

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.309 of 2017
and CMP No.1415 of 2017

1.A.K.Eswaramoorthy
2.A.K.Vellingiri
3.Padmavathi
4.S.Elango

...

Petitioners/Defendants

Vs.

1.A.K.Sivasamy
2.A.K.Gopalasamy
3.The Sub-Registrar,
Office at the Sub-Registrar Office
at Sulur (exonerated)
4.The Sub-Registrar,
Office at the Sub-Registrar Office
at Annur (exonerated)
5.The Tahsildar
Sulur Taluk Office,
Sulur,
Coimbatore District.
6.The District Collector,
Coimbatore
Coimbatore Collectorate Campus,
Coimbatore

...

1st Respondent / Plaintiff

...

Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.712 of 2016 in O.S.No.483 of 2011 dated 02.12.2016, on the file of the Third Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.E.K.Kumaresan

For R-1 : Mr.Ma.Pa.Thangavel

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.712 of 2016 in O.S.No.483 of 2011 dated 02.12.2016, on the file of the Third Additional District and Sessions Judge, Coimbatore.

2. The revision petitioners are defendants 2, 3, 4 & 9 in the suit. The first respondent is the plaintiff and the respondents 2 to 6 are defendants 1 & 5 to 8. The first respondent filed suit for partition and for division of the property by metes and bounds and to allot 1/5th share to him. The first respondent/plaintiff also filed application in I.A.No.712 of 2016 to amend the plaint to include the description of property, i.e. Innova Car bearing Regn.No.TN 38 AZ 5000.

3. According to the first respondent, the car belongs to A.K.Palanisamy and after his death, the first respondent has 1/5th

share in the said car. The petitioners filed counter and submitted that A.K.Palanisamy had given the said car to one Ramakrishnan by executing document to that effect on 03.01.2011 and first respondent did not implead the owner of the said car in the schedule of property and now he cannot include the same by way of amendment. Even A.K.Palanisamy has executed document during his life time to Ramakrishnan and the first respondent has not impleaded the said Ramakrishnan as party to the suit. Hence, the claim of the first respondent is not maintainable for not impleading the said Ramakrishnan as proper and necessary party.

3. The learned Judge, considering the materials on record, averments in the affidavit and counter affidavit, allowed the application, holding that the ownership of the car can be decided after conclusion of the trial. Aggrieved against the said order, the present Civil Revision Petition is filed.

4. Heard the learned counsel for both sides and perused the materials available on record.

5. The first respondent has filed suit for partition mentioning

six items of the property in the schedule to the plaint. In the present application, first respondent sought for amendment to include one more item of the property i.e. Innova Car in the suit. In the suit for partition, apart from the properties mentioned in the schedule to the plaint, at the time of filing of the suit, other properties can also be included subsequently. It is for the person who includes the said property in the suit to prove that he is entitled to a share in the said property. In the present case, petitioners have stated that A.K.Palanisamy himself sold the car to one Ramakrishnan during his life time. The ownership also has been transferred in the name of Ramakrishnan. In the said circumstances, the car is not available for partition. The learned counsel for the petitioners submitted that the learned Trial Court Judge failed to consider the fact that the ownership has been transferred to Ramakrishnan. The said contention of the learned counsel for the petitioners is untenable. The learned counsel for the first respondent submitted that the transfership of ownership to Ramakrishnan was set aside. The issue whether the ownership has been transferred to Ramakrishnan or not or whether the car is available for partition or not can be decided only after conclusion of trial by appreciating the evidence let in by the parties.

6. The learned Judge has considered all the facts and passed the order by giving cogent and valid reasons. I do not find any irregularity or illegality in the order passed by the Trial Judge warranting interference by this Court.

7. In the result , this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned Third Additional District and Sessions Judge, Coimbatore is directed to dispose of the suit in O.S.No.483 of 2011, on merits and in accordance with law, as expeditiously as possible, in any event, not later than 30th September 2017.

17.04.2017

Speaking/Non-Speaking order
Index :Yes/No
rgr

(2/2)

To

To

The Third Additional District and
Sessions Judge, Coimbatore.

V.M.VELUMANI,J.
rgr

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