

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD)No.1090 of 2009
M.P.Nos.1 & 2 of 2009

1.S.R.Rangadurai
2.S.R.Raj kumar
rep.by his power of Attorney
R.Sasikala

.. Petitioners

Cause title accepted vide order
of Court dated 16.04.2009
made in M.P.No.1 of 2009 in
C.R.P.SR.25395/2009

Vs.

1.S.Rajagopal
2.S.Rangaraju
3.S.R.Rangabashyam
4.S.R.Venkaraju
5.S.S.Ramachandran
6.S.Manisekar
7.R.Vijayarani
8.R.Semmalar
9.R.Sengodan
10.T.K.Mathiyalagan
11.P.M.Nagarajan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.02.2009 made in I.A.No.1064/2008 in O.S.No.25 of 2003 on

the file of the Additional District Court (Fast Track Court No.1), Salem.

For Petitioners : Mr.V.Sivalingam
for M/s. Siva Associates

For R1, R5 to R9 : No appearance

For R2 to R4 : Mr.P.Jagadeesan

For R10 & R11 : Not ready in notice

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 25.02.2009 made in I.A.No.1064/2008 in O.S.No.25 of 2003 on the file of the Additional District Court (Fast Track Court No.1), Salem.

2. The petitioners are plaintiffs and respondents are the defendants in O.S.No.25 of 2003 on the file of the Additional District Court (Fast Track Court No.1), Salem. The petitioners filed the said suit for partition and to appoint an Advocate Commissioner in the final decree proceedings. The respondents 2 to 4 filed written statement on 18.07.2000 and additional written statement on 13.06.2008. Trial commenced. The

petitioners examined Pws 1 to 3 and closed their side of evidence. The first respondent was examined as DW1. The DW1 chief examination was over and when the suit was posted for cross examination, the petitioners filed I.A.No.1064 of 2008 to implead one Thangamani as 12th defendant in the suit. According to the petitioner, the respondents 2 to 4, in the additional written statement had stated that 7th item of the property belongs absolutely to the proposed party, Thangamani. In view of the same, the said Thangamani is proper and necessary party to the suit.

3. The second respondent filed counter affidavit and the same was adopted by the respondents 3 and 4. The respondents 2 to 4 submitted that the partition was effected in the year 1976 as per the Ex.A5, dated 21.06.1976 and all the family members were allotted separate properties. The respondents 2 to 4 and other family members are in possession and enjoyment of the property allotted to them and they deal with the same as owners. The first respondent/petitioners' father left the joint family in the year 1976 itself. The petitioners grand father V.N.V.Srinivasan

sold the property to the respondents 2 to 4 and first respondent executed a Release Deed dated 12.12.1977. In the partition deed, Ex.A5 dated 21.06.1976, it has been specifically mentioned that all the properties belonging to the family were partitioned and there is no other property to be partitioned. In the year 1993, by the sale deed dated 24.11.1993, the second respondent purchased the 7th item of the property from and out of his own earnings, in the name of his wife, Thangamani from kuppammal and others. It is not a joint family property and therefore it is not liable to be partitioned. The respondents 2 to 4 had stated that one property standing in the name of R.Sasikala, mother of the petitioner, wife of the first respondent. The said property had been purchased in the year 1990 in the name of R.Sasikala. In the circumstances, the claim of the petitioners that property purchased on 24.11.1993 in the name of Thangamani, wife of second respondent is joint family property is not correct and only to harass the second respondent and cause hardship, the present application has been filed and prayed for dismissal of the plaint.

4. Before the learned Judge, no oral evidence was let in by the parties. The petitioners have not marked any documents. The respondents 2 to 4 marked sale deed dated 24.11.1993 as Ex.R1. The learned Judge, considering the materials on record, averments in the affidavit and counter affidavit and Ex.A5 dated 21.06.1976, the partition deed, dismissed the application.

5. Against the said order dated 25.02.2009 made in I.A.No.1064/2008 in O.S.No.25 of 2003, the present civil revision petition is filed by the petitioners.

6. Mr.P.Jagadeesan filed vakalat for the proposed party. The proposed party is not impleaded as a respondent in the civil revision petition. He also submitted that he is appearing for the respondents 2 to 4.

7. Heard the learned counsel appearing for the petitioners and respondents 2 to 4 and perused the materials available on record. Though the notice has been served on the respondents 1 and 5 to 9, and their names are printed in the cause list, there is

no representation either in person or through counsel.

8. The petitioners filed the suit for partition and in the said suit, they included one of the property as item no.7 in the plaint schedule. According to the petitioners, it is a joint family property and the said property is also liable to be partitioned. According to the respondents 2 to 4, a partition was effected on 21.06.1976, as per Ex.A5 and members of family were allotted separate specific properties and they are enjoying the said properties as owners. The first respondent, the father of the petitioners' left the joint family in the year 1976 and he has also executed the Release Deed in respect of the properties in favour of respondents 2 to 4. The respondents 2 to 4 had marked Ex.R1, Sale deed dated 24.11.1993. From Ex.R1, it is seen that the said property is standing in the name of Thangamani, wife of the second respondent. The petitioners claim that there is no partition effected in respect of the joint family property mentioned in the schedule and those properties are liable to be partitioned. On the other hand, Ex.A5 dated 21.06.1976 was filed by the petitioner. In the said partition deed, the petitioners'

father, first respondent is also a party and properties are allotted to him. From that date onwards, the joint family was separated and each member is enjoying the property separately as owner. After 16 years of partition, the second respondent purchased item no.7 in the schedule, by the sale deed dated 24.11.1993 in the name of his wife, Thangamani. In view of this fact, it cannot be said that item no.7 is also joint family property. It is pertinent to note that the petitioner has stated that respondents 2 to 4 have mentioned in the additional written statement that one property is standing in the name of R.Sasikala, mother of the petitioner. The petitioners have not taken any steps to implead their mother as defendant in the said suit filed for partition.

9. From the materials on record, it is seen that the petitioners have not made the said Thangamani, the proposed party as a party in the application in I.A.No.1064 of 2008, filed to implead her as a party defendant. In the civil revision petition also, she is not a party. In the circumstances, there is no irregularity or illegality warranting interference with the order of the learned trial Judge dated 25.02.2009.

V.M.VELUMANI,J.

gsa

10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. The learned counsel appearing for the respondents 2 to 4 submitted that already trial completed and the suit is posted for arguments and prayed for speedy disposal of the suit. Since, the suit is of the year 2003, the learned Additional District Judge, Salem is directed to dispose of the suit as expeditiously as possible in any event not later than two months from the date of receipt of a copy of this order.

01.09.2017

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To

The Additional District Judge,
(Fast Track Court No.I),
Salem.

C.R.P(PD)No.1090 of 2009



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