

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1077 of 2016
and C.M.P.No.5936 of 2016

Vijayakumar ... Petitioner

Vs.

1.Ranganatha Gounder

2.Selvaraji

3.Amirthalingam

4.Vijayalakshmi ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.08.2015 passed by the Subordinate Judge, Cheyyar Thiruvannamalai in I.A.No.225 of 2014 in O.S.No.86 of 2012.

For Petitioner
 For RR1 to 4

: Mr.V.Meenakshi Sundaram
 : No appearance

ORDER

The respondent herein filed the suit in O.S.No.86 of 2012 for partition. In the aforesaid suit the respondent herein filed a suit in O.S.No.86 of 2012 under Order VI, Rule 17 C.P.C. In inclusion of the revision petitioner's property for the partition suit. The said

application was allowed by the Courts below. Challenging the above, the present Civil Revision Petition has been filed before this Court.

2. According to the learned counsel for the petitioner the suit was filed in the year 2001 and the present application was filed in the year 2016. The property proposed to be included in the suit is a self acquired property of the revision petitioner. Without considering the objection made by the revision petitioner, the trial Court mechanically allowed the application. Therefore, the order passed by the Courts below is liable to be set aside.

3. Notice served. None appeared on behalf of the respondent.

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

5. The respondent/Plaintiff has filed the application in I.A.No.225 of 2014, to include the schedule mentioned property mentioned in the I.A. The case of the respondent/plaintiff in the instant application is that the property stated in the application had been purchased out of the income derived from the sale of the vacant

land. The respondent/plaintiff also entitled for the share in the aforesaid property. It is a specific case of the revision petitioner that the schedule mentioned property in the application is self acquired property of the revision petitioner. Therefore, the aforesaid property had been purchased by the revision petitioner only from the income earned by him and not from the ancestral property.

6. Further it is contend by the learned counsel for the petitioner, already issues have been framed in the suit. If the said application is allowed, the trial Court have to frame additional issue in the aforesaid suit to determine the dispute arising out of the present application.

7. Considering the facts and circumstances of the case, this Court cannot come to the conclusion that the schedule mentioned property in the application is self acquired property of the revision petitioner or the ancestral property and the same shall be

D.KRISHNAKUMAR,J.

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considered only at the time of the trial by producing the necessary oral and documentary evidence before the trial Court. Hence, the order of the Courts below is confirmed and there is no warrants to interfere with order passed by the Courts below. The observations made by this Court is only for disposal of Civil Revision Petition and the same shall not be influenced in the trial of the suit.

8. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed. Further, the trial Court is directed to frame additional issues raised in I.A.No.225 of 2014 and proceed trial in accordance with law.

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Index : Yes/No

Internet : Yes/No

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To

<http://www.judis.nic.in>

1. The Subordinate Judge,
Cheyyar, Thiruvannamalai.