold the property to Krishnamoorthi in the year 2011.

9. The learned Judge considering this contention, rejected the same on the ground that the petitioner has not substantiated the same by any acceptable evidence. The learned Judge held that the petitioner will have an opportunity to file additional written statement and to cross examine the witnesses examined on behalf of the respondents 1 to 11 and the petitioner will have an opportunity to let in evidence to prove the gift deed of the year 1973 executed to the petitioner by the father of the respondents 1 to 11.

10. In view of the same, the property is not a joint family property. The respondents 1 to 11 are not entitled to partition, since they have admitted in their evidence that they are not claiming the property in Survey No.77/2A.

11. The learned Judge considering all the aspects in proper perspective manner, allowed the application by giving cogent and valid reasons. There is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge,

dated 08.03.2017.

12. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is
closed.

16.06.2017

Index : Yes/No

tkp/kj

To

The Sub-Court, Uthangarai.

V.M.VELUMANI, J.

tkp/kj

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