

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) No.888 of 2012**

P.Desingu : Petitioner

versus

Md.Gulam Moideen : Respondent

**PRAYER:** Revision filed against the order dated 3.1.2012, in I.A.No.1735 of 2011 in O.S.No.294 of 2009 on the file of the Additional District Munsif, Villupuram.

For petitioner :: Mr.N.Suresh

For respondents :: Mr.T.Sezhian

**ORDER**

The respondent purchased undivided share from some of the co-owners. The respondent thereafter, took possession of the property. The petitioner immediately filed a suit for declaration that the sale deed dated 2 July 2007 in favour of the respondent is null and void and for a mandatory injunction directing him to reconstruct and restore the building to its original condition.

2. Subsequently, the petitioner filed an application under Order 2 Rule 2(3) of CPC to grant leave to seek further prayer for recovery of possession. The application was opposed by the respondent. The Trial Court dismissed the application on the ground that the petition is highly

belated and as such, there is no question of granting leave. The said order is under challenge at the instance of the unsuccessful petitioner in I.A.No.1735 of 2011.

3. The learned counsel for the petitioner contended that the respondent has purchased only the undivided share. The respondent after trespassing into the property, demolished the residential house. The petitioner therefore rushed to the Court and filed the suit. Subsequently, petition was filed for filing another suit for declaration and mandatory injunction. According to the learned counsel, the respondent is not entitled to keep possession of the property.

4. The learned counsel for the respondent justified the order passed by the Trial Court. According to the learned counsel, there was an oral partition in the family and on the strength of the said partition, the respondent purchased the property. According to the learned counsel, the application was filed after concluding evidence. The Trial Court was therefore correct in dismissing the plea.

5. The documents available on record clearly indicate that the respondent purchased only the undivided extent of property from his vendor. The respondent in his written statement contended that he was told by his vendor that there was an oral partition among the children of

Palaniappa Chettiar and the eastern 2/8 share was allotted to them. There is nothing on record to show that such an oral partition took place among the children of Palanisamy Chettiar. Therefore, it is *prima facie* clear that the respondent purchased only the undivided extent. There is no question of taking possession of the entire property on the strength of a document purchasing the undivided extent.

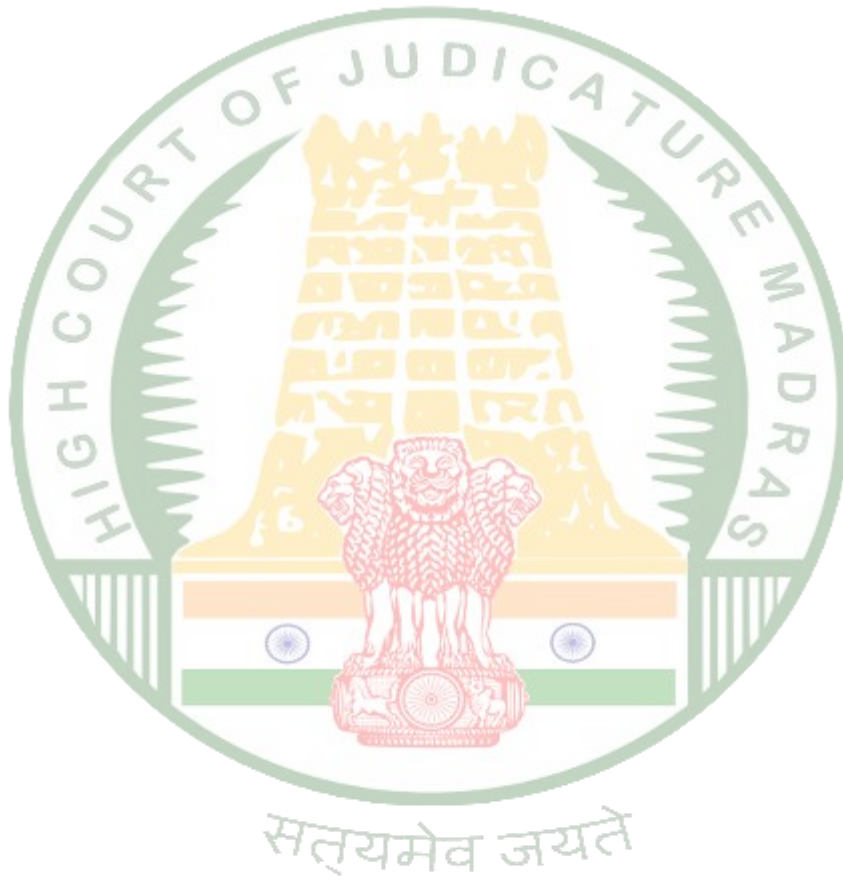
6. The petitioner filed a suit for declaration and mandatory injunction immediately after he was dispossessed. Therefore, it cannot be said that the petitioner ought to have taken leave during the initial stage instead of filing the application subsequently.

7. The factual matrix clearly indicates that the petitioner was constrained to file suit the immediately after he was dispossessed. The petitioner has given sufficient reasons, giving him leave to file another suit.

8. The learned counsel for the petitioner submitted that the petitioner would be satisfied in case liberty is given to file application for amendment. I do see considerable merit in the said contention.

9. The petitioner cannot be non-suited merely on the ground that he has not taken leave originally. Even according to the respondent, the petitioner is having share in respect of the plaint schedule property. Even if

the document evidencing sale of property to the respondent is taken not of,



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**K.K.SASIDHARAN, J.**

(tar)

still he is only a co-owner owner. Such being the factual position, I am of the view that the petitioner should be permitted to file application for amendment of the plaint to claim the additional reliefs.

10. The petitioner is given liberty to file a comprehensive application for amendment of the plaint, for claiming additional reliefs. The learned Trial Judge is directed to permit the amendment. The respondent should be given opportunity to file additional written statement taking into account the plaint so amended.

11. The civil revision petition is allowed with the above direction. No costs.

Index:Yes/no  
tar

To  
The Additional District Munsif, Villupuram.

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