

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2094 of 2017
& C.M.P.No.9989 of 2017

N.K.Thirumalai Naidu

.. Petitioner

Vs.

1. N.K.Jayalakshmi
2. N.K.Kubendaran naidu
3. N.K.Lokeswaran naidu
4. N.K.Govindarajulu Naidu
5. N.K.Yasodha Ammal
6. N.K.Subathra @ Dillibai
7. Mrs. K.Aalis
8. Rathinasamy Nadar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the preliminary judgement and decree dated 05.02.2003 made in O.S.No.4012 of 1999 on the file of learned II Additional Judge, City Civil Court, Chennai.

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For Petitioner : Mr.R.Prabhakaran

ORDER

This Civil Revision Petition has been filed against the preliminary judgement and decree dated 05.02.2003 made in O.S.No.4012 of 1999 on the file of learned II Additional Judge, City Civil Court, Chennai.

2. The petitioner is the 4th defendant and the 1st respondent is the plaintiff in O.S.No.4012 of 1999 on the file of learned II Additional Judge, City Civil Court, Chennai. The 1st respondent filed suit for partition of the suit property, to allot 1/5 share, for separate possession and for permanent injunction restraining the petitioner and respondents 2 to 8 from alienating the suit property. The 1st respondent claimed the said relief on the ground that properties originally belonged to her grand father, namely, Sri Nagalaramasamy Naidu and he settled the property on them, i.e., petitioner and respondents 1 to 6 on 10.03.1989. Their father N.K.Viswanathan Naidu behind her back partitioned the property among petitioner and respondents 2 to 4 and the same is not binding on her.

3. The petitioner and respondents 2 to 4 filed written statement and contented that their grandfather, Sri Nagalaramasamy had five sons including the father of the petitioner, and respondents 1 to 5. He divided the suit property into 5 shares and gave only one ground of the suit property to their father late N.K.Viswanathan Naidu. Their father has given money and jewels, to the 1st respondent and respondents 5 and 6 and therefore, they are not entitled to any share in the property. On these pleadings, trial was conducted. By the judgement and decree dated 05.02.2003, a preliminary decree was passed granting 1/5th share in the suit property to the 1st respondent and permanent injunction.

4. Against the said judgement and decree dated 05.02.2003 the petitioner and respondents 2 to 4 filed A.S.No.353 of 2003 before this court. This Court by the judgement and decree dated 30.01.2013 dismissed the appeal confirming the Judgment and decree of the trial court. Against the said judgement, the petitioner and respondents 2 to 4 filed Special Leave petition in S.L.P.(C)No.4351 of 2014 before the Hon'ble Apex Court and the same was dismissed on 03.02.2014. The petitioner and

respondents 2 to 4 filed Review Petition (C) No.1099 of 2014 in S.L.P.No.4351 of 2014 and the same was dismissed by the Hon'ble Apex Court on 03.03.2014. Now, the petitioner has come up with the present Civil Revision Petition to set aside the judgement and decree dated 05.02.2003 made in O.S.No.4012 of 1999.

5. The learned counsel appearing for the petitioner stated that the property in question was assigned to his father by Final Settlement Enquiry Tahsildar classifying it as individual property. The said document was discovered by the petitioner only recently. The petitioner came to know that the property was Government land and this land was given by Town Settlement Tahsildar and therefore, it is the self acquired property of his father. By virtue of Section 23 of Tamil Nadu Survey and Boundaries Act, 1923 and Section 9 of Civil Procedure Code, suit is barred before the Trial Court. In the circumstances, the trial court has no jurisdiction to try the case and any question of law can be raised at any stage. The present Civil Revision Petition is questioning the validity of the suit filed by the 1st respondent.

6. The learned counsel for the petitioner also relied on the judgement reported in **AIR 1995 Ori 284 : (1996) 1 AP LJ (DNC 1) 4 : (1995) 79 CLT 666 (Purnabashi Mishra V.Raj Kumari Mishra and another)** wherein at Paragraph Nos. 4 and 10 it is held as follows:-

"4. Mr.S.N.Sinha, learned counsel for the appellant, reiterated the same issue of previous partition and alternatively submitted that the learned single Judge committed an error in not holding the property under schedule 'E-II' as the self-acquired property of the appellant and thereby misdirected himself in not applying the proposition of law laid down in the case on M.N.Aryamurthi v.M.L.Subbaraya Setty, AIR 1972 SC 1279, which fully supported the case of the appellant with regard to such self-acquisition.

10. In the result, the appeal is allowed, but in part. The properties under Schedule E-II'is the self-acquired property of defendant No.1 and, therefore, has to be excluded from the partition. parties to bear their own cost."

