

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 24.02.2017**

**CORAM :**

**THE HONOURABLE MR.S.M.SUBRAMANIAM**

**C.R.P(PD).No.58 of 2014**  
**and M.P.No.1 of 2014**

Nachimuthu

.. Petitioner

Vs.

Sellakumaran

.. Respondent

**Prayer:-** Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.07.2013 passed in I.A.No.391 of 2013 in O.S.No.276 of 2009 on the file of the learned Additional District Munsif, Tiruchengode.

For Petitioner : Mr.P.Valliappan

For Respondent : No appearance

**ORDER**

The revision petitioner is the defendant in the suit filed by the respondent in O.S. No.276 of 2009. The suit is for partition and during the pendency of the suit, the plaintiff filed an Interlocutory Application in I.A. No.391/2013 under Order 23 Rule 1 and requested the Trial Court to permit him to abandon his claim in respect of the property described in the petition. The petition was

allowed by the Trial Court and challenging the same, the present revision petition is filed.

2.Learned counsel appearing for the petitioner submitted that the suit schedule property sought to be abandoned by the respondent is part and parcel of the property which is to be partitioned in the main suit itself and therefore, by granting permission to abandon the portion of the suit schedule property, will affect his share involved in the same. Further the learned counsel for the petitioner contented that a small portion measuring 1.06 acres was sold and 1.34 acres are remaining which is part and parcel of the property to be partitioned. Therefore, the order of the Trial Court permitting the respondent to abandon the entire property is erroneous and the same will affect his right of share in the property.

3.Even in the counter, it was admitted that only a portion of the property was sold to a third party and the remaining property is the subject matter of the suit. The Trial Court, while considering the facts and circumstances, has failed to notice that only one portion alone was sold to a third party and therefore, the portion of the

property cannot be abandoned. Such being the factual position, this Court is of the opinion that abandoning of the entire portion of the property will prejudice the rights of the parties and accordingly, the findings of the Trial Court is incorrect. Hence, the fair and decreetal order passed in I.A. No.391 of 2013 in O.S. No.276 of 2009 on the file of the learned Additional District Munsif, Tiruchengode is set aside and all the issues with regard to the rights of the parties shall be decided by full fledged Trial and without expressing any opinion on the merits and demerits of the case, this petition is allowed. Consequently, connected miscellaneous petition is closed. No order as to costs.

**24.02.2017**

Index: Yes/ No

vga

To

The Additional District Munsif,  
Tiruchengode.

**S.M.SUBRAMANIAM,J.**

vga

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