



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M. VELUMANI

**CRP(MD) .No.236 of 2017 and
CMP(MD) .No.1079 of 2017**

Vedamuthu : Petitioner / 1st Defendant

Vs.

1.Thankam : 1st Respondent/2nd Defendant/
Petitioner

2.Rajamoni

3.Chandrabose

4.Sekar

5.Satheesh

: Respondents/ Respondents/
Plaintiffs

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.268 of 2013 in O.S.No.419 of 2010 dated 13.06.2016 on the file of the II Additional District Munsif, Kuzhithurai.

For Petitioner : Mr. M. Vallinayagam
Senior Counsel for
Mr.S.C.Herold Singh

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.268 of 2013 in O.S.No.419 of 2010 dated 13.06.2016 on the file of the II Additional District Munsif, Kuzhithurai.

2. The petitioner is the first defendant in O.S.No.419 of 2010. The first respondent is second defendant. The respondents 2 to 5 are plaintiffs in O.S.No.419 of 2010, on the file of the II Additional District Munsif, Kuzhithurai. The respondents 2 to 5 filed suit for declaration and for recovery of possession and to recover Rs.300/- per annum as future means profit. The petitioner filed written statement on 04.01.2011 and is contesting the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The petitioner along with first respondent filed I.A.No.268



of 2013 for stay of the trial of the suit in O.S.No.419 of 2010, till the final disposal of final decree application in O.S.No.1101 of 1969. According to the petitioner and first respondent, the property in present suit and second item of the suit schedule property in S.No.1101 of 1969 are one and the same. With regard to the suit property and other properties, earlier suit in O.S.No.1101 of 1969 is pending for partition of entire suit property in Survey No.1504 and for passing of final decree for partition. The property scheduled in the plaint is old Survey No.1504A of Killioor Village measuring 18 Cents. The correct measurement for old Survey No.1504 is 52 Cents. old Survey No.1504 was not sub divided as Survey Nos.1504A and 1504B re survey number of the property is R.Survey Nos.25/10 and 25/11 of Killioor Village. The Advocate Commissioner appointed in the suit, filed report mentioning Survey Nos.1504A and 1504B, instead of Old Survey No.1504. In the decree passed in A.S.No.67 of 1975, filed against preliminary decree, old Survey Number of the property is mentioned correctly as S.No.1504 of Killioor Village. The respondents 2 to 5 are claiming right over the suit property through one Daniel Nadar, who was the 17th defendant in the suit in O.S.No.1101 of 1969. After his death, respondents 2 to 5 were impleaded as additional respondents 54 to 56 in final decree application. In the suit in O.S.No.1101 of 1969 already a preliminary decree has been passed on 07.04.1973 declaring the shares of all the parties therein. There will be conflict of finding, if present suit is proceeded. Therefore, he prayed for stay of the trial of the suit in O.S.No.419 of 2010, till the final disposal of final decree in O.S.No.1101 of 1969.

4. The respondents filed counter affidavit and submitted that the suit property is not the subject matter of suit in O.S.No.1101 of 1969. Both the properties are different. The property in old Survey.No.1504A is co-related to Re Survey No.25/11 measuring 18 Cents. The second item of the property in O.S.No.1101 of 1969 is in old S.No.1504 measuring 34 Cents. Taking advantage of the pendency of the final decree proceedings in O.S.No.1101 of 1969, the petitioner and first respondent trespassed into the suit property. In view of the above facts, the petitioner and first respondent cannot invoke Section 10 of CPC for stay of further proceedings and prayed of dismissal of I.A.No.268 of 2013.

5. The learned Judge considering the judgment passed in the earlier suit in which the extent of land in Survey No.1504 is mentioned as 34 Cents and no sub division has been mentioned therein, dismissed the application filed by the petitioner and the first respondent holding that properties in both the suits are not one and the same.

6. In view of the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

7. The learned Senior counsel appearing for the petitioner submitted that the property in O.S.No.1101 of 1969 and present suit are one and the same and the father of the petitioner and respondents 2 to 5 are parties to the earlier suit in O.S.No.1101 of 1969 and the claim with regard to the property is already settled in the earlier suit. The issue in the present suit is directly and substantially in issue in the previous suit, wherein the ancestors of the petitioner and the respondents were all parties and the earlier suit in the final stage.

8. I have heard the learned Senior Counsel appearing for the petitioner and perused the materials available on record.

9. From the materials available on record it is seen that the first respondent is claiming relief in the present suit with regard to 18 Cents in Survey No.1504A, whereas the second item of the earlier suit is in Survey No. 1504 measuring 34 Cents. The learned Judge considered the entire facts and has concluded that old Survey No.1504 measuring 34 cents is subject matter of earlier suit in O.S.No.1101 of 1969 co-related to Re Survey No.25/10 and property involved in the present suit is 18 Cents in S.No.1504A co-related to Re Survey.No.25/11 measuring 18 cents, and concluded that both the properties are different and not one and the same and dismissed the application.

10. The learned Judge has considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the I.A.No.268 of 2013 in O.S.No.419 of 2010 dated 13.06.2016, on the file of the II Additional District Munsif, Kuzhithurai. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

The II Additional District Munsif, Kuzhithurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate, SR No. 7593.

TRP

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