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

8. According to the petitioner, the suit property is the self acquired property of his father as the same was assigned to him by the Final Settlement Enquiry Tahsildar. It is not an ancestral property and 1st respondent is not entitled to any share in the suit property. He came to know about the assignment made by the Government only recently. The stand taken by the petitioner in the Civil Revision Petition is contrary to the stand taken by him and respondents 2 to 4 in the suit. The petitioner and respondents 2 to 4 admitted that the property originally belonged to their grandfather Sri Nagalaramasamy Naidu. They disputed the extent of land as claimed by the 1st respondent. At no point of time the petitioner contented that the property is self acquired property of his father N.K.Viswanathan Naidu before the trial court in O.S.No.4012 of 1999, this Court in first appeal, A.S. No.353 of 2003, before Hon'ble Apex Court in Special Leave Petition (c) No.4351 of 2014 and Review Petition (c) No.1099 of 2014.

9. In the typed set of papers filed by the petitioner in the Civil Revision Petition, the petitioner has filed the order of the Final Settlement Enquiry Tahsildar dated 27.2.1959. According to the petitioner, the land in question is the Government land and it was

allotted to their father in his individual capacity. A reading of said order shows that the Final Settlement Enquiry Tahsildar has held that the property in question is ancestral property in the hands of the petitioner's father and three properties in the hands of his brothers as per un-registered partition deed dated 29.5.1945. The relevant portion of the said order reads as follows:-

"The lands are their ancestral properties. The ancestral properties were divided among the four sons of late Ramaswami Naidu in an unregistered partition deed dated 29.5.1945, according to which the lands in question falls to their shares as registered in the S.L.R. They are enjoying the lands according to this partition deed for the last 13 years."

10. A reading of the above said order reveals that the land in question was an ancestral property in the hands of N.K.Viswanathan Naidu and it is not the Government land assigned to him, as claimed by the petitioner now.

11. In view of the same, there is no question of law as alleged by the petitioner arises in this Civil Revision Petition and there is no illegality or irregularity in the judgement of the trial Court dated 05.02.2003 warranting interference by this Court.

12. In the result, this Civil Revision Petition is dismissed with cost of Rs.25,000/- (Rupees twenty five thousand only). The said cost to be paid within four weeks from the date of receipt of a copy of this order to the Chief Justice Relief Fund, High Court, Madras. Consequently, connected miscellaneous petition is closed.

Post on 27.07.2017 for reporting compliance.

28.06.2017

Speaking Order/Non-speaking Order
Index :Yes/No
av / ssd
Note: Issue order copy on 12.07.2017.

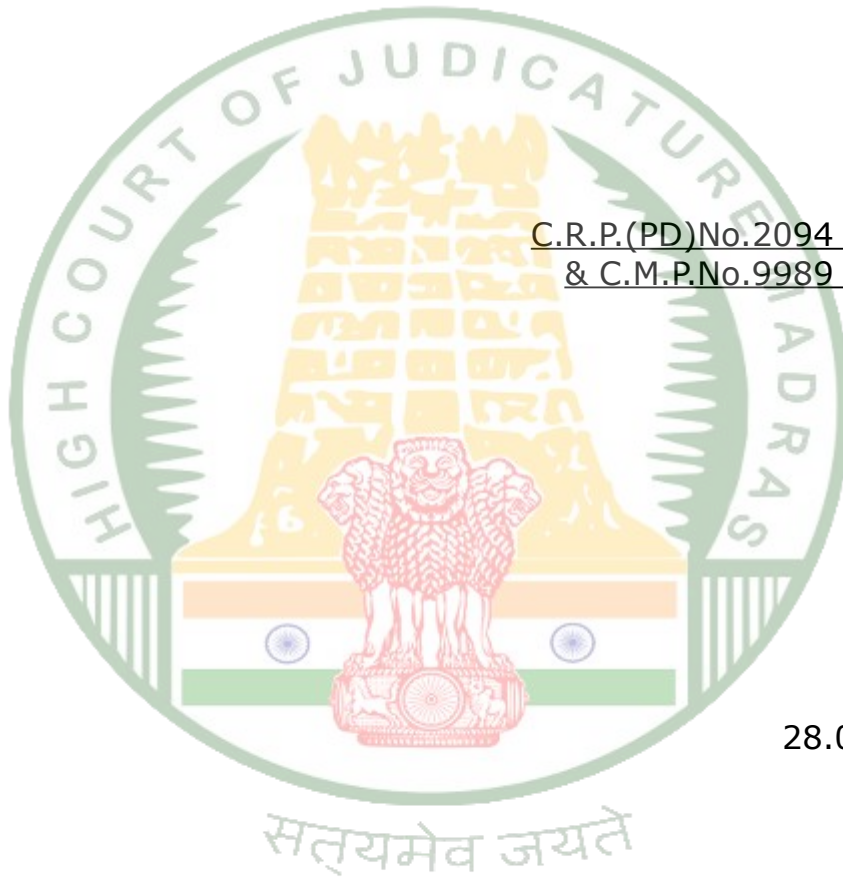
To

The learned II Additional Judge,
City Civil Court, Chennai.

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V.M.VELUMANI, J.

av/ssd



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