



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM

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THE HON'BLE MR.JUSTICE J.NISHA BANU**C.R.P. (MD) No.2399 of 2017 (NPD)
and C.M.P. (MD) No.11423 of 2017**

K.Balasubramaniam ... Petitioner/1st Respondent/
Petitioner/4th Defendant

-Vs-

1.Velathal

2.T.Babu

K.Ponnuchamy (died)

... Respondents 1 and 2/Petitioners/
Respondents 15, 16/Defendants 13,14

3.Gandhimathi

4.Abi Chithra

5.K.Chellappan

6.K.Rathinasamy

7.K.Thandayutham

8.Chellammal

9.Komalavalli

10.Mangalam

11.Saraswathi @ Usha

12. Muthuchamy Naickar

13.Duraisamy Naicker

14.Dhandayuthapani

15.Subramanian Chettiar

16.M.Balan

17.V.Bose

..Respondents 5- 17/Respondents 5 - 17/Respondents
4-14,17, 18/Defendants 1-3, 5-12, 15, 16.

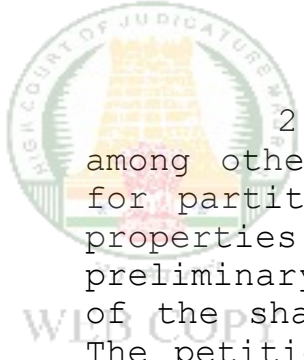
Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the petition in E.A.No.135 of 2017 in E.P.No.86 of 2008 in O.S.No.53 of 1977 on the file of the District Munsif Court, Palani.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.D.Venkatesh for R1 and R2
R3 to R17 given up.

ORDER

This Civil Revision Petition has been filed seeking a direction to strike off the petition in E.A.No.135 of 2017 in E.P.No.86 of 2008 in O.S.No.53 of 1977 on the file of the District Munsif Court, Palani.



2. The learned counsel for the petitioners would aver among other things that the suit in O.S.NO.53 of 1977 was filed for partition and separate possession of 1/9th share in the suit properties against the brothers and sisters. After contest, a preliminary decree was passed on 16.03.1979 holding that each one of the sharer is entitled to 1/9th share in the suit properties. The petitioner filed I.A.No.1209 of 1991 for passing final decree and on 25.03.1996, final decree was passed allotting the specific portion in the suit properties. In item No. 2 of Schedule-I, the petitioner was allotted 72 sq.ft on the eastern side of the property. The petitioner filed E.P.No.86 of 2008 on the file of District Munsif's Court, Palani for taking delivery of the petitioner's share in the above item. On 15.03.2012, delivery was ordered. The petitioner filed E.A.No.51 of 2012 for surveyor help to measure and hand over his share.

3. At this juncture, the respondents 1 and 2 filed a impleading application to implead them as parties in the execution proceedings. They contended that after the passing of preliminary decree, they purchased the shares of the brothers and sisters in Item No.2 in Schedule-I and they have put up construction.

4. The learned counsel for the petitioner would also draw the attention of this Court to page Nos.15 and 16 of the typed set of papers, wherein it is specifically stated that share of the property has been divided and it has been specifically allotted to the petitioner and therefore, when the Execution Petition is posted for delivery, the respondents 1 and 2 have filed E.A.No.135 of 2017 under Section 47 of C.P.C stating that they made construction and the same cannot be disturbed in the present Execution Petition, which is clear abuse of process of court.

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

6. Considering the facts and circumstances of the case and considering the facts that the respondents 1 and 2 being pendente lite purchasers cannot claim any right over the construction put up by them, this Court is inclined to strike off the Execution Application. Accordingly, E.A.No.135 of 2017 in E.P.No.86 of 2008 in O.S.No.53 of 1977 on the file of the learned District Munsif, Palani, is struck off.

7. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No.11423 of 2017 is closed.

Sd/-

Assistant Registrar(CO)



To,

The District Munsif Court,
Palani.

+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 92907

+ 1 cc TO Mr.D.Venkatesh , Advocate in SR No. 92969

CM

AE/GT/SAR1/08.01.2018/3P/4C

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