



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.2033 of 2015
and M.P.(MD) No. 1 of 2015

M.Sivaraman ... Petitioner/Respondent/Plaintiff

vs.

S.Veeraragavan ... Respondent/Petitioner/1st Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.04.2015 made in I.A.No.119 of 2015 in O.S.No.81 of 2014 on the file of the VI Additional District Court, Madurai.

For Petitioner : Mr.T.Antony Arul Raj
For Respondent : Mr.R.Suriyanarayanan

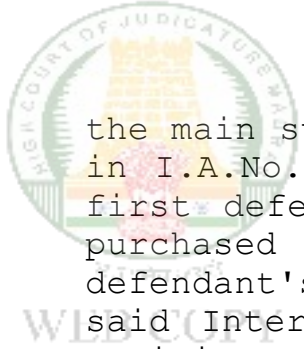
O R D E R

This revision petition has been filed against the fair and decreetal order dated 21.04.2015 made in I.A.No.119 of 2015 in O.S.No.81 of 2014 on the file of the VI Additional District Court, Madurai.

2. The petitioner would aver among other things that the petitioner has filed a suit in O.S.No.81 of 2014 seeking the relief of partition. The defendants 1 to 5 are the petitioner's sons and daughters. The sixth defendant is the subsequent purchaser. There are 14 items of property.

3.The first defendant filed an Interlocutory Application in I.A.No.119 of 2015 to strike off item Nos. 12 and 14 from the suit schedule properties stating that the said item of properties were purchased by the first defendant out of his own income. In that application, the petitioner has filed a detailed counter. After perusal of averments, the trial court has allowed the said petition on 21.04.2015.

4. Aggrieved over the same, the petitioner has filed the present Civil Revision Petition on the ground that two items of property cannot be deleted at enquiry stage and the issues raised in the Interlocutory Application ought to have been dealt with in



the main suit. The petitioner/plaintiff states that the petitioner in I.A.No.119 of 2015 is the son of the plaintiff and he is the first defendant in the suit. The 12th item of the property was purchased in the name of the first defendant and the first defendant's wife. But, on the strength of these averments, the said Interlocutory Application could not have been allowed. The petitioner also would aver that construction in item No.14 of the suit property was made by using the teak woods, which were collected from the portion of the demolished ancestral property at Natchikulam and the site of the house was treated as joint family property. By suppressing the said fact, the first defendant executed a sale deed in favour of the sixth defendant and it appears that notice was sent by the plaintiff to the defendants claiming 1/3rd share. The petitioner also submits that the first defendant has no locus standi individually to file the above Interlocutory Application.

5. According to the revision petitioner, all the suit properties are ancestral properties. Some of them were purchased by family source. Whether properties are ancestral properties or not has to be decided only during the trial by letting in evidence and the court ought not to have allowed the application to stricke off the plaint in respect of a particular property alone which has been allotted in the suit.

6. Therefore, I am of the opinion that the learned VI Additional District Court, Madurai, ought not to have allowed the petition filed by the first defendant and therefore, in my considered opinion, the order of the learned Judge needs to be interfered with. Therefore, the order passed in I.A.No.119 of 2015 in O.S.No.81 of 2014 by the learned VI Additional District Court, Madurai, is set aside.

7. Considering the facts and circumstances of the case, there shall be a direction to the learned VI Additional District Judge, Madurai, to dispose of the suit in O.S.No.81 of 2014 within a period of six months from the date of receipt of copy of this order.

8. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

The VI Additional District Judge, Madurai.

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+1cc to M/S.T.Antony Arul Raj, Advocate SR.No. 87129

CRP (PD) (MD) No.2033 of 2015

14.11.2017

CM

JM/JC/SAR 1/03.01.2018/3P/3C